

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 22/2023

IN THE MATTER OF:

MR. AMOL ABHIMANYU SHINDE & ORS.APPLICANTS

VERSUS

MPCB & OTHERS

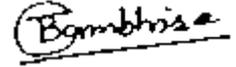
....RESPONDENTS

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Date: 02.08.2024



ADVOCATE FOR APPLICANTS

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REJOINDER ON BEHALF OF THE ORIGINAL APPLICANT

I, Mr. Amol Shinde S/o Abhimanyu Shinde, Age: 45 Yrs, Occupation: Business, R/o: At Post: Manchar, Taluka: Ambegaon, District: Pune, 410503 (MH), do hereby solemnly affirm and state on oath as follows:

I state that, I am Applicant No. 1 in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.

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- 1. BRIEF BACKGROUND OF CASE:** I state that the Original Applicant total 9 in numbers have approached this Hon'ble NGT for adversely affecting their life as well as Environment & Ecology of the Area due to illegal establishment, expansion & operations of the Industry of R-8-Akash Dairy & R-9-Rheansh Food without CTE & CTO and further without installation of appropriate Air Pollution Control Devices and Water Pollution

Control Devices and also, illegal operations despite refusal of CTO by MPCB vide its direction dated 13.10.2020 (P@31-34). That the Applicant seeks permanent closure of the Industry as the establishment and expansion of Industry is in violation of law provisions of law i.e. law laid down by the Hon'ble Supreme Court & Hon'ble NGT, prohibiting such industrial establishment & operations in Residential Zone by obtain permissions under the garb of Commercial establishment. Further these Applicants seeks restitution and restoration of the Area by imposing exemplary EDC on PP and recovering the same EDC from PP. Hence this OA filed on 22.02.2023 (P@1-107).

1.1 CHANGE IN CIRCUMSTANCES AND NGT OUGHT TO USE

ITS INHERENT POWER: I state that, the during the pendency of this OA, MPCB officials in notorious manner granted ex-post facto CTO vide dated 16.11.2023 (P@457-465) to R-8-Akash Dairy and vide dated 26.12.2023 (P@466-472) to R-9-Rheansh Food in illegal manner and these facts have changed circumstances thereby requesting this Hon'ble NGT to use its inherent powers under Rule No. 24 of NGT (P&P) Rules, 2011 for end of justice with clear message to the erring officials of MPCB that their illegal acts will not be tolerated at the cost of mother nature & also, at the cost of right to decent life of our citizens and if, not Hon'ble NGT will not use its powers it will be miscarriage of the justice compelling Applicants to move pillar to post.

1.2 DETAILS OF PLEADINGS: I state that, this Hon'ble NGT has admitted this OA and issued notices vide its Order dated 02.03.2023 and thereafter, the Respondent have filed their reply with following details;

Sr.	Pleading	Date	Page No.
1.	OA (E-filed on 22.02.2023)	20.02.2023;	001-107

2.	Service Affidavit	21.03.2023	108-123
3.	Reply R-4-SDO, Junnar-Ambegao & R-7-Collector of Pune	12.05.2023	124-129
4.	Reply R-8D-Pritviraj Thorat	13.05.2023	130-142
5.	Reply R-1-MPCB	15.05.2023	143-157
6.	Reply R-8-Akash Dairy	15.05.2023	158-284
7.	Reply R-9-Rheansh Food	15.05.2023	285-298
8.	IA No. 185/2024: Kishor V. Karale	21.08.2023	299-376
9.	R-1-MPCB: Visit Report	19.07.2023	378-383
10.	Reply R-1-MPCB: EDC	29.08.2023	384-398
11.	IA No. 06/2024: Original Applicant	05.01.2024	399-728
12.	Reply R-2-CGWA	23.01.2024	729-739
13.	Reply R-1-MPCB to IA No. 06/2024	13.03.2024	740-759
14.	Reply R-8-Akash Dairy to IA No. 185/2023	13.03.2024	760-766
15.	Reply R-8-Akash Dairy to IA No. 06/2024	13.03.2024	767-771
16.	Reply R-8-Akash Dairy to MPCB EDC	31.07.2024	

That the Respondent No. 3-Town Planning Department, Respondent No. 5-Manchar Nagar Panchayat and Respondent No. 6-Manchar Police Station have failed to file their Reply affidavit despite multiple opportunities since March, 2023. Therefore, this Hon'ble NGT may kindly proceed in the matter ex-parte.

1.3 That as per Order of Hon'ble NGT passed in OA No. 46/2018(PB) vide dated 20.05.2020, CGWA have issued norms vide July, 2020 for Dairy Farms with title "Guidelines Environmental for Management of Dairy Farms and Gaushalas" and same have confirmed & enforced nationwide by the Hon'ble NGT vide its order dated 08.10.2020. Therefore, stand taken by the MPCB that there is no siting criteria for Dairy is total wrong and MPCB have misled this Hon'ble NGT on account of granting of CTO. Therefore, the MPCB officer named in IA No. 06/2024 is liable for the strict action and judicial note to be taken against the same.

2. IMPORTANT DATES & EVENTS: That the Following important dates and events are itself explanatory proving that it's admitted case of violation.

Sr.	Description	Date	Para & Page
1.	Water (P&CP) Act, 1974: S. 25 & 26 “no person shall , without the previous consent of the state board”	23.03.1974	S.25, S.26
2.	Air (P&CP) Act, 1981: S. 21 “no person shall , without the previous consent of the state board”	29.03.1981 16.05.1981	S.21
3.	Collector Non-Agricultural Permission	21.04.1992	Marathi: P@365-368 English: P@369-375
4.	(1996) 5 SCC 647: Vellore Citizens Welfare Forum Vs. Union of India & Ors. ¶25 (5): <i>An Industry may have set up the necessary pollution control device at present but it shall be liable to pay for the <u>past pollution generated</u> by the said Industry which has resulted in the environmental degradation and sufficient to the residents of the area.</i>	28.08.1996	P@
5.	(1997) 1 SCC 388; MC Mehta Vs Kamal Nath & Ors. ¶37: <i>The <u>Precautionary Principle and the Polluter Pays Principle</u> have been accepted as part of the <u>law of the Land</u>.</i> ¶38: <i>It thus settled by this Court that <u>one who pollute the environment must pay to reverse the damage caused by his acts</u>.</i> ¶39(1): <i>The <u>public trust doctrine</u>, as discussed by us in this judgment is a part of the <u>law of the land</u>.</i>	13.12.1996	P@

6.	M.C. Mehta Vs. Union Of India (2004) 6 SCC 588 -Closure of Industries from Residential Zone -No leniency to violators encroaching right to decent life of law abiding citizens	07.05.2004	¶f, g (P@479) = ¶21, 41, 51, (P@490, 489, 502) ¶69; @508 P@473-509
7.	(2010) 2 SCC 27 ; Priyanka Estate International Pvt. Ltd. & Ors. Vs. State of Assam & Ors. ¶50; <u>Seal of Approval for such illegal activities is not required to be given by this Court</u>	03.12.2009	P@
8.	CTO to Vighnagar Diary Pvt. Ltd. -No CTE -Valid Upto 30.11.2012 -No renewal in CTO -No Installation of ETP/APC -No compliance to the any Condition	29.09.2010	P@389-394
9.	DCPR Provisions for regional plan sanctioned by state government (Residential plots abutting on road having width 12 m. and above in non-congested area and 9 m. and above in congested area) in this zone the following uses, mix uses may be permitted: -“With power requirement not more than 10 h.p., employment not more than 9 persons and floor area not exceeding 100 Sq. m.”	21.11.2013	¶22.2.3, (xii); P@416-417 ¶Table No. 12 I-Food Product (2); P@418 II-Beverages & Tobacco (11); P@419
10.	NOC by Manchar Grampanchayat to R-9 (There is NOC for present Location as stated in CTO)	16.12.2019	*No mention of Project Location, *Ward No. 5 P@24-25

11.	NOC by Manchar Grampanchayat to R-8 (There is NOC for present Location as stated in CTO)	30.01.2020	*Ward No. 5, *Property No. 6407 P@26-27
12.	Food License to R-8-PP	10.02.2020	Flavoured Milk: 250 Tonnes/Years P@29
13.	NGT-PB Order in OA No. 46/2018 Dealing with issue of siting criteria, waste management, Water Pollution & Air Pollution from Dairy	20.05.2020	P@
14.	CPCB Guidelines for Dairy Farm and siting Policy “i. Dairy farms and gaushalas should be located outside city/village boundaries, atleast 200 meters away from residential dwellings and 500 meters away from hospitals & schools.”	July, 2020	P@
15.	NGT-PB Order in OA No. 46/2018 ¶5: Siting Criteria	08.10.2020	P@
16.	MPCB Refusal of CTO to R-9	13.10.2020	¶1-7: P@31-32
17.	MPCB Refusal of CTO to R-8	13.10.2020	¶1-11: P@33-34
18.	Recommendation of R-3-ADTP to R-4-SDO (Only Commercial Use & No Industrial Use is recommended by ADTP)	23.10.2020	*Commercial Use ¶1: Land Use & Building Use: Milk Collection & Chilling Unit; P@35/39 ¶17-MPCB-Consent, P@37/42 ¶Proposed Plan for Milk Collection & Chilling unit for Commercial Use; P@44
19.	UDCPR Provisions for Maharashtra State sanctioned by state government (Residential Zone R2 includes Residential plots abutting on roads	02.12.2020	¶4.4.2 (iv) (a) (I) (i); P@437

	having existing or proposed width of 9 m. and above in congested area and 12 m. and above in non-congested area). -“With power requirement not more than 10 h.p., employment not more than 9 persons and floor area not exceeding 100 sq.m.”		
20.	R-4-SDO Order for Land use change & building Sanction	12.08.2021	*Commercial Use- Milk Collection & Chilling Unit; P@45 ¶14: Land Use & Building Use: Milk Collection & Chilling Unit; P@46/52 ¶22: Rain Water Harvesting; P@47/53 ¶30: MPCB-Consent, P@ P@48/55 P@45-56
21.	South Gujarat Textile Processors Associations Vs. Union Of India & Ors. OA No. 1038/2018(PB),	29.08.2022	¶182; P@698 P@510-728
22.	Applicants Complaints	23.09.2021 05.09.2022 11.10.2022 23.10.2022 27.01.2023	P@60-62 P@63-66 P@67-69 P@70-73 P@89-91
23.	Noise Measurement	21.01.2023	82 dB; 9.25 PM; P@74
24.	Photographs -Boiler installation, -Wood used as fuel for boiler, -Chimney, -Illegal construction in site margin, -DG Set installation	22.01.2023	P@75-84
25.	OA filed before NGT IMP Facts: No CTE/CTO; MPCB Consent Refusal; ADTP & SDO	22.02.2023	¶7: PP info. ¶8: Facts ¶9: Grounds

	<p>sanction only for commercial activity of Milk Collection & Chilling etc.</p> <p>IMP Grounds: Illegal Operations without CTE/CTO, refusal of consent, 1 boiler-Wood as fuel, 2 DG sets, Discharge of waste water & trade effluent in natural water body, Ground Water extraction from open well/dug well, violation of conditions of building sanction-no Consents obtained, Collusion of Government Authorities/ ignorance of complaints, No RWH, No Solar, No Fire Fighting, no tree plantation, No RG/OS Area development, No access road, Milk use more than 40000 Litres, Waste Water discharge without treatment into Natural Water body 50000 Litres, EDC More than Rs. 5 Crores</p>		¶11: Prayers P@001-23/24-107
26.	<p>Reply of R-4-SDO & R-7-Collector of Pune</p> <p>¶1: OA Allegation pollution due to R-8 & 9 Activity of Milk Collection, Milk Chilling, processing, treatment, packaging, various other milk food production</p> <p>¶2: SDO-Sanction plan on 12.08.2021 for construction and building use for Milk Collection & Chilling Unit</p> <p>¶3: Manchar Nagar Panchayat formed on 23.12.2020 and complaint send to them for further action on illegal construction</p> <p>¶4: one boiler, one waste water treatment plant, after treatment water used for agricultural purpose and discharged to drainage of Nagarpanchayat Manchar, No</p>	12.05.2023	P@124-129

	chemical discharge in natural water course		
27.	<p>Reply R-1-MPCB</p> <p>¶3: Akash Dairy-(i) to (vii); Milk collection, pasteurisation, packing, trial ghee production, Earlier name “Vighhar Dairy Pvt. Ltd.” Consent valid upto 30.11.2012, Daily Water Requirement-30 CMD, Source-Dug Well- 1 KM Away, No treatment plant for trade effluent, untreated trade effluent disposed in local Nalla, 1-2 year ago disposal was in agricultural land, Installation of One wooden fire hot water generator without APC, Stack 5-6 Mtrs, Installed one wood fired boiler of 1 TPH with 30 Mtrs Stack-no sampling facility, Installed one baby Boiler of 1 Lack Kcal with 5-6 Mtrs Stack-without sampling facility, Baby boiler not in operation since 1.5 year, Installation of DG Set of 125 KVA, Daily Milk Requirement 20000 to 22000 Litres. (P@144-145)</p> <p>¶3: Rheansh Dairy-(i) to (vi); Industry found in Operation, Flavoured Milk production at ground, installed soft drink setup at 1st floor,</p>	15.05.2023	P@143-157
28.	<p>R-1-MPCB Proposed Direction to R-8 & 9</p> <p>¶ 1-3: Akash Dairy; P@152 ¶ 1-2: Rheansh Dairy;P@154</p>	28.04.2023	P@152-155
29.	<p>R-1-MPCB Interim Direction to R-8 & 9</p> <p>¶ 1-5: Akash Dairy; P@156 ¶ 1-5: Rheansh Dairy;P@157</p>	12.05.2023	P@156-157

30.	Reply R-8-Akash Diary (No CTE since the year 2000 and for expansion since Year 2019) (No CTO Renewal since 01.12.2012)	15.05.2023	¶27: Operations Since year 2000; P@170 ¶28: 20000 Litres Milk, 12 Tempo, P@170 ¶28: Employees-30 Nos; P@171, ¶29: Wood as fuel P@171,
31.	Reply R-9-Rheansh Foods (No CTE & CTO since the year 2020)	15.05.2023	¶25: Operations Since year 2020; P@296 ¶26: 50000 Bottles of Milk, 1 Tempo, P@296 ¶26: Employees-40 Nos; P@296, ¶29: Wood as fuel P@297,
32.	R-4-SDO Letter to R-1-MPCB ¶Building Plans are sanctioned for use of Milk Collection & Milk Chilling Unit,	11.07.2023	
33.	R-4-SDO Letter to R-1-MPCB ¶Building Plans are sanctioned for use of Milk Collection & Milk Chilling Unit,	28.08.2023	
34.	MPCB & Tehsildar Visit Report -Industry found in Operation, production of milk pouch, loose processed milk with pasteurisation, -Earlier Industry name “Vighnagar Dairy Pvt. Ltd.” last consent valid upto 30.11.2012, applied for renewal on 27.04.2023, -Industry generate 25 CMD effluent, provided ETP of 50 CMD, Domestic effluent treatment by Septic Tank, -Installed Wooden Fired Boiler - 1TPH with 30 Mtrs Stack without	19.07.2023	P@378-383

	<p>sampling port, Installed Hot Water generator without APC & 5 Mtrs stack, One Baby Boiler-1 Lakh Kcal-wooden fuel-no sampling port, 125 KVA DG Set, Tin Cover for storage of fly Ash, Industry obtained certificate from director of steam boilers on 22.04.2022,</p> <p>-Wooden fired 1 TPH boiler used by R-9-Rheansh Food, -BG of 1 Lakh submitted valid upto 15.05.2025.</p>		
35.	<p>R-1-MPCB Additional Affidavit on EDC Calculations R-8-Akash Dairy= Rs. 3.882 Crores (P@386-387) R-9-Rheansh Food=Rs. 1.256 Crores (P@387-388) *Wrong Calculations, No EDC for not having valid CTE since inception as well as for expansion of the project from Milk Collection & Chilling unit to Milk Food production, Packaging, Soft Drink production, boiler installation, Hot Water Generation, etc. Ground Water Extraction, No Solar, No RWH, No tree Plantation, etc.</p>	29.08.2023	P@384-398
36.	<p>Ex-post facto CTO to R-8-Akash Dairy -Condition No. 10 of CTO: -CTO illegal -CTO granted for expanded industry without CTE -CTO subject to final outcome of NGT Case</p>	16.11.2023	¶10, P@458
37.	<p>Ex-post facto CTO to R-9-Rheansh Food -Condition No. 10 of CTO -CTO illegal</p>	26.12.2023	¶10, P@467

	-CTO granted for expanded industry without CTE -CTO subject to final outcome of NGT Case		
38.	IA No. 06/2024 -Abuse of process of law, -Grant of ex-post facto permissions-CTO, not permissible under Water Act & Air Act, MC Mehta Case Judgment & NGT Judgment ignored by MPCB Officials, -Counterblast to the OA -Changed in circumstances -Prohibited activity is regularised, -MPCB officials must be held liable and action shall be taken	05.01.2024	P@399-728
39.	Reply of R-2-CGWA ¶7: Obligatory on part of R-8 & 9 to obtain CGWA NOC under Notification dated 24.09.2020; ¶8: CGWA issued advisory to R-8 & 9 to obtain NOC, failing which will attract imposition of EDC ¶9: Ground Water abstraction observed-25 M ³ /day; Rheansh Food-5 M ³ /day and Akash Dairy-20 M ³ /day ¶10: CGWA letter dated 05..09.2023 to collector, to take legal action against R-8 & 9-PP ¶11: R-8 & 9-PP are liable for penalty as per S-15 & 16 of the Environment (P) Act, 1986	23.01.2024	*CGWA failed to impose and recover the EDC for illegal ground water extraction. Very casual attitude of CGWA P@729-739
40.	R-1-MPCB Reply to IA No. 06/2024 ¶6:Units falls under Red Category, No siting Criteria , for non-erection of Milk Industry since ETP is in Place ¶7: MPCB PD-28.04.2023, MPCB-ID-12.05.2023 & direction to submit BG	13.03.2024	P@740-759

	<p>¶8: MPCB assessment for EDC-Additional Affidavit 30.08.2023</p> <p>¶9: Penal Charges under MPCB circular dated 12.07.2022; R-8=Rs. 495000/- and R-9=Rs. 126739/- subsequent grant of CTO, no abuse of process of law.</p> <p>¶10: CTO issued in official Capacity, uncalled the name of official as EDC is imposed.</p>		
41.	<p>Reply R-8-PP to IA No. 185/2023</p> <p>-Stand taken by R-8 is plain denial of the contentions raised in IA. However, PP failed to under the law laid down by the Hon'ble Supreme Court is binding on all and PP is not exceptional to its. Moreover, civil rights of every resident in the area or property in the area being adversely affected by the operation of PP.</p>	13.03.2024	P@760-766
42.	<p>Reply R-8-PP to IA No. 06/2024</p> <p>-Stand taken by R-8 is plain denial of the contentions raised in IA.</p>	13.03.2024	P@767-771
43.	<p>Reply of R-8 to MPCB Affidavit dated 29.08.2023 on EDC</p> <p>-OA is silent on destruction of environment, bald statement, No proof</p> <p>-EDC is without Application of mind, No opportunity is afforded, Industry has paid Penalty of Rs. 495000/-</p> <p>-Once penalty is levied then no question of imposing EDC,</p> <p>-Applicant & MPCB failed to substantiate the damage to environment</p>	31.07.2024	P@
44.	<p>Hon'ble NGT Order</p> <p>¶6: NGT have Ample Power,</p>	15.05.2024	

That above dates and events clearly shows that the PP have committed blatant violations of Water (P&CP) Act, 1974, Air (P&CP) Act, 1981 and Hazardous Handling & Management Rules causing irreparable damage to the Environment & Ecology of the Area since the starting of Operations from year 2000 as admitted by R-8-PP in its Reply Affidavit. Therefore, R-8 & 9-PP are not liable for any leniency.

3. ADMITTED CASE OF VIOLATIONS:

That the Reply Affidavit of the R-1-MPCB, R-2-CGWA, R-4-SDO & R-7-Collector clearly admits the violations of Respondent-Industry, Therefore, plain denial by PP in its Affidavit has become meaningless and it is admitted case of violation.

3.1 AREA IN RESIDENTIAL ZONE, COMMERCIAL PERMISSION FROM LOCAL PLANNING AUTHORITY AND ACTUAL INDUSTRIAL ESTABLISHMENT UNDER COMMERCIAL SANCTION: HON'BLE SC & NGT DIRECTIONS PROHIBITS SUCH INDUSTRY IN RESIDENTIAL ZONE:

That the Area surrounded by the Industry including industry is come under Residential Area. However, R-4-SDO & R-3-ADTP have sanctioned its plans vide dated 23.10.2020 & 12.08.2021 for commercial purpose only with use for "Milk Collection & Chilling Unit", but in actual PP have expanded its project from commercial to Industrial purpose and made illegal changes in the project to large scale having huge pollution load. That as per Hon'ble Supreme Court Judgment, no industrial establishment & operations are allowed in the residential area and same aspect have confirmed by this Hon'ble NGT in 2018 judgment. That the Hon'ble SC directed shifting of many thousands Industries from residential Area to Industrial Area with zoning conformity. Therefore, despite

refusal of consent to such industry by MPCB vide its Order dated 13.10.2020, again during the pendency of OA and at the verge of final hearing, MPCB in notorious manner granted CTO vide dated 16.11.2023 to R-8-Akash Dairy and Vide dated 26.12.2023 to the R-9-Rheansh Food. It is important to note that, if the residential zone/area is prohibited for industrial establishment/ operations, then granting of such CTO is nothing but abuse of process of law. Moreover, this Hon'ble NGT have taken note of such Dairy Pollution in OA No. 46/2018(PB) and accordingly, CPCB have issued its guidelines in July, 2020 for siting of Dairy operations and these guidelines also, prohibit the MPCB for grant of CTO to the Dairy within 200 Mtrs from the residential area. Therefore, R-8, R-9 as well as R-4-SDO and R-1-MPCB in collusion with each other misleading this Hon'ble NGT. Therefore, these Industry may kindly be closed and direct the MPCB, PP for shifting of Industry to appropriate zone/location.

3.2 ILLEGAL ESTABLISHMENT WITHOUT CTE & ILLEGAL OPERATIONS WITHOUT CTO AND HUGE GAPS: That the PP himself have admitted that the Industry is established & in operation since the year 2000. However, PP have obtained first CTO on 29.09.2010 which was valid upto 30.11.2012. It means there is no CTE for establishment of this Industry since its inception and also there was no CTO since the year 2000 till 29.09.2010 and thereafter, from 01.12.2012 to 16.11.2023. Also, PP have expanded the capacity of Industry without obtaining prior CTE under Water Act & Air Act and accordingly refusal Order was issued by MPCB vide dated 13.10.2020 for "Akash Dairy". Moreover, PP expanded its operation by adding Milk food production and other products like soft drink etc. in the name & style "Rheansh Food", which

was established on 09.02.2020 (CTE Application date as per MPCB Affidavit dated 29.08.2023) and also, MPCB refused CTO vide its order dated 13.10.2020. That the gap days calculated by the MPCB are wrong and without valid CTO & CTE, we cannot consider that the industry is in compliant of the Law. Therefore, there are huge gaps as below;

Sr.	Firm	From	To	Gap-No of Days
1.	No CTE-Akash Dairy	01.01.2000	01.08.2024	8970
2.	No CTO-Akash Dairy	01.01.2000	28.09.2010	4285
3.	No CTO-Akash Dairy	01.12.2012	16.11.2023	4000
4.	No CTE-Rheansh Food	09.02.2020	01.08.2024	1634
5.	No CTO-Rheansh Food	09.02.2020	26.12.2023	1417

Therefore, there is gap of **8970** days in obtaining CTE by R-8-M/s. Akash Dairy, There is gap of **8285** (4285+4000) days in obtaining CTO by R-8-M/s. Akash Dairy.

And also, there is gap of **1634** days in obtaining CTE by R-9-M/s. Rheansh Food, There is gap of **1417** days in obtaining CTO by R-9-Rheansh Food. Above gaps shows the admitted case of violation.

3.3 ILLEGAL GROUND WATER EXTRACTION FROM DUG WELL: That the MPCB Affidavit dated 15.05.203 (**¶3** (iv), **P@144**) as well as CGWA Affidavit dated 23.01.2024 (**¶9**, **P@733-734**) have confirmed that the PP is extracting ground water without mandatory prior CGWA NOC for its daily consumption from as dug well located at 1 KM in its farm. Therefore, it is admitted case of violations and PP is liable for the payment of the EDC on this illegal ground water extraction.

3.4 NO INSTALLATION OF ETP/STP, DIRECT DISCHARGE OF UNTREATED TRADE EFFLUENT TO SEWER LINE & NATURAL WATER BODY: That the MPCB That the MPCB Affidavit dated 15.05.203 (**¶3** (v), **P@144**) have confirmed that

the PP has not provided treatment plant for trade effluent treatment and it is disposed in local Nalla. However, when PP got exposed for all of its blatant violation, PP have installed scrap skeleton of ETP hurriedly as per visit report dated 19.07.2023. However, same ETP is not in operation in scientific manner to achieve the parameters stipulated in CTO.

3.5 ETP PARAMETER FROM ITS MANUFACTURER NOT IN CONFORMITY WITH CTO: that the following table shows the discrepancies in the PP's ETP manual parameter set points and CTO standards set points for treated effluent. This shows that there is no scientific installation and operation of ETP. Also, MPCB despite visit have not collected any samples from outlet of ETP for analysis.

Sr.	Parameters	Inlet	Outlet	CTO
1.	pH	4.5-10	6.0-9.0	6.0-8.5
2.	COD	2300-2500	<250	250
3.	BOD	1300-1500	<100	30
4.	Oil & Grease	13-15	<10	10
5.	TSS	Not Disclosed	Not Disclosed	100
6.	TDS	Not Disclosed	Not Disclosed	2100
7.	Sulphate	Not Disclosed	Not Disclosed	1000
8.	Chlorine	Not Disclosed	Not Disclosed	600

Basically, there is no standard manual is provided from the manufacturer of the ETP, but PP have provided the details from on its own Letter pad, which also shows that this ETP is not in conformity with the MPCB standards.

3.6 POWER CONSUMPTION MORE THAN 10 HP AND EMPLOYEE MORE THAN 9: That the ETP itself is having power consumption of more than 6 HP alone as shown in its manual (P@272-279) than other equipments and R-8 & R-9 have total manpower of more than 70 persons with 13

numbers of tempo for transportation. That this industry have cumulative power consumption of more than 25 HP. Therefore, such industry with huge pollution load shall not be allowed to be in residential area as per the Order of Hon'ble Supreme Court & Hon'ble NGT.

3.7 ILLEGAL INSTALLATION & OPERATION OF BOILER: That the MPCB That the MPCB Affidavit dated 15.05.203 (¶3 (vi), P@145) have confirmed that the PP has illegally install one wooden fired hot water generator, one wood fired boiler of 1 TPH both without APC system.

3.8 ILLEGAL INSTALLATION & OPERATION OF DG SETS: That the MPCB That the MPCB Affidavit dated 15.05.203 (¶3 (vii), P@146) have confirmed that the PP has installed DG Set of 125 KVA capacity.

3.9 NO TREE PLANTATION: That PP have made any tree plantation around the Industry for ecological balance and Photographs shows on **Page No. 167-171** with his affidavit dated 15.05.2023 are from his bungalow and not from industry premises.

3.10 VEHICULAR MOVEMENT CAUSING AIR POLLUTION AND NO APPROACH ROAD FROM HIS OWN PLOT: That the PP himself in his affidavit dated 15.05.2023 at Para-28 on page No 170 have admitted that there are 12 tempos used for milk handling in Akash Dairy and One tempo at Rheansh Food. Moreover, Both the Industry have no independent approach road to their industry and using approach road of Applicants Society creating huge air pollution, noise pollution, dust emission due to routine trips.

3.11 ILLEGAL BUILDING CONSTRUCTION & NO SITE MARGIN: That the R-4-SDO with technical help of R-3-ADTP have approved the building plans vide dated 12.08.2021 as well as land use change only for the "Milk Collection & Chilling unit",

However, PP have carried out illegal construction having no site margin around the building. Also, there is illegal installation of boiler, hot water generators, wood storage area and material storage in the site margin. Moreover, site margins are occupied with tin sheds. Also, the construction carried out at the site is not in consonance with the plan sanction by R-4-SDO. There is illegal excess construction. However, present construction is only for Commercial purposed, but PP has established Industry having heavy pollution load and it is prohibited in Residential Area as per MC Mehta case of 2004 and NGT case of 2018. Also, the Residential Area developed in the vicinity of the Industry is from 1992 and Industry was established in the year 2000 only for Milk Collection and chilling unit, but PP have expanded the industry for additional large quantity of Milk products and Food production and this establishment is in violation of fundamental rights of decent life.

4. ABUSE OF PROCESS OF LAW, CARELESS, RECKLESS, UNAPOLOGETIC & UNPROFESSIONAL MISCONDUCT BY MPCB OFFICIALS AND COLLUSION WITH PP-ATTEMPT TO GIVE COUNTERBLAST TO THE OA:

- 4.1** That there is no CTE obtained by Akash Dairy for establishment of Industry and their is grant of ex-post facto CTO dated 16.11.2023 without CTE to Akash Dairy by MPCB officials and this is in contravention of provisions of Water Act, 1974 and Air Act, 1981.
- 4.2** That also, there is no CTE obtained by Rheansh Food for establishment of Industry and there is grant of ex-post facto CTO dated 26.12.2023 without CTE to Rheansh Food by MPCB officials and this is in contravention of provisions of Water Act, 1974 and Air Act, 1981.

- 4.3** That the siting criteria of CPCB issued in 2020 on the basis of Hon'ble NGT direction from OA No. 46/2018 (PB) have clearly imposed prohibition on installation of Dairy Farm from not in vicinity of 200 Mtrs from Village/City or residential Area.
- 4.4** Therefore, this professional misconduct of the MPCB officials which is totally illegal, unapologetic, careless, reckless, and attracting serious action from this Hon'ble NGT.

5. REJOINDER TO REPLY OF R-1-MPCB DATED 15.05.2023, VISIT REPORT DATED 19.07.2023 & ADDITIONAL REPLY DATED 29.08.2023 ON EDC (P@143-157, P@378-383, P@384-398): That the R-1-MPCB filed its first reply affidavit vide dated 15.05.2023 and MPCB have brought on record the blatant violations of both the PP i.e. R-8 & 9 as stated in Para-3 of the said affidavit and clearly mentioned that there is no CTO obtained by PP, not installation of Environment Infrastructure of ETP, APC, WTP etc., but MPCB is mute on the issue of obtaining prior CTE. Thereafter, MPCB filed its visit Report dated 19.07.2023 and same is to cover-up the PP with his belated compliances and Thereafter, MPCB filed additional Affidavit vide dated 29.08.2023, which shows wrong calculations of EDC based on the wrong days calculation. Also, MPCB failed to make comment on not obtaining CTE by PP and also, failed to compute the EDC for not obtaining CTE. This Applicant have provided the actual EDC calculation in this Rejoinder.

6. REJOINDER TO REPLY OF R-2-CGWA DATED 23.01.2024 (P@729-739): That the R-2-CGWA has admitted that there is illegal ground water extraction from dug well, but made mistake to show the extraction from May, 2023 instead of its extraction from the establishment of this Industry from the

year 2000 as admitted by PP in its Affidavit. Further, CGWA intentionally ignored to compute the EDC as well penalty amount. That the CGWA has directed Collector to take action against PP, but nothing has happen till date. This is complete irresponsible behaviours of the CGWA. That this Original Applicant have provided the EDC computation in this Rejoinder and same may kindly be impose on the both the PP and same shall be recovered from PP.

7. **REJOINDER TO REPLY OF R-3-ADTP:** That the ADTP have not filed its reply till date and this is complete irresponsible conduct of government authorities disrespecting the discipline of government administration to assist the Judicial System for the delivering justice.
8. **REJOINDER TO REPLY OF R-4-SDO OF JUNNAR-AMBEGAON DATED 12.05.2023 (P@124-129):** That this Respondent along with R-7 Collector of Pune have filed their consolidated Reply clarifying the stand that the Sanction accorded for the construction of building and its use is restricted to the “Commercial Purpose” with “Milk Collection & Chilling” Unit. However, PP is carrying out its expanded operations with illegal construction beyond commercials to Industrial Activity and therefore, present Industry having huge pollution load cannot be established in this Residential Area.
9. **REJOINDER TO REPLY OF R-5-MANCHAR NAGAR PANCHAYAT:** That this Respondent have not filed its Reply Affidavit despite grant of opportunity vide order dated 15.05.2024.
10. **REJOINDER TO REPLY OF R-6-PI, MANCHAR POLICE STATION:** That this Respondent have not appeared as well as not filed any reply till date.

11. REJOINDER TO REPLY OF R-7-COLLECTOR OF PUNE:

That this Respondent have filed its reply affidavit with R-4-SDO and same is rebutted in this Rejoinder.

12. REJOINDER TO REPLY OF R-8-AKASH DAIRY DATED 15.05.2023, 13.03.2024 & 31.07.2024:

That this Respondent have not rebutted the specific contentions from OA as well as MPCB additional Affidavit on EDC. There is only plain denial. Moreover, PP have admitted that the number of workers engaged is more than 30, which shows industrial operations. Also, PP have admitted that there are 12 Tempos engaged for transportation of the Milk & Milk Product from the Industry. Also, PP have provided misleading details of ETP, tree plantation etc. That the PP have not complied with the siting criteria of CPCB as well as its Industry is not in conformity of MC Mehta verdict from Hon'ble SC and NGT Order. That the Industry of the PP is with huge pollution load and there is no installation of proper ETP, STP, APC, etc. and such industry cannot be established in the area surrounded by Residential Area. That the PP himself have admitted that the Industry was set up in the year 2000 without CTE & CTO and its illegal operations are exposed. This Respondent have violated the provisions of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981, Hazardous Waste Management & Handling Rules, Solid Waste Management & Handling Rules. Therefore, PP is liable for the past pollution for restitution & restitution of the environment. That the Reply of this PP dated 31.07.2024 is without sign.

13. REJOINDER TO REPLY OF R-9-RHEANSH FOOD" DATED 15.05.2023 & 13.03.2024:

That the reply of this Respondent is also plain denial to the contentions from OA. Moreover, this Respondent have not rebutted the MPCB additional Affidavit dated 29.08.2023 for EDC imposition. That this Respondent

have applied for CTO on 09.02.2020 which was refused by MPCB on 13.10.2020. That this Respondent have also not obtained the CTE and failed to comply with the law. This Respondent have violated the provisions of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981, Hazardous Waste Management & Handling Rules, Solid Waste Management & Handling Rules.

14. CASE LAWS CITED BY APPLICANT: That the Original Applicant is relying on the following judgment of the Hon'ble Supreme Court and Hon'ble NGT in support of their contentions;

Sr.	Case	Para & Page
1.	(1996) 5 SCC 647: Vellore Citizens Welfare Forum Vs. Union of India & Ors.	¶25 (5); P@
2.	(1997) 1 SCC 388; MC Mehta Vs Kamal Nath & Ors.	¶37, 38, 39(1): P@
3.	M.C. Mehta Vs. Union Of India (2004) 6 SCC 588	¶f, g (P@479) = ¶21, 41, 51, (P@490, 489, 502) ¶69; @508 P@473-509
4.	(2010) 2 SCC 27; Priyanka Estate International Pvt. Ltd. & Ors. Vs. State of Assam & Ors.	¶50;
5.	2021 SCC Online SC 897; MCGM Vs Ankita Sinha & Ors.	¶41
6.	South Gujarat Textile Processors Associations Vs. Union Of India & Ors. OA No. 1038/2018(PB) judgment dated 29.08.2022,	¶182; P@698 P@510-728

15. EDC & PENALTY TO BE IMPOSED ON PP: That the Following EDC & Penalty may kindly be imposed on PP;

15.1 EDC ON ACCOUNTS OF GAPS IN CTE & CTO: that the total EDC amount of Rs. 5.138 Crores has been imposed by MPCB on R-8 & R-9, but Actual calculation of EDC must be from the

year 2000 as mentioned in Para-3. That, as mentioned above, there is gap of **8970** days in obtaining CTE by R-8-M/s. Akash Dairy, There is gap of **8285** (4285+4000) days in obtaining CTO by R-8-M/s. Akash Dairy. And also, there is gap of **1634** days in obtaining CTE by R-9-M/s. Rheansh Food, There is gap of **1417** days in obtaining CTO by R-9-Rheansh Food. As per the formula set out by the Hon'ble NGT in "Paryavaran Suraksh Case", Environmental Damage Compensation (EDC) on account of not obtaining CTE & CTO is as below;

EC= PI X N X R X S X LF						Total
	PI	N	R	S	LF	
Not CTE-Akash Dairy	80	8970	250	0.5	1	89700000
No CTO-Akash Dairy	80	8285	250	0.5	1	82850000
Not CTE-Rheansh Food	80	1643	250	0.5	1	16430000
No CTO-Rheansh Food	80	1417	250	0.5	1	14170000
PI	Pollution Index, as per MPCB is 80, Industry is under red category					
N	Number of days for not obtaining CTE & CTO are calculated in Para-3 above in this Rejoinder.					
R	Factor in Rupees, considering the magnitude of the project and Minimum Rs. 100 to Maximum Rs. 500 scale. It will suggest amount of Rs. 250/- for this project					
S	Factor for scale of operation, the unit is being Large Scale Industry-LSI, S=1.5					
LF	Factor based on Population of Pune, Population is between 1 Million to 5 Million, LF=1.25					

15.2 PENALTY FOR NOT OBTAINING PRIOR CTE & CTO

TILL 01.08.2024: That as per the Circular of the MPCB vide letter no. BO/MPCB/AS(T)/Circular/B-220712FTS0047 dated 12/07/2022 to discourage the defaulting industries by adopting "Polluter Pays"

principal by imposing appropriate cost of violation of provision of Environment enactments for violation;

Akash Dairy: Cost of Violation for CTE: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 75000 X (8970/365)] = **Rs. 9215753.43/-**

Akash Dairy: Cost of Violation for CTO: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 75000 X (8285/365)] = **Rs. 8511986.30/-**

Rheansh Food: Cost of Violation for CTE: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 75000 X (1643/365)] = **Rs. 1688013.70/-**

Rheansh Food: Cost of Violation for CTO: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 75000 X (1417/365)] = **Rs. 1455821.92/-**

15.3 EDC FOR ILLEGAL GROUND WATER EXTRACTION: That the R-2 CGWA reply affidavit discloses the cumulative ground water extraction to the tune of 25 M³/day by both the industry from dug well from May, 2023 due to non-supply of water from Local Authority. However, in actual there is no supply of water from local authority for such huge quantity for industrial operations and PP is fulfilling its need from ground water extraction from his dug well at his farm around 1 KM away from the Industry. That the PP from the year 2000, extracting this ground water from dug well without prior permission from CGWA/MoEF. That the Ministry of Jal Shakti-CGWA has issued 24.09.2020 for computation of EDC as well as taking legal recourse on defaulting entity. That the EDC on account of illegal ground water extraction is to be calculated as per Sec. 15 of the Notification dated 24.09.2020 as below;

$EC_{GW} = \text{Ground water consumption per day} \times \text{Environmental Compensation rate (ECR}_{GW}) \times \text{No. of days} \times \text{Deterrence factor}$

(Where ground water consumption is in m³/day and ECR_{GW} in Rs./cum)

EC_{GW}	Ground water consumption per day	Environmental Compensation rate (ECR _{GW})	No. of days	Deterrence factor
EC_{GW}	30	40	8970	1.25
Ground water consumption per day	As MPCB affidavit 15.05.2023, Water requirement is mentioned to the tune of 30 CMD			
Environmental Compensation rate (ECR _{GW})	That the area under reference is Semi critical area and therefore, ECR _{GW} is 40 as per table No. 15.3 of Notification dated 24.09.2020			
No. of days	No. of Days are calculated from 01.01.2000 to 16.11.2023			
Deterrence factor	That the Ground water extraction is going on from the year 2000 and extraction is more than 30 KLD, but less than 1000 KLD, Therefore as per table NO. 15.4 of the Notification dated 24.09.2020, Deterrence factor is 1.25			
$EC_{GW}=30 \times 40 \times 8970 \times 1.25= 1,34,55,000/-$ (Rs. One Crores Thirty Four Lakhs Fifty Thousands only) That this EDC shall be imposed on both the Respondents R-8-Akash Diary & R-9-Rheansh Farm and same shall be recovered.				

15.4 NGT HAVE SUO MUTO POWERS AS WELL AS AMPLE POWERS TO BE APPLIED BASED ON FACTS AND CIRCUMSTANCES OF THE CASE:

That the Hon'ble Supreme Court in MCGM Vs. Ankita Sinha case at Para-41 have clarified that the final relief can be modified as per facts and circumstances and NGT have Suo Muto powers to take cognizance of the facts. That the Area around the Industry is purely residential area/ residential zone and PP have established its industry under commercial unit sanction. That the Industry is not in conformity with the zoning permissibility as Industry surrounding Area is residential zone since 1992 and Industry is established much later around year 2000 with milk collection & chilling unit and thereafter, expanded in the

year 2020 for large scale with huge pollution load. Therefore, the residents of the area shall not face problems due to industry. Moreover, TP recommendation & SDO Sanction /permission for commercial use of Milk Collection & Chilling unit only. However, R-8 & R-9 have established Industry & its operation in contravention with zoning permissibility. Therefore, industry must be closed and directed to shift to another location conforming zoning permissibility and shall be operated after due permissions. That the MC Mehta case of 2004 & NGT OA Order of the year 2018 clearly prohibit such industry and clarify that the development must be in zoning conformity. That the Rule No. 24 of NGT (P&P) Rules, 2011 gives NGT such power to combat the abuse of process of law and for end of justice and these power ought to be used by NGT in present circumstances of case.

16. SUGGESTIONS ON BEHALF OF THE ORIGINAL APPLICANTS: That it is humble Requests of the Original Applicants

- A) That this Hon'ble NGT may kindly issue direction for closure of industry or allow PP to shift this Industry in appropriate Zone in specific period.
- B) That this Hon'ble NGT may kindly impose the EDC as stated in this Rejoinder and also, direct the MPCB to recover the same from both R-8 & R-9 and direct the restitution and restoration of the Area in time bound manner.
- C) That this Hon'ble NGT may kindly direct the MPCB & CGWA to initiate prosecution against the PP
- D) That this Hon'ble NGT may kindly take judicial note of conduct of the MPCB erring official who have granted CTO in contravention of the law and take appropriate action.
- E) Any other just and equitable order may kindly be passed.

F) Any other suggestion come across at the time of hearing.

17. In view of the suggestions, the application may kindly be disposed with appropriate direction.

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



TANAJI B. GAMBHIRE
(ADVOCATE FOR APPLICANTS)



ORIGINAL APPLICANT NO. 1
(AMOL ABHIMANYU SHINDE)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE AT PUNE
ORIGINAL APPLICATION NO. 22/2023
IN THE MATTER OF:

MR. AMOL ABHIMANYU SHINDE & ORS.APPLICANTS

VERSUS

MPCB & ORS.

...RESPONDENTS

AFFIDAVIT IN SUPPORT OF REJOINER

I, Mr. Amol Shinde S/o Abhimanyu Shinde, Age: 45 Yrs,
Occupation: Business, R/o: At Post: Manchar, Taluka: Ambegaon,
District: Pune, 410503 (MH), do hereby solemnly affirm and state
on oath as follows:

1. I state that I am Applicant No. 1 in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I state that the contents of the Rejoinder to the Replies of Respondents have been drafted under my instructions and that the contents stated therein are true to the best of my knowledge and belief.
3. I state that the Annexures to the said application are true copies of their respective originals.

I KNOW AFFIANT

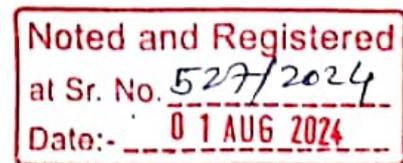
Bombhise
ADV. TANAJI B. GAMBHIRE

Shinde

DEPONENT

BEFORE ME

Shashikant B. Kurhade
Notary Govt. of India



ANNEXURE-A-1**“Guidelines for Environmental Management of
Dairy Farms and Gaushalas”**

Central Pollution Control Board
(Ministry of Environment, Forest and Climate Change, Govt. of India)
Parivesh Bhawan, East Arjun Nagar
Delhi-110032

(July 2020)

TRUE COPY

#31

1. Introduction

India ranks first among the world's milk producing Nations since 1998 and has the largest bovine population in the World. Dairying has become an important secondary source of income for millions of rural families and has assumed the most important role in providing employment and income opportunities particularly for marginal farmers.

Dairy farms are the establishment which in-house milching animals to produce milk for distribution and processing dairy products in milk processing plants. Gaushalas are the establishment which in-house weak, sick, injured, handicapped and abandoned homeless cattle/cows to rehabilitate them.

The dairies/gaushalas may be categorised on the basis of nos. of animals (adult cows & female buffaloes) in a dairy/gaushala i.e. Category-I (upto 25 animals), Category-II (26-50 animals), Category-III (51-75 animals), Category-IV (76-100 animals) and Category-V (above 100 animals).

As per the Livestock Census, carried out by the Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture and Farmers Welfare, the year-wise livestock population of adult female bovine is as follow:

Sl. No.	Year	Adult Cows	Adult Female Buffaloes	Total Cows & Buffaloes
1	1951	5,44,00,000	2,10,00,000	7,54,00,000
2	1956	4,73,00,000	2,17,00,000	6,90,00,000
3	1961	5,10,00,000	2,43,00,000	7,53,00,000
4	1966	5,18,00,000	2,54,00,000	7,72,00,000
5	1972	5,34,00,000	2,86,00,000	8,20,00,000
6	1977	5,46,00,000	3,13,00,000	8,59,00,000
7	1982	5,92,00,000	3,25,00,000	9,17,00,000
8	1987	6,21,00,000	3,91,00,000	10,12,00,000
9	1992	6,44,00,000	4,38,00,000	10,82,00,000
10	1997	6,44,00,000	4,68,00,000	11,12,00,000
11	2003	6,45,00,000	5,10,00,000	11,55,00,000
12	2007	7,30,00,000	5,45,00,000	12,75,00,000
13	2012	7,67,00,000	5,66,00,000	13,33,00,000
14	2019	8,14,00,000	5,50,00,000	13,64,00,000

Also, as per the Livestock Census carried out by the Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture and Farmers Welfare, in 2019, the state-wise total population of adult female bovine is as follow:

Sl. No.	State/UT	Adult Cows	Adult Female Buffaloes	Total Cows & Buffaloes
1.	Andhra Pradesh	19,80,000	31,61,000	51,41,000
2.	Arunachal Pradesh	1,02,000	2,000	1,04,000
3.	Assam	38,18,000	1,38,000	39,56,000
4.	Bihar	71,47,000	36,70,000	1,08,17,000
5.	Chhattisgarh	33,79,000	3,83,000	37,62,000
6.	Goa	30,000	14,000	44,000

7.	Gujarat	44,94,000	56,71,000	1,01,65,000
8.	Haryana	9,45,000	21,00,000	30,45,000
9.	Himachal Pradesh	9,32,000	3,69,000	13,01,000
10.	Jammu & Kashmir	12,31,000	4,02,000	16,33,000
11.	Jharkhand	34,58,000	4,35,000	38,93,000
12.	Karnataka	40,63,000	16,71,000	57,34,000
13.	Kerala	6,90,000	8,000	6,98,000
14.	Madhya Pradesh	73,42,000	52,96,000	1,26,38,000
15.	Maharashtra	56,99,000	33,19,000	90,18,000
16.	Manipur	77,000	10,000	87,000
17.	Meghalaya	3,33,000	3,000	3,36,000
18.	Mizoram	21,000	1,000	22,000
19.	Nagaland	21,000	3,000	24,000
20.	Odisha	31,94,000	1,52,000	33,46,000
21.	Punjab	15,25,000	22,76,000	38,01,000
22.	Rajasthan	68,19,000	70,15,000	1,38,34,000
23.	Sikkim	68,000	0	68,000
24.	Tamil Nadu	48,20,000	2,61,000	50,81,000
25.	Telangana	14,93,000	21,86,000	36,79,000
26.	Tripura	3,03,000	3,000	3,06,000
27.	Uttarakhand	8,22,000	4,96,000	13,18,000
28.	Uttar Pradesh	92,07,000	1,57,32,000	2,49,39,000
29.	West Bengal	72,73,000	1,93,000	74,66,000
30.	A & N Islands	16,000	1,000	17,000
31.	Chandigarh	8,000	8,000	16,000
32.	Dadar & Nagar Haveli	4,000	1,000	5,000
33.	Daman & Diu	1,000	0	1,000
34.	Delhi	Not available	Not available	Not available
35.	Lakshadweep	1,000	0	1,000
36.	Puducherry	37,000	2,000	39,000
37.	All India	8,13,53,000	5,49,82,000	13,63,35,000

2. Environmental Issues in Dairy Farms and Gaushalas

The major environmental issues of dairy farms and gaushalas are discharges of dung and urinal wastewater. The poor handling of dung and wastewater causes odour problem also. A Bovine animal, on an average, weigh 400 kg and discharges 15-20 kg/day of dung and 15-20 litres/day of urine.

Many dairy farms and gaushalas discharge the cattle dung along with wastewater into the drains, leading to clogging, which ultimately reach to rivers and create water pollution. Also, these clogged drains become breeding ground for mosquitoes creating health hazards and odour nuisance. The dung produces many gases/compounds such as carbon dioxide, ammonia, hydrogen sulphide, methane, etc. which emitted into the atmosphere and responsible for odour issue.

The disposal of cow/buffalo dung is the biggest challenge in dairy farms and gaushalas. However, cattle dung, if effectively utilised, can be a resource of manure & energy. The cattle

dung contains many beneficial constituents which may be used as fuel source either by direct combustion (dung wood) or converted to biogas, soil conditioner, fertilizers, material for wall plastering, construction of granaries, livestock & fish feeding, etc.

Now, following guidelines are framed for management of wastes from dairy farms and gaushalas.

3. Guidelines for Waste Management in Dairy Farms and Gaushalas

3.1 Solid Waste Management

The solid wastes produced from dairy farms and gaushalas are basically organic in nature, consisting of cattle dung, feed residue, bedding, etc. The waste produced is not hazardous in nature but its proper handling and disposal needs attention. The guidelines for the management of solid wastes are as follow:

- i. Dairies and gaushalas should collect dung from the floor of the shed at regular interval, so as to keep the floor clean. The surrounding areas should also be cleaned regularly to prevent obnoxious smell in the area.
- ii. Dairy premises and its surrounding areas should be properly sanitized and disinfected, e.g. by sprinkling crushed lime, regularly.
- iii. The solid wastes should be collected & stored properly for its treatment.
- iv. Dairies and gaushalas should dispose the domestic hazardous wastes (vaccines, vials, medicines, syringes, etc.) as per the provisions of “Solid Waste Management Rules, 2016”.
- v. Dairies and gaushalas should not wash dung & fodder residue etc. into drains in order to avoid clogging of drains. The local bodies/corporations/SPCBs should ensure that untreated wastes are not discharged outside the dairy premises.
- vi. Dairies and gaushalas should have adequate infrastructure to ensure proper handling, treatment and disposal of solid wastes and wastewater. They may set-up individual or common treatment facilities wherein cluster. The local government bodies/corporations/SPCBs should facilitate the dairies/gaushalas/ entrepreneurs/ NGOs in setting up of individual or common treatment facilities.
- vii. The following methods for disposal/ utilisation of solid wastes (dung) may be adopted:
 - a. Composting/Vermicomposting: Composting is a manure management practice to reduce the impact on the environment. Composting is the biological decomposition and stabilization of organic material. The process produces a final product that is stable, free of pathogens, reduced odours and can be applied on the land. Vermicomposting is the method of preparing compost with the use of earthworms that enriches soil quality by improving its physicochemical and biological properties. It is becoming popular as a major component of organic farming system.
 - b. Biogas/Compressed biogas (CBG) production (anaerobic digestion): Biogas plants are the best way to handle the dung waste. Biogas is generated in the process of biodegradation of organic materials under anaerobic conditions which may be utilised for cooking and power generation. The Biogas plant provides the digested organic manure for crops. Biogas can be processed and filled in cylinders. The biogas may be further purified to remove hydrogen sulphide (H₂S), carbon dioxide (CO₂) & water vapour and compressed (known as Compressed Bio Gas, CBG)

which has methane (CH₄) content of more than 90% as per BIS standard IS 16087:2016. CBG has calorific value and other properties similar to CNG and hence can be utilized as green renewable fuel as replacement of CNG in automotive, industrial and commercial areas.

- c. Manufacture of dung wood to be used as fuel: The cattle dung can be used as fuel as a replacement of firewood. The cattle dung can be dewatered and converted to value added products such as logs, powder etc. by mechanized/semi-mechanized machines. This option can be easily adopted at dairy farms and gaushalas in economical manner, creating substantial value & no damage to the environment.

3.2 Wastewater Management

The guidelines for the management of wastewater are as follow:

- i. Dairies and gaushalas should take necessary steps for the judicious usage of water for drinking & bathing of cattles and other services including floor cleaning, however, the same should not exceed 150 litres/day/cattle.
- ii. Dairies and gaushalas should ensure that the wastewater, being discharged, is adequately treated so as to meet the standards as prescribed by SPCBs/PCCs.
- iii. Dairies and gaushalas should ensure that the wastewater does not percolate through ground and pollutes the groundwater. The flooring of the shed should be properly paved (impervious) with a wastewater collection system. However, the floor should not be slippery in order to ensure safety of animals.

3.3 Air Quality Management

The guidelines for the management of air quality/emissions (includes gaseous emissions, odour and dust) from dairy farms and gaushalas are as follow:

- i. The animal housing should be adequately ventilated allowing sufficient supply of fresh air to remove humidity, dissipate heat and prevent build-up of gases such as methane, carbon dioxide, ammonia, etc.
- ii. Dairy farms and gaushalas should follow good housekeeping practices like maintaining proper sanitary conditions, protecting dung from unwanted pests/insects in order to minimize odour nuisance.
- iii. The floor, feeding, water and air spaces available for each animal should be adequate for standing, resting, loafing, movement, feeding, watering and ventilation. The space requirements should be provided as per the standards prescribed by the Bureau of Indian Standards (BIS) (BIS 12237:1987 & 11799:2005).
- iv. Dairy farms and gaushalas should improve/modify the quality and dosage of feed/forage/supplements in order to reduce enteric methane generations from livestock. It is beneficial to animal health/nutrition and reduced impact on environment. They should obtain ration advisory for the same from any of the agricultural institutes/departments like Krishi Vigyan Kendra, State Dairy Department, Animal Husbandry Department, NDRI, NDDB, etc.
- v. Dairy farms and gaushalas should plant trees or develop green belts to provide a barrier against the spread of foul smell or noise originating from them.

4. Siting Policy:

The siting criteria will be applicable for new establishment, however, the existing establishments should take appropriate pollution control measures as per the guidelines. The siting policy for dairy farms and gaushalas are as follow:

- i. Dairy farms and gaushalas should be located outside city/village boundaries, atleast 200 meters away from residential dwellings and 500 meters away from hospitals & schools.
- ii. Dairy farms and gaushalas should not be located in flood prone areas, subject to flooding at 1-in-25-year or more frequent levels in order to avoid contamination of water bodies.
- iii. Dairy farms and gaushalas should not be located in areas with shallow groundwater depth of about 10 to 12 feet and in particular in alluvium areas in order to avoid groundwater contamination.
- iv. Dairy farms and gaushalas may be allowed to follow minimum distance criteria given below which may be subject to vary with the local conditions:
 - a. National and State Highways: 200 meters from National Highway and 100 meters from State Highway in order to avoid odour nuisance and road accident caused due to cattle.
 - b. Major drinking water reservoir on catchment side: 500 meters in order to avoid water contamination due to leakages/spillages from the dairy farms and gaushalas.
 - c. Drinking water source like wells, summer storage tanks, other tanks (drinking water): 100 meters in order to avoid water contamination.
 - d. Major watercourses like River and Lake: 500 meters in order to avoid water contamination.
 - e. Canals: 200 meters in order to avoid water contamination.
 - f. Inter-se distance between two establishments should be atleast 5 meters for ventilation. Each unit should provide atleast 2.5 meters from each side and develop the green belt.

5. Regulatory/ Monitoring Mechanism:

- i. The local authorities/corporations should carry out inventory of the dairy farms and gaushalas located in their jurisdiction in the modified inventory performa given at **Annexure-A**. The same should be updated and shared with the concerned SPCB/PCC on annual basis (calendar year wise).
- ii. The local bodies/municipal corporations shall publish a public notice in newspapers and on their website for registration of dairy farms and gaushalas as per municipal law. The registration may be done preferably through online mode and same may be displayed at their websites.
- iii. The SPCBs/PCCs shall publish a public notice for dairy farms and gaushalas to obtain consent to establish and consent to operate under Water Act, 1974 as well as Air Act, 1981 as per the categorization of industries. CPCB issued directions on 10.07.2020 under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 regarding classification of Dairy Farms and Gaushalas into Orange and Green Category, respectively.
- iv. The SPCBs/PCCs/local bodies/municipal corporations shall upload the **Form-A** for compliance status of environmental guidelines on their website and also circulate to all the dairy farms and gaushalas. The compiled status of compliance in the form of report shall be submitted once in six months by SPCBs/PCCs to CPCB for Audit purpose.

- v. The concerned SPCBs/PCCs/local bodies/corporations should monitor the dairy farms and gaushalas on regular basis to ensure the proper disposal of cattle dung and wastewater to check compliance of environmental norms. The SPCBs/PCCs will considered the carrying capacity of the surroundings while allowing a new establishment and laying down the environmental norms.
- vi. The SPCBs/PCCs shall carry out environmental audit of atleast 2 dairy farms and 2 gaushalas, randomly selected from each district of the state/UT and submit the compliance and action taken report to CPCB on half yearly basis.
- vii. CPCB shall carry out environmental auditing of 4 dairy farms and 4 gaushalas in each state/UT, randomly selected based on the information received from SPCBs/PCCs on annual basis.
- viii. In case of any violation of environmental norms under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and Environmental (Protect) Act, 1986 by dairy farms and gaushalas, the concerned SPCBs/PCCs should impose environmental compensation as per the CPCB methodology for “Environmental Compensation to be levied on Industrial Units”, for damaging the environment and in order to stop polluting activity and initiate prosecution for repeatedly polluting units.
- ix. SPCBs/PCCs should provide training and consultation to the Gram Panchayat for implementation of guidelines in their jurisdiction. Gram Panchayat should ensure the implementation of the guidelines by dairy farms and gaushalas falling under their jurisdiction for handling and management of the wastes.
- x. Hands on practical trainings on environment/waste management & treatment technologies, scientific feeding for enteric methane reduction, waste to wealth management programme, etc. should be provided to dairy workers/entrepreneurs by the local bodies/SPCBs/PCCs on regular interval.

Status of Compliance of Guidelines for Environmental Management of Dairy Farm and Gaushalas

(Encircle the correct one)

1.	Name/ address of Dairy Farm/Gaushala	
2.	Area occupied by Dairy Farm/Gaushala (plot area)	
3.	Contact person (Name, Designation, and Contact No, FAX, e mail)	
4.	Status of registration with local bodies/corporations	Registered / Not-registered
5.	Status of consent to operate from SPCBs/PCCs	Valid/Expired/Applied
6.	Total no. of animals in dairy farm/gaushala a. Adult Cows b. Adult Female Buffaloes c. Calves d. Any other	
7.	Category of dairy farm/gaushala	Category-I (upto 25 animals) Category-II (26-50 animals) Category-III (51-75 animals) Category-IV (76-100 animals) Category-V (above 100 animals)
8.	Total amount of cow/buffalo dung produced (ton per day) by dairy farm/gaushala @ 14 Kg/day/animal	
9.	Methods of disposal/utilization of cattle dung by dairy farm/gaushala	Composting/Vermicomposting Biogas/Compressed biogas (CBG) production Manufacture of dung wood Any other (specify)
10.	Whether wastewater is treated or not?	Yes/No
11.	Methods of disposal/utilization of wastewater by dairy farm	In drain/field

Solid Waste Management		
12.	Is the dung collected from the floor of the shed at regular interval, so as to keep floor clean? Are the surrounding areas cleaned regularly to prevent obnoxious smell?	Yes/No Yes/No
13.	Are the dairy premises and its surroundings areas properly sanitized and disinfected regularly?	Yes/No
14.	Are the solid waste collected & stored properly for its treatment & disposal?	Yes/No
15.	Are the domestic hazardous wastes (vaccines, vials, medicines, syringes, etc.) disposed as per the provisions of "Solid Waste Management Rules, 2016"	Yes/No
16.	Are the dung & fodder residue etc. washed into drain?	Yes/No
Wastewater Management		
17.	Total amount of water used for drinking & bathing of cattles and other services including floor cleaning per day	litres/day
18.	Are any necessary steps taken for judicious usage of water for drinking & bathing of cattles and other services including floor?	Yes/No
19.	Is any wastewater percolate through ground?	Yes/No
20.	Is the flooring of shed properly paved with wastewater collection system?	Yes/No
21.	Whether infrastructure to ensure proper handling & treatment of wastewater?	Individual treatment facility Common treatment facility No treatment
Air Quality Management		
22.	Is the animal housing adequately ventilated?	Yes/No
23.	Are the good housekeeping practices followed?	Yes/No
24.	The space provided for animals by dairy farm/gaushala Covered floor area Open floor area Feeding manger length Water trough length	 m ² m ² m m

25.	Is ration advisory obtained from any of the agricultural institutes/department?	Yes/No
26.	Are the dosage of feed/forage/supplements given as per ration advisory?	Yes/No
27.	No. of trees/plants planted in the premises	
Siting Policy		
28.	Minimum distance from following features: a) Residential Dwelling/Hospital/School b) National Highway/State Highway c) Major drinking water reservoir on catchment side d) Drinking water source like wells, summer storage tanks, other tanks (drinking water) e) River/Lake f) Canal g) Dairy Farm/Gaushala	
29.	Is dairy farm/gaushala located in flood prone area?	Yes/No
30.	Is dairy farm/gaushala located in shallow groundwater depth area?	Yes/No

(Signature of Official)
(Name & Designation of Official)

Inventory Performa for Dairies and Gaushalas in the State/UT

Sl. No.	Description	Urban Area	Peri-urban Area	Rural Area
1.	Total no. of dairies <ul style="list-style-type: none"> • Category-I (upto 25 animals) • Category-II (26-50 animals) • Category-III (51-75 animals) • Category-IV (76-100 animals) • Category-V (above 100 animals) • Total 	• • • • • •	• • • • • •	• • • • • •
2.	Total no. of animals in <ul style="list-style-type: none"> • Category-I dairies • Category-II dairies • Category-III dairies • Category-IV dairies • Category-V dairies • Total 	• • • • • •	• • • • • •	• • • • • •
3.	Total amount of cow/buffalo dung produced (ton per day) by <ul style="list-style-type: none"> • Category-I dairies • Category-II dairies • Category-III dairies • Category-IV dairies • Category-V dairies • Total 	• • • • • •	• • • • • •	• • • • • •
4.	Methods of disposal/utilisation of cattle dung and wastewater by dairies (to be enclosed)			
5.	Total no. of dairy colonies/clusters (list of such dairy colonies/clusters along with the details of no. of dairies, no. of cattles, method of disposal/utilisation of cattle dung & wastewater, etc. to be enclosed)	•	•	•
6.	Total no. of Gaushalas <ul style="list-style-type: none"> • Category-I (upto 25 animals) • Category-II (26-50 animals) • Category-III (51-75 animals) • Category-IV (76-100 animals) • Category-V (above 100 animals) • Total 	• • • • • •	• • • • • •	• • • • • •

7.	Total no. of animals in • Category-I Gaushalas • Category-II Gaushalas • Category-III Gaushalas • Category-IV Gaushalas • Category-V Gaushalas • Total	• • • • • •	• • • • • •	• • • • • •
8.	Total amount of cow dung produced (ton per day) by • Category-I Gaushalas • Category-II Gaushalas • Category-III Gaushalas • Category-IV Gaushalas • Category-V Gaushalas • Total	• • • • • •	• • • • • •	• • • • • •
9.	Methods of disposal/utilisation of cattle dung and wastewater by Gaushalas (to be enclosed)			

Note:

Urban area: As per the Census of India 2011, the urban area is defined as follows:

- i. All places with a municipality, corporation, cantonment board or notified town area committee, etc.
- ii. All other places which satisfied the following criteria:
 - a. A minimum population of 5,000;
 - b. At least 75 per cent of the male main working population engaged in non-agricultural pursuits; and
 - c. A density of population of at least 400 persons per sq. km.

Peri-urban area: It is an area or habitation located on the perimeter of the urban area having partial or complete influence of urbanization. It undergoes dramatic changes over a given period of time.

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MINISTRY OF JAL SHAKTI
(Department Of Water Resources, River Development And Ganga Rejuvenation)
(CENTRAL GROUND WATER AUTHORITY)

NOTIFICATION

New Delhi, the 24th September, 2020

S.O. 3289(E).—WHEREAS, on the directions of Hon'ble Supreme Court vide its order dated the 10th December, 1996 passed in Civil writ Petition No 4677 of 1985, MC Mehta Vs Union of India, the Central Government constituted the Central Ground Water Authority (hereafter referred to as the 'Authority') vide notification number S.O. 38 (E), dated the 14th January, 1997 to exercise powers under Section 5 of the Environment (Protection) act, 1986 (29 of 1986) for the purposes of regulation and control of Ground Water management and development and to exercise certain powers and perform certain functions relating thereto;

AND WHEREAS, the Authority has been regulating ground water development and management by way of issuing 'No Objection Certificates' for ground water extraction to industries or infrastructure projects or Mining Projects etc., and framed guidelines in this connection from time to time in twenty two States and two Union territories, where ground water development is not being regulated by the State Government Union Territory administration concerned;

AND WHEREAS, some of the State Governments or, Union territories enacted legislations and issued regulatory directions or orders for regulating ground water development and management;

AND WHEREAS, the Hon'ble National Green Tribunal, New Delhi vide order dated the 15th April 2015 in OA Nos. 204/205/206 of 2014 has issued directions to the Authority to ensure that any person operating tube-well, or any means to extract ground water shall obtain permission from the Authority and shall operate the same subject to the law in force, even if such unit is existing unit or the unit is yet to be established;

AND WHEREAS, the said Hon'ble Tribunal vide its order dated the 09th July, 2015 in OA Nos. 34 and 37 of 2014 directed all industrial units which are members of the Common Effluent Treatment Plants (CETPs) to approach the Authority through State Pollution Control Board for obtaining 'No Objection Certificate' in accordance with the law;

AND WHEREAS, the aforesaid Hon'ble Tribunal vide order dated the 13th July, 2017 in OA No 200- of 2014 directed that every industry should be directed to pay for extraction of such water, that too, subject to the conditions stated in the order permitting such extraction;

AND WHEREAS, the said Hon'ble Tribunal vide its order dated the 28th August, 2018 in O.A. Nos. 176 of 2015 and 59 of 2012 respectively directed the Ministry of Water Resources, River Development and Ganga Rejuvenation to forthwith review the existing mechanism so as to ensure effective steps for conserving the groundwater resources;

AND WHEREAS, in pursuance of the directions of the Hon'ble National Green Tribunal and powers conferred by sub-section (3) of section 3 and section 5 of the Environment (Protection) Act, 1986 the Authority, with a view to protect the ground water resources had circulated the draft guidelines for grant of 'No Objection Certificate' on the 11th October, 2017 inviting comments and suggestions from all the stakeholders;

AND WHEREAS, all objections and suggestions received in response to the said draft guideline have been duly considered by the Central Government, the Authority notified the guidelines to regulate groundwater over-exploitation and to conserve the groundwater resources in the country vide notification number S.O. 6140 (E), dated the 12th December, 2018;

AND WHEREAS, the aforesaid Hon'ble Tribunal vide order dated the 03rd January 2019 in the OA No. 176 of 2015 directed that the above mentioned notification dated the 12th December, 2018 may not be given effect to as it is unsustainable if tested on 'Precautionary Principle, Sustainable development as well as Inter-generational Equity Principles' and if implemented, will result in fast depletion of groundwater and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India;

AND WHEREAS, the said Hon'ble Tribunal vide order dated the 11th September, 2019 constituted a committee to deliberate on steps for preventing depletion of groundwater, robust monitoring mechanism

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against unauthorised extractions and fulfillment of 'No Objection Certificate' conditions, environment compensation etc and to submit a report;

AND WHEREAS, the aforesaid committee submitted the report along-with draft guidelines to regulate groundwater extraction and groundwater conservation in Hon'ble Tribunal on the 16th March, 2020;

AND WHEREAS, the above said Hon'ble Tribunal vide order dated the 20th July, 2020 directed to comply with certain points for sustainable groundwater management while issuing 'No Objection Certificates' to commercial establishments by the Authority;

Now therefore, in pursuance of the directions of Hon'ble National Green Tribunal and the powers conferred by sub-section (3) of Section 3 read with Section 5 of the Environment (Protection) Act, 1986 (29 of 1986), the Department of Water Resources, River Development & Ganga Rejuvenation, hereby notifies the guidelines to regulate and control groundwater extraction in the country in supersession to this Ministry notification vide S.O. 6140 (E), dated the 12th December, 2018 as per the Schedule below:

SCHEDULE

Guidelines to regulate and control ground water extraction in India

(with immediate effect)

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[F. No. CGWA-21/4/2020-CGWA]

ASHISH KUMAR, Director

ANNEXURES

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Guidelines to regulate and control groundwater extraction in India**Preamble and Background:**

On the directions of Hon'ble Supreme Court vide its order dated 10th December, 1996 passed in Civil writ Petition No 4677 of 1985, MC Mehta Vs Union of India, the Central Government had constituted the Central Ground Water Board as Authority vide notification number S.O. 38 (E), dated the 14th January, 1997 to exercise powers under sub section (3) of section 3 of the Environment (Protection) act, 1986 (29 of 1986) for the purposes of regulation and control of Ground Water Management and Development and to exercise certain powers and perform certain functions as per the said Act.

The Authority has been regulating ground water development and management by way of issuing 'No Objection Certificates' for ground water extraction to industries or infrastructure projects or Mining Projects etc., and framed guidelines in this connection from time to time applicable in twenty two States and two Union territories, where ground water development is not being regulated by the State Government and Union territory administration concerned.

To have sustainable management of water resources in the country groundwater abstraction guidelines have been prepared to regulate groundwater extraction and conserve the scarce groundwater resources in the country.

These guidelines will come into force with immediate effect from the date of Gazette Notification and will supersede all earlier guidelines issued by the Central Ground Water Authority (CGWA).

These guidelines will have pan India applicability. Ground water abstraction in States/ Uts (which are not regulating ground water abstraction) shall continue to be regulated by Central Ground Water Authority.

Further, wherever States/ Uts have come out with their own groundwater abstraction guidelines, which are inconsistent with the CGWA guidelines, the provisions of CGWA guidelines will prevail. However, in case the guidelines followed by such States/ Uts contain some more stringent provisions than CGWA guidelines, such provisions may also be given effect to by the States/ Uts Authorities in addition to those contained in the CGWA guidelines. States may be at liberty to suggest additional conditions/ criteria based on the local hydro-geological situations which shall be reviewed by CGWA/Ministry of Jal Shakti, Government of India before acceptance.

All new/existing industries, industries seeking expansion, infrastructure projects and mining projects abstracting ground water, unless specifically exempted under Para 1.0 below, will be required to seek No Objection Certificate from Central Ground Water Authority or, the concerned State/ UT Ground Water

Authority as the case may be. The entire process of grant of No Objection Certificate shall be online through a web based application system.

Water management plans shall be prepared by all the State Ground Water Authorities/ Organizations for all Over-exploited, Critical and Semi-critical assessment units starting with Over-exploited units. Water management plans shall be reviewed and updated periodically. Water management plans, data on water availability and scarcity and policy framed in this regard shall be placed on the websites of Central Ground Water Authority/ State Ground Water Authority.

1.0 Exemptions from seeking No Objection Certificate:

Following categories of consumers shall be exempted from seeking No Objection Certificate for ground water extraction:

- (i) Individual domestic consumers in both rural and urban areas for drinking water and domestic uses.
- (ii) Rural drinking water supply schemes.
- (iii) Armed Forces Establishments and Central Armed Police Forces establishments in both rural and urban areas.
- (iv) Agricultural activities.
- (v) Micro and small Enterprises drawing ground water less than 10 cum/day.

1.1 Registration of Drilling Rigs

State / Ut Governments shall be responsible for registering drilling rigs operating within their jurisdiction and for maintaining the database of wells drilled by them. Appropriate link shall be provided in CGWA portal for making the data available to CGWA.

2.0 Drinking & Domestic use for Residential apartments/ Group Housing Societies/ Government water supply agencies in urban areas

For grant of No Objection Certificate for ground water extraction, the project proponent has to furnish the details as per the guidelines issued by the CGWA in proper format as available in CGWA website. No Objection Certificate for new /existing wells shall be granted only in such cases where the local Government water supply agency is unable to supply requisite amount of water in the area.

No Objection Certificate shall be granted subject to the following specific conditions:

- i) Installation of Sewage Treatment Plants shall be mandatory for all residential apartments/ Group Housing Societies where ground water requirement is more than 20 m³/day. The water from Sewage Treatment Plants shall be utilized for toilet flushing, car washing, gardening etc.
- ii) The No Objection Certificate shall be valid for a period of five years from the date of issue or till such time local Government water supply is provided to the project area, whichever is earlier. In case the project proponent receives water supply from the concerned local Government Water Supply Agency during the validity of the No Objection Certificate, intimation regarding availability of public water supply shall be sent by the project proponent to CGWA and No Objection Certificate will be cancelled by the Authority. In other cases, the project proponent will apply for renewal of No Objection Certificate, ninety days before the expiry of No Objection Certificate.
- iii) Proponents shall be liable to pay ground water abstraction charges for the quantum of ground water proposed to be extracted, as per rates mentioned in Table 5.1.

Documents to be submitted with the application

- a) Details of water requirement computed as per National Building Code, 2016 (**Annexure I**), taking into account recycling/ reuse of treated water for flushing etc.
- b) Affidavit on non-judicial stamp paper of Rs. 10/- by the applicant, confirming non/ inadequate availability of public water supply in case of users requiring ground water up to 10 m³/ day for drinking/ domestic use.
- c) Certificate of non-availability of water from local government water supply agency in cases requiring ground water in excess of 10 m³/ day for drinking/ domestic use. Government water supply agencies

applying for No Objection Certificate shall submit copy of government approval of the scheme/project proposed to be implemented.

- d) Ground water quality data of existing bore well/ tube well/ dug well from any National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited laboratory or Govt. approved laboratory (in case of existing projects applying for no objection certificate)
- e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.

3.0 Agriculture Sector

Agriculture sector is the backbone of the Indian economy. As per Minor Irrigation Census 2013-14, 87.86% of wells are owned by marginal, small and semi-medium farmers having land holding up to 4 hectares (ha). Around 9.18 % of wells are owned by medium farmers having land holding 4 – 10 ha and 2.96% of the wells are owned by big farmers having land holding more than 10 ha.

Considering the number of ground water abstraction structures, regulation of ground water in agriculture sector through a 'command and control' strategy will prove to be an arduous task. Therefore, a participatory approach for sustainable ground water management would be more productive.

States/Uts are advised to review their free/subsidized electricity policy to farmers, bring suitable water pricing policy and may work further towards crop rotation/diversification/other initiatives to reduce over-dependence on groundwater.

Agriculture sector shall be exempted from obtaining No Objection Certificate for ground water extraction.

4.0 Commercial Use

No new major industries shall be granted No Objection Certificate in over-exploited assessment areas except as per the policy guidelines.

Availability of ground water resources shall be given due regard while considering applications for grant of No Objection Certificate for commercial use.

Commercial entities extracting ground water shall be required to submit online annual water audit report including an audit of water use as mentioned in the relevant sections. CGWA/ State Ground Water Authority (SGWA) shall publish all such audit reports online.

CGWA/ SGWAs shall engage independent agencies to verify the compliance of No Objection Certificate conditions periodically.

4.1 Industrial Use

In Over-exploited assessment units, No Objection Certificate shall not be granted for ground water abstraction to any new industry except those falling in the category of Micro, Small and Medium Enterprises (MSME). However, No Objection Certificate for drinking/ domestic use for work force, green belt use by these new industries shall be permitted. Expansion of existing industries involving increase in quantum of ground water abstraction in over-exploited assessment units shall not be permitted. No Objection Certificate shall not be granted to new packaged water industries in Overexploited areas, even if they belong to MSME category.

No Objection Certificate for ground water extraction by industries shall be granted subject to the following specific conditions:

- i) No Objection Certificate shall be granted only in such cases where local government water supply agencies are not able to supply the desired quantity of water.
- ii) All industries shall be required to adopt latest water efficient technologies so as to reduce dependence on ground water resources.
- iii) All industries abstracting ground water in excess of 100 m³/d shall be required to undertake annual water audit through Confederation of Indian Industries (CII)/ Federation Indian Chamber of Commerce and Industry (FICCI)/ National Productivity Council (NPC) certified auditors and submit audit reports within three months of completion of the same to CGWA. All such industries shall be

required to reduce their ground water use by at least 20% over the next three years through appropriate means.

- iv) Construction of observation well(s) (piezometer)(s) within the premises and installation of appropriate water level monitoring mechanism as mentioned in Section 15 shall be mandatory for industries drawing/ proposing to draw more than 10 m³/day of ground water and. Monitoring of water level shall be done by the project proponent. The piezometer (observation well) shall be constructed at a minimum distance of 15 m from the bore well/production well. Depth and aquifer zone tapped in the piezometer shall be the same as that of the pumping well/ wells. Detailed guidelines for design and construction of piezometers are given in **Annexure II**. Monthly water level data shall be submitted to the CGWA through the web portal.
- v) The proponent shall be required to adopt roof top rain water harvesting/ recharge in the project premises. Industries which are likely to pollute ground water (chemical, pharmaceutical, dyes, pigments, paints, textiles, tannery, pesticides/ insecticides, fertilizers, slaughter house, explosives etc.) shall store the harvested rain water in surface storage tanks for use in the industry.
- vi) Injection of treated/ untreated waste water into aquifer system is strictly prohibited.
- vii) Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/ Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary well head protection measures to ensure prevention of ground water pollution (**Annexure III**).
- viii) All industries drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.2 A and 5.3 A.
- ix) All existing industries drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as applicable as per Tables 5.2 B and 5.3 B.

Documents to be submitted with the application

- (a) An affidavit on non judicial stamp paper of Rs. 10/- regarding non availability of water supply from local government agencies in cases where ground water requirement is up to 10 m³/day.
- (b) Certificate regarding non/ partial availability of fresh water/ treated waste water supply from the local government water supply agency in cases where requirement of ground water is more than 10 m³/day.
- (c) Ground water quality data of existing bore well/ tube well/ dug well from any NABL accredited laboratory or Govt. approved laboratory (in case of existing projects applying for No Objection Certificate)
- (d) Water quality data of bore well/ tube well/ dug well in respect of existing industries from NABL accredited laboratories/Government approved laboratories.
- (e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.
- (f) **Impact Assessment report:** All projects extracting/proposing to extract ground water in excess of 100 m³/day in Over-exploited, Critical and Semi-critical areas shall have to mandatorily submit impact assessment report of existing/ proposed ground water withdrawal on the ground water regime and also socio-economic impacts report prepared by accredited consultants. Pro-forma for the report is given in **Annexure IV**.

4.2 Mining Projects

All existing as well as new mining projects will be required to obtain No Objection Certificate for ground water abstraction. Since mining projects are location specific, there will be no ban on grant of No Objection Certificate for abstraction of ground water for such projects in over-exploited assessment units.

No Objection Certificate for mining projects shall be granted subject to the following specific conditions:

- i) It shall be mandatory for all the mining industries to ensure that water available from de-watering operations is properly treated and should be gainfully utilized for supply for irrigation, dust

- suppression, mining process, recharge in downstream and for maintaining e-flows in the river system.
- ii) Construction of observation well(s) (piezometers) along the periphery in the premises, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m³/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells.
 - iii) In addition, the proponent shall monitor ground water levels by establishing observation wells (piezometers) in the core and buffer zones as specified in the No Objection Certificate.
 - iv) In case of coal and other base metal mining the project proponent shall use the advance dewatering technology (by construction of series of dewatering abstraction structures) to avoid contamination of surface water.
 - v) In addition to this, all mining units shall also monitor the water quality of mine seepage and mine discharge through NABL accredited/ Govt. approved laboratories and the same shall be submitted at the time of self compliance.
 - vi) All mining projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.4 A.
 - vii) All mining projects drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.4 B.

Documents to be submitted with the application

- (a) Mining plan approved by the concerned Govt. agency/ department.
- (b) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.
- (c) Comprehensive report prepared by accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering on ground water regime and its socio-economic impact, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in **Annexure V**.

4.3 Infrastructure projects:

Since infrastructure projects are location specific, grant of No Objection Certificate to such projects located in over-exploited assessment units shall not be banned. New infrastructure projects/ residential buildings may require dewatering during construction activity and/ or use ground water for construction. In both cases, applicants shall seek No Objection Certificate from CGWA before commencement of work. However, in over-exploited assessment units, use of ground water for construction activity shall be permitted only if no treated sewage water is available within 10 km radius of the site. New as well as existing Infrastructure projects shall also be required to seek No Objection Certificate for abstraction of ground water.

No 'No Objection Certificate' shall be granted for extraction of groundwater for Water Parks, Theme Parks and Amusement Parks in over-exploited assessment units.

Indicative list of Infrastructure projects is given in Annexure VI.

The No Objection Certificate for ground water abstraction will be granted subject to the following specific conditions:

- i) In case of infrastructure projects that require dewatering, proponent shall be required to carry out regular monitoring of dewatering discharge rate (using a digital water flow meter) and submit the data through the web portal to CGWA/SGWA as applicable. Monitoring records and results should be retained by the proponent for two years, for inspection or reporting as required by CGWA/SGWA.

- ii) Installation of Sewage Treatment Plants (STP) shall be mandatory for new projects, where ground water requirement is more than 20 m³/day. The water from STP shall be utilized for toilet flushing, car washing, gardening etc.
- iii) For infrastructure dewatering/ construction activity, No Objection Certificate shall be valid for specific period as per the detailed proposal submitted by the project proponent.
- iv) All infrastructure projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Table 5.3 A.
- v) All infrastructure projects (new/ existing) drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.3 B.

Documents to be submitted with the application

- (a) In cases where dewatering is involved, submission of impact assessment report prepared by an accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime shall be mandatory. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence etc.
- (b) An affidavit on non judicial stamp paper of Rs. 10/- regarding non availability of water from any other source in case water is required for construction in safe and semi critical areas.
- (c) Certificate from a government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.
- (d) Certificate of non-availability of water from local government water supply agency in respect of all categories of assessments units for commercial use.
- (e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.
- (f) Details of water requirement computed as per National Building Code, 2016 (**Annexure I**), taking into account recycling/ reuse of treated water for flushing etc. (in case of completed infrastructure projects for commercial use).
- (g) Completion certificate from the concerned agency for infrastructure projects requiring water for commercial use.

5.0 Ground water abstraction/ restoration charges

All residential apartments/ group housing societies/ Government water supply agencies in urban areas shall be required to pay ground water abstraction charges.

All industries/mining/ infrastructure projects drawing ground water in safe, semi-critical and critical assessment units will have to pay ground water abstraction charges based on quantum of ground water extraction and category of assessment unit as per details given in this guideline.

All existing mining/ infrastructure projects and existing industries including MSME drawing ground water in over-exploited assessment units will have to pay ground water restoration charges based on quantum of ground water extraction. Further, new MSME, new infrastructure and new Mining projects in over exploited areas shall also be required to pay ground water restoration charges.

Existing industries, infrastructure units and mining projects which have installed/constructed artificial recharge structures in compliance of the conditions prescribed in the groundwater guidelines prevailing at the time of grant of No Objection Certificate or its renewal shall be eligible for a rebate of 50% (fifty percent) in the ground water abstraction charges/ground water restoration charges, subject to their satisfactory performance and verification.

The revenue generated from the proposed water abstraction/ restoration charges shall be kept in a separate fund for implementation of site specific suitable demand/ supply side interventions.

5.1 Rates of Ground water abstraction /restoration charges

I. Drinking and domestic use for residential apartments/ group housing societies/ Government water supply agencies in Urban areas

All residential apartments/ Group Housing Societies requiring water only for drinking/domestic use requiring No Objection Certificate would pay ground water abstraction charges as per rates given below in Table 5.1.

Table 5.1 Ground Water Abstraction charges for Drinking & Domestic use.

Quantum of Groundwater withdrawal (m ³ /month)	Rate of ground water abstraction charges (Rs. per m ³)
0-25	No charge
26-50	1.00
>50	2.00

Government water supply agencies and Government infrastructure projects shall pay Ground water abstraction Charges @ Rs. 0.50 per m³.

II. Packaged Drinking Water units

Rates of ground water abstraction charges for packaged drinking water units in safe, semi-critical and critical assessment units are given in Table 5.2 A and those for ground water restoration charges in over-exploited assessment units are given in Table 5.2 B.

Table 5.2 A: Rates of ground water abstraction charges for packaged drinking water units (Rs per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal				
		Up to 50m ³ /day	51 to <200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Safe	1.00	3.00	5.00	8.00	10.00
2.	Semi-critical	2.00	5.00	10.00	15.00	20.00
3.	Critical	4.00	10.00	20.00	40.00	60.00

Table 5.2 B: Rates of ground water restoration charges for packaged drinking water units (Rs per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal				
		Up to 50 m ³ /day	51 to <200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Over-exploited (existing industries only)	8.00	20.00	40.00	80.00	120.00

III. Other Industries & infrastructure projects

Rates of ground water abstraction charges for other industries and infrastructure projects in safe, semi-critical and critical assessment units are given in Table 5.3 A and those for ground water restoration charges in over-exploited assessment units are given in Table 5.3 B.

Table 5.3 A: Rates of Ground Water abstraction charges for other industries & infrastructure projects (Rs per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal			
		< 200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Safe	1.00	2.00	3.00	5.00
2.	Semi-critical	2.00	3.00	5.00	8.00
3.	Critical	4.00	6.00	8.00	10.00

Table 5.3 B: Rates of ground water restoration charges for other industries & infrastructure projects (Rs per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal			
		< 200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Over-exploited (existing industries / new Industries as per the present Guidelines)	6.00	10.00	16.00	20.00

IV. Mining projects

Rates of ground water abstraction charges for mining, which are drawing ground water in safe, semi-critical and critical assessment units are given in Table 5.4 A and those for ground water restoration charges in case of projects drawing ground water in over-exploited assessment units are given in Table 5.4 B.

Table 5.4 A: Rates of ground water abstraction charges for mining (Rs. per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal			
		< 200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Safe	1.00	2.00	2.50	3.00
2.	Semi-critical	2.00	2.50	3.00	4.00
3.	Critical	3.00	4.00	5.00	6.00

Table 5.4 B: Rates of ground water restoration charges for mining (Rs. per m³)

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal			
		< 200 m ³ /day	200 to <1000 m ³ /day	1000 to <5000 m ³ /day	5000 m ³ /day and above
1.	Over-exploited	4.00	5.00	6.00	7.00

6.0 Bulk Water Supply

All private tankers abstracting ground water and use it for supply as bulk water suppliers will now mandatorily seek No Objection Certificate for ground water abstraction. The bulk water suppliers through tankers drawing ground water in safe, semi-critical and critical assessment units shall pay groundwater abstraction charges as per the **Table-6.1 A**. The bulk water suppliers drawing ground water in over-exploited assessment units shall pay the groundwater restoration charges as per the **Table-6.1 B**. All tankers will have to install GPS based system for their monitoring of movement/area of operation.

Modalities for issue of No Objection Certificate for bulk/tanker water supplies shall be worked out in consultation with States/Uts and suitable guidelines in this regard will be framed and issued separately for the same.

Table-6.1A: Groundwater abstraction charges for Bulk/Tanker water supplies

Category	Rate per m ³ (in Rs.)
Safe	10
Semi Critical	20
Critical	25

Table-6.1B: Groundwater abstraction charges for Bulk/Tanker water supplies

Category	Rate per m ³ (in Rs.)
Over Exploited	35

7.0 Abstraction of Saline ground water

Abstraction of saline ground water in areas having either saline ground water at all depths or pockets of saline ground water in an otherwise fresh water area for use by industries/ dewatering by infrastructure/ mining projects including those located in over-exploited areas would be encouraged. Such industries shall be exempted from paying ground water abstraction charges.

The list of such assessment units having saline ground water at all depths as per the latest assessment of dynamic ground water resources will be made available by the CGWA in their website. However, due care shall be taken in respect of disposal of effluents by the units so as to protect the water bodies and the aquifers from pollution.

Detailed guidelines in this regard shall be prepared and issued separately.

8.0 Protection of Wetland Areas

The wet land areas in the country are very crucial as they are direct reflection of the presence of ground water in such areas. The protection of the wetland areas is being separately handled by the Wetland Authorities. Since ground water is very crucial for the survival of the wetland area, any excessive ground water development within the zone of wetland area would affect the volume of water in that wetland.

Projects falling within 500 m. from the periphery of demarcated wetland areas shall mandatorily submit a detailed proposal indicating that any ground water abstraction by the project proponent does not affect the protected wetland areas. Furthermore, before seeking permission from CGWA, the projects shall take consent/approval from the appropriate Wetland Authorities to establish their projects in the area.

9.0 General compliance conditions in No Objection Certificate

- i. Installation of digital water flow meter (conforming to BIS/ IS standards) having telemetry system in the abstraction structure(s) shall be mandatory for all users seeking No Objection Certificate and intimation regarding their installation shall be communicated to the CGWA within 30 days of grant of No Objection Certificate through the web-portal.
- ii. Proponents shall mandatorily get water flow meter calibrated on from an authorized agency once in a year.
- iii. Proponents shall install roof top rain water harvesting & recharge systems in the project area.
- iv. Proponents shall pay Ground Water Abstraction/ Restoration Charges based on quantum of ground water extraction as applicable as per the rates given in Section 6.
- v. Construction of purpose-built observation wells (piezometers) for ground water level monitoring shall be mandatory as per Section 15. Water level data shall be made available to CGWA through web portal. Detailed guidelines for construction of piezometers are given in **Annexure-II**.
- vi. Proponents shall monitor quality of ground water from the abstraction structure(s) once in a year. Water samples from bore wells/ tube wells / dug wells shall be collected during April/May every year and analysed in NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to CGWA through the web portal.
- vii. If the existing well becomes defunct due to mechanical failure within the validity period of No Objection Certificate, the user can construct a replacement well under intimation to CGWA on web portal. The defunct well shall be properly sealed (**Refer Annexure VII**). The user will be required to submit documentary proof in this regard. However, if the existing abstraction structures fails to yield water and he proponent desires to drill another tubewell in the same premises, prior permission of the Authority shall be required. If the replacement well is to be drilled in some different place, the proponent shall obtain fresh No Objection Certificate.
- viii. Wherever feasible, requirement of water for greenbelt (horticulture) shall be met from recycled / treated waste water.
- ix. In case of change of ownership, new owner of the industry will have to apply for incorporation of necessary changes in the No Objection Certificate with documentary proof within 60 days of taking over possession of the premises.

10.0 Monitoring of compliance of No Objection Certificate Conditions

To monitor the compliance of No Objection Certificate conditions, Central Ground Water Authority and State/ UT Ground Water Authorities shall take the following steps:

- a. Suitable MIS will be developed for compliance monitoring.
- b. District Collectors/Deputy Commissioners (DCs) /District Magistrates (DMs) are authorized to take enforcement measures like sealing of unauthorized ground water abstraction structures, disconnection of electricity, launching of prosecution against those violating the No Objection Certificate conditions and taking action for imposition of Environmental Compensation.
- c. Technical officers of CGWB/ CGWA and State groundwater organizations are authorized to take actions with respect to monitoring and periodic inspections with the approval of competent authority.
- d. In case of violation of any of the No Objection Certificate conditions, the proponents shall be liable to pay the penalties as per **Section 16**.

11.0 Renewal of No Objection Certificate

No objection certificate shall be renewed periodically, subject to the compliance of the conditions mentioned therein:

- i. The applicant shall apply for renewal of No Objection Certificate at least ninety days prior to expiry of its validity.
- ii. Application for renewal of No Objection Certificate shall be accompanied by the Compliance Report.
- iii. Before granting renewal, Central Ground Water Authority or State/ Ut Authority shall satisfy itself that the conditions of No Objection Certificate have been complied with.
- iv. In case of change in category of the assessment unit, renewals would be granted with conditions as laid down for new category.
- v. No Objection Certificate will be renewed for the terms specified for various uses as follows:

Category	Use	Term of renewal
Critical, Semi-critical and safe	Infrastructure projects for drinking & domestic use and urban Water Supply Agencies	5 years
	Industries	3 years
	Mines	2 years
Over exploited	All users in 'Over-exploited areas'	2 years

- vi. If the application for renewal is submitted in time and the CGWA/ the respective State/ Ut Authority is unable to process the application in time, No Objection Certificate shall be deemed to be extended till the date of renewal of No Objection Certificate.
- vii. If the proponent fails to apply for renewal within 3 months from the date of expiry of No Objection Certificate, the proponent shall be liable to pay Environmental Compensation for the period starting from the date of expiry of No Objection Certificate till No Objection Certificate is renewed by the competent authority.

12.0 Extension of No Objection Certificate

If the proponent is unable to construct the well(s) during the validity period of No Objection Certificate for genuine reasons, the proponent will have to apply for extension of No Objection Certificate. Application for extension should be supported by documents justifying the reasons for delay. Other conditions for grant of extension of No Objection Certificate will be the same as that for fresh No Objection Certificate.

Extension of No Objection Certificate will be granted for a maximum period of two years. No further extension will be granted after the expiry of the extended period. In that case, the applicant will have to apply afresh for grant of No Objection Certificate.

13.0 Delegation of powers against illegal groundwater withdrawal

Central Ground Water Authority has appointed the District Magistrate/ District Collector/ Sub Divisional Magistrates of each Revenue District/Sub division as Authorized Officers, who have been delegated the power to seal illegal wells, disconnect electricity supply to the energised well, launch prosecution against offenders etc. including grievance redressal related to ground water in their respective jurisdictions.

In order to further decentralise and strengthen the monitoring and compliance mechanism as per the guidelines, officials of concerned Departments of Revenue and Industries of the States/Uts shall be appointed as Authorised Officers in consultation with the State/Ut Governments.

A copy of the No Objection Certificate issued by the CGWA in the No Objection Certificate Application Portal (NOCAP) will be forwarded to the respective District Magistrate/ District Collector. In case of any violation of the directions of Central Ground Water Authority and non-fulfilment of the conditions laid

down in the No Objection Certificate, the Authorised Officers will file appropriate Petition/Original Application etc under sections 15 to 21 of the Environment (Protection) Act, 1986 in appropriate Courts.

14.0 Ground Water Level Monitoring

All the project proponents (drawing ground water more than 10 cum/d) have to mandatorily construct Piezometers (observation wells) within their premises for monitoring of the ground water levels. Such a mechanism of compliance conditions has been made to ensure that every month the ground water level in the project area can be monitored and observed. In this regard the necessary criteria for monitoring of water levels through piezometers by the project proponents is given in Table 14.1.

Table 14.1 No. of Piezometers to be constructed & Type of Water Level Monitoring Mechanism

S.No.	Quantum of Ground water withdrawal (cum/d)	No. of piezometer required	Monitoring mechanism		
			Manual	DWLR	DWLR with Telemetry
1	<10	0	0	0	0
2	11-50	1	1	0	0
3	51-500	1	0	1	0
4	>500	2	0	1	1

The piezometer shall be suitably located to ensure that zone of aquifer tapped in the piezometer is the same as that of the pumping well.

15.0 Environmental Compensation

Extraction of ground water for commercial use by industries, infrastructure units and mining projects without a valid No Objection Certificate from appropriate authority shall be considered illegal and such entities shall be liable to pay Environmental Compensation for the quantum of ground water so extracted. The norms prescribed by Central Pollution Control Board (CPCB) shall be utilized for calculating the Environmental compensation as mentioned below:

$$EC_{GW} = \text{Ground water consumption per day} \times \text{Environmental Compensation rate (ECR}_{GW}) \times \text{No. of days} \times \text{Deterrence factor}$$

where ground water consumption is in m³/day and ECR_{GW} in Rs./ cum

15.1 Rates of Environmental Compensation:

Rates of Environmental Compensation (ECR_{GW}) for various types of users in different categories of assessment units are given in Table 15.1 to 15.3.

Table 15.1 : ECR_{GW} for Packaged Drinking Water units

S.No.	Area Category	Water Consumption (cum/day)			
		<200/	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./m ³			
	Safe	12	18	24	30
2	Semi critical	24	36	48	60
3	Critical	36	48	66	90
4	Over- exploited	48	72	96	120

Note :-Minimum EC_{GW} shall not be less than Rs 1,00,000/-

Table 15.2: ECR_{GW} for Mining/ infrastructure dewatering projects

S.No.	Area Category	Water Consumption (cum/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./m ³			
1	Safe	15	21	30	40
2	Semi critical	30	45	60	75
3	Critical	45	60	85	115
4	Over- exploited	60	90	120	150

Note :-Minimum EC_{GW} shall not be less than Rs 1,00,000/-

Table 15.3: ECR_{GW} for Industrial units

S.No.	Area Category	Water Consumption (cum/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./m ³			
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over- exploited	80	120	160	200

Note :-Minimum EC_{GW} shall not be less than Rs 1,00,000/-

15.2 Deterrent Factors to compensate losses and environmental damage (for packaged drinking water units, mining, industries and infrastructural dewatering projects)

The following deterrent factors based on the duration of illegal ground water extraction shall be levied to compensate for the losses and environmental damages as detailed in Table 15.4.

Table 15.4: Deterrent factor based on quantum of ground water withdrawal and number of years of illegal withdrawal

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

Note: KLD – Kilolitre per day

16.0 Provision of Penalty

Penalty shall be imposed on the proponents for non-compliance of No Objection Certificate conditions issued by the appropriate authority. Rates of penalty proposed for non-compliance of various conditions of No Objection Certificate are given in Table 16.1. The rates of the penalty shall be reviewed periodically with the approval of competent authority in Ministry of Jal Shakti.

Table 16.1: Penalty provision for non Compliance of No Objection Certificate conditions

S. No.	Items	Charges in Rs.
1	Non installation/faulty Digital water Flow meter with telemetry system.	200000
2	Non disclosure/ construction of additional groundwater abstraction structures a) Non-functional Structures. b) Defunct/Abandoned Note: Given rates are for unit non-functional/defunct/abandoned structures. This shall be multiplied with total such structures to arrive at consolidated penalty.	200000 100000
3	Reporting of fresh water zones as Brackish / Saline zones in application.	200000
4	Non Installation of Piezometer.	200000
5	Non Installation/faulty DWLR/Telemetry system	100000
6	Non Construction/Inadequate capacity of Recharge / Water conservation structures.	500000
7	Non maintenance of Recharge structures.	200000
8	Injection of treated/untreated water into the aquifer system. Note: In addition to penalty, the proponent shall bear the cost of aquifer remediation as per the provisions of Environment (Protection) Act, 1986.	1000000
9	Non Submission of Water level/Water quality Data.	50000
10	Non-maintenance of log book of daily withdrawal/non submission of Groundwater abstraction data.	50000
11	Non submission of photograph of recharge structure(s).	50000
12	Non Submission of Self Compliance report.	100000
13	Construction of groundwater abstraction structures by un authorized/unregistered Drilling Rigs (per structures).	100000
14	Non registration of water supply tankers.	500000
15	Submission of false information/ undertaking.	100000

Charges shall also be payable for correction/modification in the existing issued No Objection Certificate letter. The details of such charges are given in [Table 16.2](#).

Table 16.2: Proposed Charges for correction/Modification in the existing issued No Objection Certificate

S. No.	Items	Charges in Rs.
1	Change in recharge quantum	10000
2	Change in User ID.	5000
3	Change in firm Name	5000
4	Extension of No Objection Certificate	5000
5	Issuance of duplicate No Objection Certificate	5000
6	Issuance of corrigendum to No Objection Certificate	5000
7	Any other items/corrections etc	5000

17.0 Other important Conditions (Applicable to all):

- i. Sale of ground water by a person/ agency not having valid no objection certificate from CGWA/State Ground Water Authority is not permitted.
- ii. In infrastructure projects, paved/parking area must be covered with interlocking/perforated tiles or other suitable measures to ensure groundwater infiltration/harvesting.
- iii. In case of Infrastructure projects, the firm/entity shall ensure implementation of dual water supply system in the projects. Compliance of the same shall be submitted through the web portal.
- iv. Non-compliance of conditions mentioned in the No Objection Certificate may be taken as sufficient reason for cancellation of no objection certificate accorded/ non-renewal of No Objection Certificate.
- v. No application shall be entertained without supporting documents as specified in relevant sections.
- vi. Abstraction structure(s) should be located inside the premises of project property.
- vii. Self compliance of conditions laid down in the no objection certificate shall be reported by the users online in the web portal of Central Ground Water Authority/state Ground Water Authority.
- viii. Processing fee prescribed, if any, from time to time shall be charged for various services.

Note:

1. Guidelines are subject to modification from time to time.
2. In case of any discrepancy between Hindi and English versions of this document including the annexures, the English version shall prevail.

Annexure I**Estimation of Water Requirements for drinking and domestic use****(Source: National Building Code 2016, BIS)**

a) Residential Buildings:

Accommodations	Population
1 Bedroom dwelling unit	4
2 Bedroom dwelling unit	5
3 Bedroom dwelling unit	6
4 Bedroom dwelling unit and above	7

Notes:

- 1) The above figures consider a domestic household including support personnel, wherever applicable.
- 2) For plotted development, the population may be arrived at after due consideration of the expected number and type of domestic household units.
- 3) Dwelling unit under EWS category shall have population requirement of 4 and studio apartment shall have population requirement of 2.

As a general rule the following rates per capita per day may be considered for domestic and non-domestic needs:

a) For communities with populations up to 20,000:

1)	Water supply through stand post:	40 lphd (Min)
2)	Water supply through house service: connection	70 to 100 lphd

- b) For communities with: 100 to 135 lphd
population 20,000 to 100,00 together with
full flushing system
- c) For communities with population: 150 to 200 lphd
above 100,000 together with
full flushing system

Note—The value of water supply given as 150 to 200 litre per head per day may be reduced to 135 litre per head per day for houses for Medium Income Group (MIG) and Low Income Groups (LIG) and Economically Weaker Section of Society (EWS), depending upon prevailing conditions and availability of water.

Out of the 150 to 200 litre per head per day, 45 litre per head per day may be taken for flushing requirements and the remaining quantity for other domestic purposes.

A. Water Requirements for Buildings Other than Residences

Sl No.	Type of Building	Domestic litres per head/ day	Flushing Litres per head/ day	Total Consumption Litres per head/ day
1.	Factories including canteen where bath rooms are required to be provided	30	15	45
2.	Factories including canteen where no bath rooms are required to be provided	20	10	30
3.	Hospital (excluding laundry and kitchen):			
	a) Number of beds not exceeding 100	230	110	340
	b) Number of beds exceeding 100	300	150	450
	c) Out Patient Department (OPD)	10	5	15
4.	Nurses' homes and medical quarters	90	45	135
5.	Hostels	90	45	135
6.	Hotels (up to 3 star) excluding laundry, kitchen, staff and water bodies	120	60	180
7.	Hotels (4 star and above) excluding laundry, kitchen, staff and water bodies	260	60	320
8.	Offices (including canteen)	25	20	45
9.	Restaurants and food court including water requirement for kitchen:			
	a) Restaurants	55 per seat	15 per seat	70 per seat
	b) Food Court	25 per seat	10 per seat	35 per seat
10.	Clubhouse	25	20	45
11.	Stadiums	4	6	10

12.	Cinemas, concert halls and theatres and multiplex	5 per seat	10 per seat	15 per seat
13.	Schools/Educational institutions:			
	a) Without boarding facilities	25	20	45
	b) With boarding facilities	90	45	135
14.	Shopping and retail (mall)			
	a) Staff	25	20	45
	b) Visitors	5	10	15
15.	Traffic Terminal stations			
	a) Airports	40	30	70
	b) Railway stations (Junction) with bathing facility	40	30	70
	c) Railway stations (Junction) without bathing facility	30	15	45
	d) Railway stations (Intermediate) with bathing facility	25	20	45
	e) Railway stations (Intermediate) without bathing facility	15	10	25
	f) Interstate bus terminals	25	20	45
	g) Intrastate Bus Terminals/Metro Stations	10	5	15

Notes:

1. For calculating water demand for visitors, consumption of 15 litre per head per day may be taken.
2. The water demand includes requirement of patients, attendants, visitors and staff. Additional water demand for kitchen, laundry and clinical water shall be computed as per actual requirements.
3. The number of persons shall be determined by average number of passengers handled by stations, with due considerations given to the staff and vendors who are using these facilities.
4. Consideration should be given for seasonal average peak requirements.
5. The hospitals may be categorized as Category A (25 to 50 beds), Category B(51 to 100 beds), Category C (101 to 300 beds), Category D (301 to 500) and Category E (501 to 750 beds).

Annexure II**Guidelines for construction of Piezometers and monitoring of Ground Water Levels and Quality**

Piezometer is a borewell/tubewell used only for measuring the water level by lowering a tape/sounder or automatic / digital water level measuring equipment. It is also used to take water sample for water quality testing whenever needed. General guidelines for installation of piezometers are as follows:

- The piezometer is to be installed/constructed at the minimum distance of 50 m from the pumping well through which ground water is being withdrawn. The diameter of the piezometer should be about four inches to six inches.
- The depth of the piezometer should be the same as that of the pumping well from which ground water is being abstracted. If, more than one pumping wells are constructed tapping aquifers at different depths, more than one piezometers shall be required to be constructed tapping different aquifers as in the pumping wells.

- The measurement of water level in piezometer should be taken, only after the pumping from the surrounding tubewells has been stopped for about four to six hours.
- The ground water quality has to be monitored once in a year during pre-monsoon (April/ May) period by industries and mines drawing ground water. Samples of ground water should be analyzed from NABL accredited laboratory.
- A permanent display board should be installed at Piezometer/ Tubewell site for providing the location, piezometer/ tubewell number, depth and zone tapped of piezometer/tubewell for standard referencing and identification.
- Any other site specific requirement regarding safety and access for measurement may be taken care off.

Annexure III

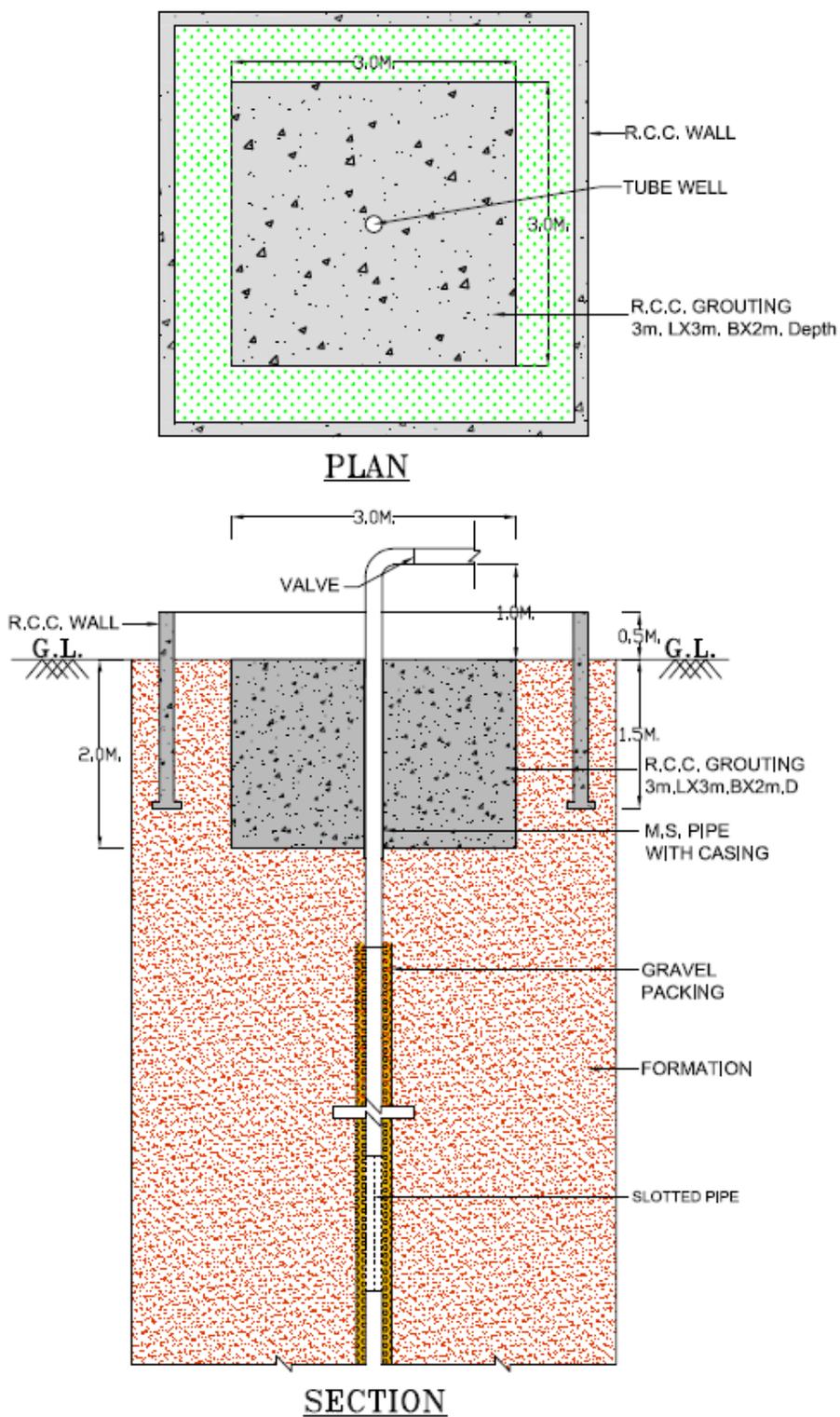
Measures to be adopted to ensure prevention from pollution in the plant premises of polluting industries/ projects

It has been observed that ground water in and around polluting industries like Tannery, Slaughter Houses, Dye, Chemical, Coalwashery, other hazardous units, etc., is polluted. In order to prevent further deterioration of ground water quality, it is essential to take all necessary measures for well head protection. All industries/ projects falling under this category are hereby directed to follow the under mentioned procedure both for existing and new category.

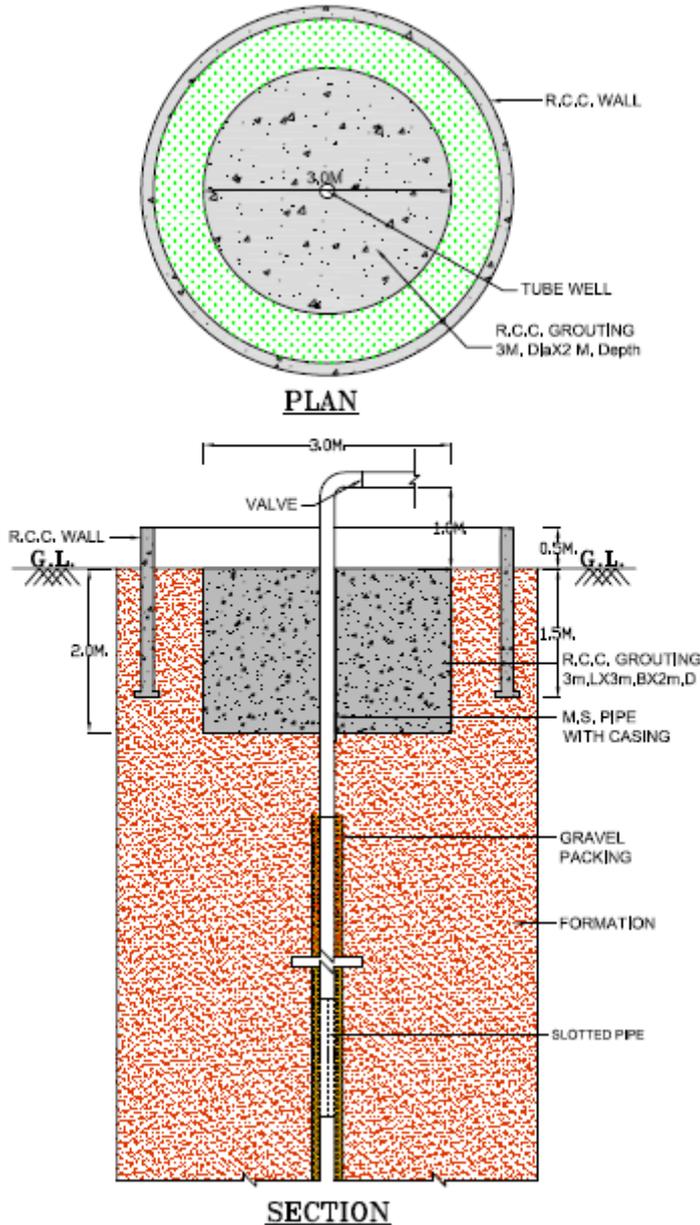
1. No tube well/ bore well / dug well should be constructed in the vicinity of the processing unit. Tube well/ bore well should be constructed at the place which is hygienically maintained.
2. Only Mild Steel pipe should be used for assembly/ casing and PVC (Poly Vinyl Chloride) or similar pipes should not be used. The tube well/ bore well having PVC or similar pipes should be abandoned and filled back.
3. Around the tube well/ bore well, RCC (Reinforced Concrete Cement) grouting of 3 meters (length) x 3 meters (width) x 2 meters (depth) must be provided. The pipe of the tube well/ bore well must be raised 1 meter above ground level (1 magl). The tube well/ bore well must be surrounded by RCC wall of 0.5 meter height and 1.5 meter depth to prevent any surface contamination to enter the constructed tube well/ bore well. Plan/Sectional diagram is enclosed for reference (Appendix 1 and 2).
3. The tube well/ bore well must be fitted with NRV (Non Return Valve) in order to ensure that the constructed tube well/ bore well is exclusively used for abstraction of ground water only.
4. At no point of time there should be any injection of any water or fluid into the constructed tube well/ bore well/ Piezometer.
5. The industries/ projects under this category should not implement any recharge measures within the plant premises.
6. Any tube well/ bore well located/ constructed in the vicinity of STP (Sewage Treatment Plant) or ETP (Effluent Treatment Plant) should be abandoned and filled back.
7. The piezometer to be constructed for monitoring purpose should follow the same procedure as that for tube well/ bore well for such industries/ projects.

Appendix 1

Plan/ Sectional diagram showing well head protection



Plan/ Sectional diagram showing well head protection

**Annexure-IV****Outline of hydro-geological Report for obtaining No Objection Certificate for industries**

1. Brief about the proposed project giving location details, coordinates, google/ toposheet maps, etc. demarcating the project area.
2. Ground water situation in and around the project area including water level and quality data and maps along with quality issues, if any. In case of mines, ground water conditions in both core and buffer zone should be described.
3. Details of the tubewells/ borewells proposed to be constructed. This includes the drilling depth, diameter, tentative lithological log, details of pump to be lowered, H.P. of pump, tentative discharge of tubewells/ borewells, etc. Locations to be marked on the site plan/ map. Location of proposed piezometers.

4. Details of Geophysical studies carried out in and around the project area. Ground water resources computation of the block in which the project falls.
5. Approved Mine plan in case of mines and detailed dewatering plan in case of mine/ infrastructure dewatering projects.
6. Proposed usage of pumped water in case of mining/ infrastructure dewatering projects.
7. Comprehensive assessment of the impact on the ground water regime in and around the project area highlighting the risks and proposed management strategies proposed to overcome any significant environmental issues.
8. Proposed measures for disposal of waste water by industries drawing saline water.
9. Measures to be adopted for water conservation which include recycling, reuse, treatment, etc. This includes the water balance chart being adopted by the firm along with details of water conservation methods to be adopted.
 - Brief write up along with capacity and flow chart of Sewage Treatment Plants / Effluent Treatment Plants / Combined Effluent Treatment Plants existing/ proposed within the project.
 - Details of water conservation measures to be adopted to reduce/ save the ground water.
 - Total water balance chart showing the usage of water for various processes.
10. Any other details pertaining to the project.

Annexure V

Format of the Report on ground water conditions (for mining projects)

Introduction

Project description

Background

Objectives and scope

Regional setting

Location

Landuse

Climate

Topography and drainage

Geology –Regional and Local

General Hydrogeology (aquifer types, aquifer depth, zone tapped etc.)

Groundwater condition (In core and buffer zones)

Spatial and temporal variations in water levels Groundwater quality (Shallow and deep aquifer)

Impact of groundwater extraction on local groundwater

Hydrograph of water level/piezometer in monitoring wells

Trend analysis of historical water levels Flow net analysis (groundwater flow direction)

Year wise/ bench wise mine dewatering computation as per approved mine plan

Conclusions

Annexure VI

Indicative list of Infrastructure projects

Residential townships including commercial buildings
Office building
School
College
University
Special Economic Zone
Metro Station
Railway Station
Bus Depot
Airport
Seaport
Highway infrastructure
Fire station
Warehouse
Business Plaza
Malls & Multiplex
Hospitals
Nursing Homes
Resort
Hotel/ Restaurant/ Food Plaza
Holiday home/Guest house/ Hostels
Banquet Hall/ Marriage Gardens
IT Complex
Logistics & Cargo
Clubs
Trade Centre

Annexure -VII

Supreme Court Order in Civil Writ petition 36 of 2009 regarding measures for prevention of fatal accidents of small children due to their falling into abandoned bore wells and tube wells

In Re: Measures for prevention of fatal accidents of small children due to their falling into abandoned bore wells and tube wells

Union of India and Ors.

Respondents(s)

ORDER

With this Court issuing requisite guidelines vide order dated 11th February, 2010, subject to slight modifications, nothing survives in the present writ petition.

That modification is as follows:

- (i) The owner of the land/ premises, before taking any steps for constructing bore well/ tube well must inform in writing to the concerned authorities in the area, i.e., District Collector/ District Magistrate/ Sarpanch of the Gram Panchayat/ any other Statutory Authority/ concerned officers of the Department of Ground Water/ Public Health/ Municipal Corporation, as the case may be, about the construction of bore well/ tube well.
- (ii) Registration of all the drilling agencies, namely, Government/ Semi Government, Private etc. should be mandatory with the district administration/ Statutory Authority wherever applicable.
- (iii) Erection of signboard at the time of construction near the well with the following details:-
 - (a) Complete address of the drilling agency at the time of construction/ rehabilitation of well.
 - (b) Complete address of the user agency/owner of the well.
- (iv) Erection of barbed wire fencing or any other suitable barrier around the well during construction.
- (v) Construction of cement/ concrete platform measuring 0.50x0.50x0.60 meter (0.30 meter above ground level and 0.30 meter below ground level) around the well casing.
- (vi) Capping of well assembly by welding steel plate or by providing a strong cap to be fixed to the casing pipe with bolts & nuts.
- (vii) In case of pump repair, the tube well should not be left uncovered.
- (viii) Filling of mud pits and channels after completion of works.
- (ix) Filling up abandoned bore wells by clay/sand/boulders/pebbles/drill cuttings etc. from bottom to ground level.
- (x) On completion of the drilling operations at a particular location, the ground conditions are to be restored as before the start of drilling.
- (xi) District Collector should be empowered to verify that the above guidelines are being followed and proper monitoring check about the status of bore holes/ tube wells are being taken care through the concerned state/ Central Government agencies.
- (xii) District/ Block/ Village wise status of bore wells/tube wells drilled viz. No. of wells in use, No. of abandoned bore wells/ tube wells found open, No. of abandoned bore wells/ tube wells properly filled up to ground level and balance number of abandoned bore wells/ tube wells to be filled up to ground level is to be maintained at District Level.

In rural areas, the monitoring of the above is to be done through Village Sarpanch and the Executive from the Agriculture Department.

In case of urban areas, the monitoring of the above is to be done through Junior Engineer and the Executive from the concerned Department of Ground Water/Public Health/ Municipal Corporation etc.

- (xiii) If a bore well/ tube well is 'Abandoned' at any stage, a certificate from the concerned department of Ground Water/ Public Health/ Municipal Corporation/ Private Contractor etc. must be obtained by the aforesaid agencies that the 'Abandoned' bore well/tube well is properly filled upto the ground level. Random inspection of the abandoned wells is also to be done by the Executive of the concerned agency/ department. Information on all such data on the above are to be maintained in the District Collector/ Block Development Office of the State.

We are informed that the last paragraph of the earlier order dated 11th February, 2010, concerning publicity has been duly complied with.

Subject to the above, the writ petition is disposed of.

.....CJL.
[S.H. KAPADIA]

.....J.
[K.S. RADHAKRISHNANA]

.....J.
[SWATANTER KUMAR]

New Delhi,
August 6, 2010

ANNEXURE VIII

List of States/Union territories where ground water extraction is being regulated by Central Ground Water Authority

1. Andaman and Nicobar Islands
2. Assam
3. Arunachal Pradesh
4. Bihar
5. Chhattisgarh
6. Dadra and Nagar Haveli and Daman and Diu
7. Gujarat
8. Haryana
9. Jharkhand
10. Madhya Pradesh
11. Maharashtra
12. Manipur
13. Meghalaya
14. Mizoram
15. Nagaland
16. Odisha
17. Punjab
18. Rajasthan
19. Sikkim
20. Tripura
21. Uttar Pradesh
22. Uttarakhand
23. Andhra Pradesh (only mining projects)
24. Telangana (only mining projects)

Glossary of technical terms used

1. **Safe area:** Area categorized as SAFE from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organizations. Details available on the websites of NOCAP and CGWB.
2. **Semi-critical area:** Area categorized as SEMI-CRITICAL from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organizations. Details available on the websites of NOCAP and CGWB.
3. **Critical area:** Area categorized as CRITICAL from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organisations. Details available on the websites of NOCAP and CGWB.
4. **Over-exploited area:** Area categorized as OVER-EXPLOITED from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organisations. Details available on the websites of NOCAP and CGWB.
5. **Aquifer:** Geological formation capable of storing and transmitting ground water.
6. **Deeper Aquifer:** In areas having multiple aquifer system, the aquifer(s) occurring below the uppermost aquifer.
7. **Well:** Any structure used for the extraction of groundwater, including open wells, dug wells, bore wells, dug-cum-bore wells, tube wells, filter points, collector wells, infiltration galleries, recharge wells, or any of their combinations or variations.
8. **Government Agency:** May be Central or State Government body.
9. **Supplier:** Government/ Government approved Water Supply Agency.
10. **Mine:** Area where mining activity is taking place, or area abandoned after mining.
11. **Illegal Ground Water abstraction Structure:** Any energized abstraction structure viz. dugwell, tubewell, borewell which is being used to withdraw ground water without valid No Objection Certificate from Central Ground Water Authority.
12. **Rainwater Harvesting:** The technique or system of collection and storage of rainwater, at micro watershed scale, including roof-top harvesting, for future use or for recharge of groundwater.
13. **Mining Project:** Project which involves mining activity either open cast or underground or both.
14. **Ground Water Draft:** Quantum of ground water withdrawal.
15. **Saline Water:** Water having salinity in excess of 2500 μ siemens/cm at 25⁰C.
16. **Water Table Intersection:** Intersection of the water table on excavation of the overlying material due to mining or other activities.
17. **Drinking and domestic use:** Besides drinking & domestic use of households, this category will cover drinking requirement of industries not requiring water for industrial process; drinking, washing, cleaning use etc. in case of hospitals, hotels, malls & multiplexes, institutions, offices, banquet halls, fire stations, metro stations, railway stations, airports, sea ports, stadia etc.
18. **Recycle/Reuse:** Using treated waste water for various purposes/ putting water to multiple uses.
19. **Government Department:** Either Central Government or State Government.
20. **Municipality:** Municipality, a Municipal Corporation or similar body of local urban governance by any other name.
21. **Groundwater:** Water, which exists below the surface in the zone of saturation and can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers;
22. **Bgl :** Below Ground Level.
23. **BCM :** Billion cubic metres.

24. **Groundwater Abstraction structure:** Structure used to withdraw groundwater like bore well / tube well / dug well/dug cum bore well/tunnel well.
25. **Observation well or Piezometer:** A bore well/tube well used only for measuring the water level/piezometric head and to take water sample periodically but not used for groundwater abstraction.
26. **Water Audit:** A method of quantifying water use in simple or complex systems, with a view to reducing water usage and often saving money on otherwise unnecessary water use.
27. **Ground water pollution:** If concentration of any parameter in ground water exceeds the maximum permissible limit for drinking water prescribed by the Bureau of Indian Standards.
28. **Cooperative Group Housing Societies/ Builder flats:** A Housing Society is a society formed by house owners within a residential complex. The housing society formed must be formally registered with registrar of co-operatives.
29. **KLD – Kilo Litre per day**
30. **EC_{GW}** - Environmental compensation for drawing illegal ground water.
31. **EC_{GWR}** - Environmental compensation rates for drawing illegal ground water.

ANNEXURE X

Annual water audits by the industries (Source – CII)

Water audit is a systematic process of objectively obtaining a water balance by measuring flow of water from the site of water withdrawal or treatment, through the distribution system, and into areas where it is used and finally discharged. Conducting a water audit involves calculating water balance, water use and identifying ways for saving water.

Water audit involves preliminary water survey and detailed water audit. Preliminary water survey is conducted to collect background information regarding plant activities, water consumption and water discharge pattern and water billing, rates and water cess. After the analysis of the secondary data collected from the industry, detailed water audit is conducted, which involves the following steps:

- On site training and discussion with facility manager and personnel
- Water system analysis
- Quantification of baseline water map
- Monitoring and measurements using pressure and flow meters and various other devices
- Quantification of inefficiencies and leaks
- Quantification of water quality loads and discharges
- Quantification of variability in flows and quality parameters
- Strategies for water treatment and reuse or direct use

A detailed water balance is finally developed. Water quality requirement at various user areas is mapped, which helps in developing 'recycle' and 'reuse' opportunities.

The detailed water audit report contains the following:

- Water consumption and wastewater generation pattern
- Specific water use and conservation
- Complete water balance of the facility
- Water saving opportunities
- Method of implementing the proposals
- Full description and figures
- Investment required

Industries can undertake following measures for water conservation:

- Setting up of norms for water budgeting
- Modernization of industrial process to reduce water consumption
- Recycling water with a re-circulating cooling system
- Ozonation cooling water approach which can result in five fold reduction in blow down when compared to traditional chemical treatment
- Reduction in reuse of de-ionized water by eliminating some plenum flushes, converting from a continuous flow to an intermittent flow system and improving control on the use
- Use of waste water for gardening
- Proper processing of effluents to adhere to the norms of disposal.

VELLORE CITIZENS' WELFARE FORUM v UNION OF INDIA

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(1996) 5 Supreme Court Cases 647

(BEFORE KULDIP SINGH, FAIZAN UDDIN AND K. VENKATASWAMI, JJ.)

a VELLORE CITIZENS' WELFARE FORUM . . . Petitioner;
Versus
UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 914 of 1991[†], decided on August 28, 1996

b A. Constitution of India — Arts. 32, 21, 47, 48-B, 51-A(g) — Environmental pollution by tannery industries — While the industries are vital for country's development, but having regard to pollution caused by them, principle of Sustainable Development has to be adopted as a balancing concept — Precautionary Principle and Polluter Pays Principle acceptable as part of the law of the country and should be implemented — Precautionary environmental measures should be taken by State Govt. and statutory authorities and lack of scientific certainty cannot be a ground for postponing such measures where
c there are serious threats to ecology — Onus on polluter industries to prove that their actions were environmentally benign — Polluter industries liable to pay compensation to individuals affected as well as to make good the ecological damage — Discharge of untreated effluent by tanneries in State of T.N. rendering river water unfit for human consumption, contaminating the subsoil water and spoiling the physico-chemical properties of the soil making it unfit for
d agricultural purposes — Held, such industries cannot be permitted to continue their operation unless they set up pollution control devices — Such industries liable to compensate for the past pollution generated by them — Pollution fine of Rs 10,000 imposed on each tannery — Amount to be deposited in Environment Protection Fund which shall be utilised for compensating the affected persons and restoring the ecological balance — Environment (Protection) Act, 1986 — Ecology — Damage to — Compensation

e B. Ecology — Environment (Protection) Act, 1986 — S. 3(3) — Authority under — Directed to be constituted by Central Govt. before 30-9-1996 — Authority to be headed by a retired High Court Judge — Authority to have all powers necessary to deal with the situation created by the polluting industries — Authority also to implement the Precautionary Principle and the principle of Polluter Pays — Authority to compute compensation payable by the polluting industries to individuals affected and that payable for restoring the damage it
f caused to the environment — Authority also to frame a scheme in consultation with expert bodies like NEERI, Central Board and State Board for reversing the ecological damage and environmental pollution

g C. Constitution of India — Arts. 32, 226 & 21 — PIL — Ecology — Green Bench — Environmental pollution caused by tanneries in State of T.N. — Suitable directions issued by Supreme Court — However, instead of itself monitoring the matter any further Madras High Court advised to constitute a Green Bench to deal with all the environmental matters — Such Green Benches already functioning in some other High Courts

D. International Law — Customary international law — If not contrary to the municipal law, deemed to be incorporated in domestic law

E. Judicial activism — Inaction on the part of the Govt. to set up regulatory/adjudicatory statutory authorities as directed by the Act makes it imperative for the Court to pass suitable necessary directions

h

[†] Under Article 32 of the Constitution of India

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SUPREME COURT CASES

(1996) 5 SCC

Held :

Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry. (Para 9) a

The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. (Para 10) b

"The Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" — in the context of the municipal law — means: c

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. d

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

"The Polluter Pays Principle" has been held to be a sound principle. The "Polluter Pays Principle" as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject. In view of the constitutional and statutory provisions it must be held that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country. (Paras 11 to 14) e

Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 : JT (1996) 2 SC 196, *relied on*

Even otherwise, once these principles are accepted as part of the customary international law there would be no difficulty in accepting them as part of the domestic law. The rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. (Para 15) f

A.D.M. v. Shivakant Shukla, (1976) 2 SCC 521 : AIR 1976 SC 1207; *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470; *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667, *relied on*

The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the g

VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA

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inalienable common law right of clean environment. Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land. (Paras 16 and 17)

a *Commentaries on the Laws of England of Sir William Blackstone* Vol. III, Fourth Edn. published in 1876. Chapter XIII, *relied on*

The Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The

b work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by the Supreme Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating,

c are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for the Supreme Court to direct the Central Government to take immediate action under the provisions of the Environment Act. (Para 20)

There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures; they have been polluting the environment for over a decade and in some cases even for a longer period. The Supreme Court has in various orders indicated that these

d tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology. (Para 21)

The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, it is directed that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu. (Para 24)

e [Keeping in view the above position the Supreme Court gave specific directions in para 25.]

However, it is not necessary for the Supreme Court to monitor these matters any further. The Madras High Court would be in a better position to monitor these matters hereinafter. Therefore, the Chief Justice of the Madras High Court is directed

f to constitute a Special Bench — “Green Bench” — to deal with this case and other environmental matters. However, it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by “Green Benches” already functioning in Calcutta, Madhya Pradesh and some other High Courts. (Para 26)

R-M/T/16616/C

g Advocates who appeared in this case :

R. Mohan, V.A. Bobde, Kapil Sibal, M.R. Sharma, V.C. Mahajan and S.S. Ray, Senior Advocates (K.R.R Pillai, M.C. Mehta, Ms Seema Midha, V.G. Pragasam, Vijay Panjwani, S. Sukumaran, Sudhir Walra, A.T.M. Sampath, M.S. Dahiya, Sudhir Walia, Roy Abraham, Sm. Baby Krishna, P. Sukumar, Praveen Kumar, Romesh C. Pathak, M.A. Krishnamoorthy, V. Krishnamurthi, Ms Anil Katiyar, Ms Indra Sawhney, Deepak Divan, S.M. Jadhav, A.V. Rangam, Zafarullah Khan, Shahid Rizvi, Shakil Ahmed Syed, Jaideep Gupta and Sanjay Hegde, Advocates, with them)

h for the appearing parties.

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Chronological list of cases cited

on page(s)

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| 1. (1996) 3 SCC 212 : JT (1996) 2 SC 196, <i>Indian Council for Enviro-Legal Action v. Union of India</i> | 658g-h | a |
| 2. (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667, <i>Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey</i> | 660e | |
| 3. (1980) 2 SCC 360 : AIR 1980 SC 470, <i>Jolly George Varghese v. Bank of Cochin</i> | 660d-e | |
| 4. (1976) 2 SCC 521 : AIR 1976 SC 1207, <i>A.D.M. v. Shivakant Shukla</i> | 660d-e | |

The Judgment of the Court was delivered by

KULDIP SINGH, J.— This petition — public interest — under Article 32 of the Constitution of India has been filed by Vellore Citizens' Welfare Forum and is directed against the pollution which is being caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It is stated that the tanneries are discharging untreated effluent into agricultural fields, roadsides, waterways and open lands. The untreated effluent is finally discharged in River Palar which is the main source of water supply to the residents of the area. According to the petitioner the entire surface and subsoil water of River Palar has been polluted resulting in non-availability of potable water to the residents of the area. It is stated that the tanneries in the State of Tamil Nadu have caused environmental degradation in the area. According to the preliminary survey made by the Tamil Nadu Agricultural University Research Centre, Vellore nearly 35,000 hectares of agricultural land in the tanneries belt has become either partially or totally unfit for cultivation. It has been further stated in the petition that the tanneries use about 170 types of chemicals in the chrome tanning processes. The said chemicals include sodium chloride, lime, sodium sulphate, chlorium (*sic*) sulphate, fat, liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Nearly 35 litres of water is used for processing one kilogram of finished leather, resulting in dangerously enormous quantities of toxic effluents being let out in the open by the tanning industry. These effluents have spoiled the physico-chemical properties of the soil and have contaminated groundwater by percolation. According to the petitioner an independent survey conducted by Peace Members, a non-governmental organisation, covering 13 villages of Dindigul and Peddiar Chatram Anchayat Unions, reveals that 350 wells out of total of 467 used for drinking and irrigation purposes have been polluted. Women and children have to walk miles to get drinking water. Legal Aid and Advice Board of Tamil Nadu requested two lawyers namely, M.R. Ramanan and P.S. Subramaniam to visit the area and submit a report indicating the extent of pollution caused by the tanneries. Relevant part of the report is as under:

“As per the Technical Report dated 28-5-1983 of the hydrological investigations carried out in Solur village near Ambur it was noticed that 176 chemicals including acids were contained in the tannery effluents. If 40 litres of water with chemicals are required for one kilo of leather, with the production of 200 tons of leather per day at present and likely to

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a be increased multifold in the next four to five years with the springing up of more tanneries like mushroom in and around Ambur town, the magnitude of the effluent water used with chemicals and acids let out daily can be shockingly imagined. ... The effluents are let out from the tanneries in the nearby lands, then to Goodar and Palar rivers. The lands, the rivulet and the river receive the effluents containing toxic chemicals and acids. The subsoil water is polluted ultimately affecting not only arable lands, wells used for agriculture but also drinking-water wells.

b The entire Ambur town and the villages situated nearby do not have good drinking water. Some of the influential and rich people are able to get drinking water from a far-off place connected by a few pipes. During rainy days and floods, the chemicals deposited into the rivers and lands spread out quickly to other lands. The effluents thus let out affect cultivation; either crops do not come up at all or if produced the yield is reduced abnormally too low. ... The tanners have come to stay. The industry is a foreign exchange earner. But one moot point is whether at the cost of the lives of lakhs of people with increasing human population the activities of the tanneries should be encouraged on monetary considerations. We find that the tanners have absolutely no regard for the healthy environment in and around their tanneries. The effluents discharged have been stored like a pond openly in most of the places adjacent to cultivable lands with easy access for the animals and the people. The Ambur Municipality, which can exercise its powers as per the provisions of the Madras District Municipalities Act, 1920 (5 of 1920) more particularly under Sections 226 to 231, 249 to 253 and 338 to 342 seems to be a silent spectator. Probably it does not want to antagonise the highly influential and stupendously rich tanners. The powers given under Section 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) have not been exercised in the case of tanneries in Ambur and the surrounding areas.”

2. Along with the affidavit dated 21-7-1992 filed by Deputy Secretary to Government, Environment and Forests Department of Tamil Nadu, a list of villages affected by the tanneries has been attached. The list mentions 59 villages in the three divisions of Thirupathur, Vellore and Ranipet. There is acute shortage of drinking water in these 59 villages and as such alternative arrangements were being made by the Government for the supply of drinking water.

3. In the affidavit dated 9-1-1992 filed by Member Secretary, Tamil Nadu Pollution Control Board (the Board), it has been stated as under:

“It is submitted that there are 584 tanneries in North Arcot Ambedkar District vide Annexures ‘A’ and ‘D’, out of which 443 tanneries have applied for consent of the Board. The Government were concerned with the treatment and disposal of effluent from tanneries. The Government gave time up to 31-7-1985 to tanneries to put up Effluent Treatment Plant (ETP). So far 33 tanneries in North Arcot

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Ambedkar District have put up Effluent Treatment Plants. The Board has stipulated standards for the effluent to be disposed of by the tanneries.”

4. The affidavits filed on behalf of the State of Tamil Nadu and the Board clearly indicate that the tanneries and other polluting industries in the State of Tamil Nadu are being persuaded for the last about 10 years to control the pollution generated by them. They were given option either to construct common effluent treatment plants for a cluster of industries or to set up individual pollution control devices. The Central Government agreed to give substantial subsidy for the construction of Common Effluent Treatment Plants (CETPs). It is a pity that till date most of the tanneries operating in the State of Tamil Nadu have not taken any step to control the pollution caused by the discharge of effluent. This Court on 1-5-1995 passed a detailed order. In the said order this Court noticed various earlier orders passed by this Court and finally directed as under:

“Mr R. Mohan, the learned Senior Counsel for the Tamil Nadu Pollution Control Board, has placed before us a consolidated statement dividing the 553 industries into three parts. The first part in Statement 1 and the second part in Statement 2 relate to those tanneries who have set up the Effluent Treatment Plants either individually or collectively to the satisfaction of the Tamil Nadu Pollution Control Board. According to the report placed on the record by the Board, these industries in Statements 1 and 2 have not achieved the standard or have not started functioning to the satisfaction of the Board. So far as the industries in Statements 1 and 2 are concerned, we give them three months’ notice from today to complete the setting up of Effluent Treatment Plant (either individually or collectively) failing which they shall be liable to pollution fine on the basis of their past working and also liable to be closed. We direct the Tamil Nadu Pollution Control Board to issue individual notices to all these industries within two weeks from today. The Board is also directed to issue a general notice on three consecutive days in a local newspaper which has circulation in the district concerned.

So far as the 57 tanneries listed in Statement III (including 12 industries who have filed writ petition, numbers of which have been given above) are concerned, these units have not installed and commissioned the Effluent Treatment Plants despite various orders issued by this Court from time to time. Mr R. Mohan, the learned Senior Counsel appearing for Tamil Nadu Pollution Control Board, states that the Board has issued separate notices to these units directing them to set up the Effluent Treatment Plants. Keeping in view the fact that this Court has been monitoring the matter for the last about four years and various orders have been issued by this Court from time to time, there is no justification to grant any further time to these industries. We, therefore, direct the 57 industries listed hereunder to be closed with immediate effect. ... We direct the District Collector and the Senior Superintendent of Police of the district to have our orders complied with

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immediately. Both these officers shall file a report in this Court within one week of the receipt of the order.

a We give opportunity to these 57 industries to approach this Court as and when any steps towards the setting up of Effluent Treatment Plants and their commissioning have been taken by these industries. If any of the industries wish to be relocated to some other area, they may come out with a proposal in that respect."

b 5. On 28-7-1995 this Court suspended the closure order in respect of seven industries mentioned therein for a period of eight weeks. It was further observed as under:

c "Mr G. Ramaswamy, the learned Senior Advocate appearing for some of the tanneries in Madras, states that the setting up of the Effluent Treatment Plants is progressing satisfactorily. According to him several lakhs have already been spent and in a short time it would start operating. Mr Mohan, the learned counsel for the Tamil Nadu Pollution Control Board, states that the team of the Board will inspect the project and file a report by 3-8-1995."

6. This Court on 8-9-1995 passed the following order:

d "The Tamil Nadu Pollution Control Board has filed its report. List No. I relates to about 299 industries. It is stated by Mr G. Ramaswamy, Mr Kapil Sibal and Mr G.L. Sanghi, the learned Senior Advocates appearing for these industries, that the setting up of the projects is in progress. According to the learned counsel Tamil Nadu Leather Development Corporation (TALCO) is in charge of the project. The learned counsel state that the project shall be completed in every respect within 3 months from today. The details of these industries and the projects undertaken by TALCO as per List No. I are as under. ... We are of the view that it would be in the interest of justice to give a little more time to these industries to complete the project. Although the industries have asked for three months' time, we give them time till 31-12-1995. We make it clear that in case the projects are not completed by that time, the industries shall be liable to be closed forthwith. Apart from that, these industries shall also be liable to pollution fine for the past period during which they had been operating.

We also take this opportunity to direct TALCO to take full interest in these projects and have the projects completed within the time granted by us.

g Mr Kapil Sibal, the learned counsel appearing for the tanneries, stated that Council for Indian Finished Leather Manufacturers' Export Association is a body which is collecting 5 per cent on all exports. This body also helps the tanneries in various respects. We issue notice to the Association to be present in this Court and assist this Court in all the matters pertaining to the leather tanneries in Madras. Mr Sampath takes notice.

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So far as List No. II is concerned, it relates to about 163 tanneries (except M/s Vibgyor Tanners & Co., Kailasagiri Road, Mittalam-635 811, Ambur (via). The Pollution Control Board has inspected all these tanneries and placed its report before us. According to the report most of these tanneries have not even started primary work at the spot. Some of them have not even located the land. The tanneries should have themselves set up the pollution control devices right at the time when they started working. They have not done so. They are not even listening to various orders passed by this Court from time to time during the last more than 2 years. It is on the record that these tanneries are polluting the area. Even the water around the area where they are operating is not worth drinking. We give no further time to these tanneries. We direct all the following tanneries which are numbering about 162 to be closed with immediate effect.”

It may be mentioned that this Court suspended the closure orders in respect of various industries from time to time to enable the said industries to install the pollution control devices.

7. This Court by the order dated 20-10-1995 directed the National Environmental Engineering Research Institute, Nagpur (NEERI) to send a team of experts to examine, in particular, the feasibility of setting up of CETPs for cluster of tanneries situated at different places in the State of Tamil Nadu where the work of setting up of the CETPs has not started and also to inspect the existing CETPs including those where construction work was in progress. NEERI submitted its first report on 9-12-1995 and the second report on 12-2-1996. This Court examined the two reports and passed the following order on 9-4-1996:

“Pursuant to this Court’s order dated December 15, 1995, NEERI has submitted Final Examination Report dated February 12, 1996 regarding CETPs constructed/under construction by the tanneries in various districts of the State of Tamil Nadu. A four-member team constituted by the Director, NEERI inspected the CETPs from January 27, 1996 to February 12, 1996. According to the report, at present, 30 CETP sites have been identified for tannery clusters in the five districts of Tamil Nadu viz., North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. All the 30 CETPs were inspected by the team. According to the report, only 7 CETPs are under operation, while 10 are under construction and 13 are proposed. The following 7 CETPs are under operation:

1. M/s TALCO Ranipet Tannery Effluent Treatment Co. Ltd., Ranipet, District North Arcot Ambedkar.
2. M/s TALCO Ambur Tannery Effluent Treatment Co. Ltd., Thuthipet Sector, Ambur, District North Arcot Ambedkar.
3. M/s TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Vaniyambattu, Vaniyambadi, District North Arcot.

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4. M/s Pallavaram Tanners Industrial Effluent Treatment Co., Chrompet Area, District Chengai MGR.

a 5. M/s Ranipet SIDCO Finished Leather Effluent Treatment Co. Pvt. Ltd., Ranipet, District North Arcot Ambedkar.

6. M/s TALCO Vaniyambadi Tanners Enviro Control Systems Ltd., Udayendiram, Vaniyambadi, District North Arcot Ambedkar.

b 7. M/s TALCO Pernambut Tannery Effluent Treatment Co. Ltd., Bakkalapalli, Pernambut, District North Arcot Ambedkar.

c The CETPs mentioned at Sl. Nos. 5, 6 and 7 were commissioned in January 1996 and were on the date of report passing through stabilization period. The report indicates that so far as the above CETPs are concerned, although there is improvement in the performance, they are still not operating at their optimal level and are not meeting the standards as laid down by the Ministry of Environment and Forests and the Tamil Nadu Pollution Control Board for inland surface water discharge. The NEERI has given various recommendations to be followed by the above-mentioned units. We direct the units to comply with the recommendations of NEERI within two months from today. The Tamil Nadu Pollution Control Board shall monitor the directions and have the recommendations of the NEERI complied with. So far as the three units which are under stabilization are concerned, the NEERI Team may inspect the same and place a final report before this Court within the period of two months.

d Apart from the tanneries which are connected with the above-mentioned 7 units, there are large number of other tanneries operating in the 5 districts mentioned above which have not set up any satisfactory pollution control devices. Mr Mohan, the learned counsel for the Tamil Nadu Pollution Control Board, states that notices were issued to all those tanneries from time to time directing them to set up the necessary pollution control devices. It is mandatory for the tanneries to set up the pollution control devices. Despite notices it has not been done. This Court has been monitoring these matters for the last about 4 years. There is no awakening or realisation to control the pollution which is being generated by these tanneries.

e The NEERI has indicated the physico-chemical characteristics of groundwater from dug wells near tannery clusters. According to the report, water samples show that well waters around the tanneries are unfit for drinking. The report also shows that the quality of water in Palar river downstream from the place where effluent is discharged is highly polluted. We, therefore, direct that all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. which are not connected with the seven CETPs mentioned above, shall be closed with immediate effect. None of these tanneries shall be permitted to operate till the time the CETPs are constructed to the satisfaction of the Tamil Nadu Pollution Control

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Board. We direct the District Magistrate and the Superintendent of Police of the area concerned, to have all these tanneries closed with immediate effect. Mr Mehta has placed on record the report of Tamil Nadu Pollution Control Board. In Statement I of the Index, there is a list of 30 industries which have also not been connected with any CETPs. According to the report, these industries have not, till date set up pollution control devices. We direct the closure of these industries also. List is as under. ... The Tamil Nadu Pollution Control Board has filed another report dated January 18, 1996 pertaining to 51 tanneries. There is dispute regarding the permissible limit of the quantity of total dissolved solids (TDS). Since the NEERI Team is visiting these tanneries, they may examine the TDS aspect also and advise this Court accordingly. Meanwhile, we do not propose to close any of the tanneries on the ground that it is discharging more than 2001 TDS.

The report indicates that except the 17 units, all other units are non-complaint units in the sense that they are not complying with the BOD standards. Excepting these 17 industries, the remaining 34 tanneries listed hereunder are directed to be closed forthwith. ... We direct the District Magistrate and the Superintendent of Police of the area concerned to have all these industries mentioned above closed forthwith. The tanneries in the 5 districts of Tamil Nadu referred to in this order have been operating for a long time. Some of the tanneries are operating for a period of more than two decades. All this period, these tanneries have been polluting the area. Needless to say that the total environment in the area has been polluted. We issue show-cause notice to these industries through their learned counsel who are present in Court, why they be not subjected to heavy pollution fine. We direct the State of Tamil Nadu through the Industry Ministry, the Tamil Nadu Pollution Control Board and all other authorities concerned and also the Government of India through the Ministry of Environment and Forests, not to permit the setting up of further tanneries in the State of Tamil Nadu.

Copy of this order be communicated to the authorities concerned within three days. To come up for further consideration after the replies to the show-cause. There are a large number of tanneries in the State of Tamil Nadu which have set up individual pollution control devices and which according to the Tamil Nadu Pollution Control Board are operating satisfactorily. The fact, however, remains that all these tanneries are discharging the treated effluents within the factory precincts itself. We direct NEERI Team which is visiting this area to find out as to whether the discharge of the effluent on the land within the factory premises is permissible environmentally. *M/s Nandeem Tanning Company, Valayampet Vaniyambadi* is one of such industries. Copy of the report submitted by the Tamil Nadu Pollution Control Board be forwarded to the NEERI. NEERI may inspect this industry within ten days and file a report in this Court. Copy of this order be communicated to NEERI.

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Matters regarding distilleries in the State of Tamil Nadu

- a The Tamil Nadu Pollution Control Board has placed on record the factual report regarding 6 distilleries mentioned in page 4 of the Index of its Report dated April 5, 1996. The learned counsel for the Board states that the Board shall issue necessary notices to these industries to set up pollution control devices to the satisfaction of the Board, failing which these distilleries shall be closed. The Pollution Control Board shall place a status report before this Court.”
- b The NEERI submitted two further reports on 1-5-1996 and 11-6-1996 in respect of CETPs set up by various industries. The NEERI reports indicate that the physico-chemical characteristics of groundwater from dug wells in Ranipet, Thuthipeth, Valayambattu, Vaniyambadi and various other places do not conform to the limits prescribed for drinking purposes.
- c **8.** This Court has been monitoring this petition for almost five years. The NEERI, Board and the Central Pollution Control Board (Central Board) have visited the tanning and other industries in the State of Tamil Nadu several times. These expert bodies have offered all possible assistance to these industries. The NEERI reports indicate that even the seven operational CETPs are not functioning to its satisfaction. NEERI has made several recommendations to be followed by the operational CETPs. Out of the 30
- d CETP sites which have been identified for tannery clusters in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R., 7 are under operation, 10 are under construction and 13 are proposed. There are a large number of tanneries which are not likely to be connected with any CETP and are required to set up pollution control devices on their own. Despite repeated extensions granted by this Court
- e during the last five years and prior to that by the Board the tanneries in the State of Tamil Nadu have miserably failed to control the pollution generated by them.
- f **9.** It is no doubt correct that the leather industry in India has become a major foreign exchange earner and at present Tamil Nadu is the leading exporter of finished leather accounting for approximately 80 per cent of the country's export. Though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it has no right to destroy the ecology, degrade the environment and pose as a health-hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.
- g **10.** The traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable Development” is the answer. In the international sphere, “Sustainable Development” as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called “Our
- h Common Future”. The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known

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as “Brundtland Report”. In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called “Caring for the Earth” which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history — deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. “Sustainable Development” as defined by the Brundtland Report means “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. We have no hesitation in holding that “Sustainable Development” as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

11. Some of the salient principles of “Sustainable Development”, as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that “The Precautionary Principle” and “The Polluter Pays Principle” are essential features of “Sustainable Development”. The “Precautionary Principle” — in the context of the municipal law — means:

(i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.

12. “The Polluter Pays Principle” has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹. The Court observed: (SCC p. 246, para 65)

¹ (1996) 3 SCC 212 : JT (1996) 2 SC 196

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a "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

The Court ruled that: (SCC p. 246, para 65)

b "... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

c Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

d 13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

e "47. *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

f 48-A. *Protection and improvement of environment and safeguarding of forests and wildlife.*—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

g 51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

h Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the

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Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M. v. Shivakant Shukla*², *Jolly George Varghese case*³ and *Gramophone Co. case*⁴.

16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (*Commentaries on the Laws of England of Sir William Blackstone*) Vol. III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:

"Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, 'sic utere tuo, ut alienum non leadas'; this

2 (1976) 2 SCC 521 : AIR 1976 SC 1207

3 *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470

4 *Gramophone Co. of India Ltd v Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667

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therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.

a ... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of 'doing to others, as we would they should do unto ourselves'."

b
c **17.** Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.

18. The Statement of Objects and Reasons to the Environment Act, inter alia, states as under:

d "The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

e Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing, long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.

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g
h In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate

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powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, safety and health.” a

Sections 3, 4, 5, 7 and 8 of the Environment Act which are relevant are as under:

“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. b

(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— c

(i) coordination 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; d

(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: e

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; f

(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; g

(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; h

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a (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;

b (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;

c (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.

d (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.

e 4. *Appointment of officers and their powers and functions.*—(1) Without prejudice to the provisions of sub-section (3) of Section 3, the Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.

f (2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of Section 3 or of any other authority or officer.

g 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.

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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.

7. *Persons carrying on industry, operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards.*—No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

8. *Persons handling hazardous substances to comply with procedural safeguards.*—No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.”

19. Rules 3(1), 3(2) and 5(1) of the Environment (Protection) Rules, 1986 (the Rules) are as under:

“3. *Standards for emission or discharge of environmental pollutants.*—(1) For the purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in Schedules I to IV.

3. (2) Notwithstanding anything contained in sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in Schedules I to IV in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons therefor in writing.

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.

(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.

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

20. It is thus obvious that the Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by this Court and the other courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers/canals shall be polluted, underground waters contaminated, agricultural lands turned barren and the residents of the area exposed to serious diseases. It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act.

21. There are more than 900 tanneries operating in the five districts of Tamil Nadu. Some of them may, by now, have installed the necessary pollution control measures; they have been polluting the environment for over a decade and in some cases even for a longer period. This Court has in various orders indicated that these tanneries are liable to pay pollution fine. The polluters must compensate the affected persons and also pay the cost of restoring the damaged ecology.

22. Mr M.C. Mehta, the learned counsel for the petitioner has invited our attention to the notification GOMs No. 213 dated 30-3-1989 which reads as under:

h “In the government order first read above, the Government have ordered, among other things, that no industry causing serious water

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pollution should be permitted within one kilometre from the embankments of rivers, streams, dams, etc. and that the Tamil Nadu Pollution Control Board should furnish a list of such industries to all local bodies. It has been suggested that it is necessary to have a sharper definition for water sources so that ephemeral water collections like rainwater ponds, drains, sewerages (bio-degradable) etc. may be excluded from the purview of the above order. The Chairman, Tamil Nadu Pollution Control Board has stated that the scope of the government order may be restricted to reservoirs, rivers and public drinking-water sources. He has also stated that there should be a complete ban on location of highly polluting industries within 1 kilometre of certain water sources.

2. The Government have carefully examined the above suggestions. The Government impose a total ban on the setting up of the highly polluting industries mentioned in Annexure I to this order within one kilometre from the embankments of the water sources mentioned in Annexure II to this order.

3. The Government also direct that under any circumstances if any highly polluting industry is proposed to be set up within one kilometre from the embankments of the water sources other than those mentioned in Annexure II to this order, the Tamil Nadu Pollution Control Board should examine the case and obtain the approval of the Government for it.”

Annexure I to the notification includes distilleries, tanneries, fertilizer, steel plants and foundries as the highly polluting industries. We have our doubts whether the above-quoted government order is being enforced by the Tamil Nadu Government. The order has been issued to control pollution and protect the environment. We are of the view that the order should be strictly enforced and no industry listed in Annexure I to the order should be permitted to be set up in the prohibited area.

23. The learned counsel for the tanneries raised an objection that the standard regarding total dissolved solids (TDS) fixed by the Board was not justified. This Court by the order dated 9-4-1996 directed the NEERI to examine this aspect and give its opinion. In its report dated 11-6-1996 NEERI has justified the standards stipulated by the Board. The reasoning of the NEERI given in its report dated 11-6-1996 is as under:

“The total dissolved solids in ambient water have physiological, industrial and economic significance. The consumer’s acceptance of mineralized water decreases in direct proportion to increased mineralization as indicated by Bruvold (1). High total dissolved solids (TDS), including chlorides and sulphates, are objectionable due to possible physiological effects and mineral taste that they impart to water. High levels of total dissolved solids produce laxative/cathartic/purgative effect in consumers. The requirement of soap and other detergents in household and industry is directly related to water hardness as brought

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a out by DeBoer and Larsen (2). High concentration of mineral salts, particularly sulphates and chlorides, are also associated with costly corrosion damage in wastewater treatment systems, as detailed by Patterson and Banker (3). Of particular importance is the tendency of scale deposits with high TDS thereby resulting in high fuel consumption in boilers.

b The Ministry of Environment and Forests (MEF) has not categorically laid down standards for inland surface water discharge for total dissolved solids (TDS), sulphates and chlorides. The decision on these standards rests with the respective State Pollution Control Boards as per the requirements based on local site conditions. The standards stipulated by the TNPCB are justified on the afore-referred considerations.

c The prescribed standards of the TNPCB for inland surface water discharge can be met for tannery wastewaters cost effectively through proper implant control measures in tanning operation, and rationally designed and effectively operated wastewater treatment plants (ETPs and CETPs). Tables 3 and 5 depict the quality of groundwater in some areas around tanneries during peak summer period (3-6-1996 to 5-6-1996). Table 8 presents the data collected by TNPCB at individual ETPs indicating that TDS, sulphates and chloride concentrations are below the prescribed standards for inland surface water discharge. The quality of ambient waters needs to be maintained through the standards stipulated by TNPCB.”

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e 24. The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, we direct that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

f 25. Keeping in view the scenario discussed by us in this judgment, we order and direct as under:

g 1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired Judge of the High Court and it may have other members — preferably with expertise in the field of pollution control and environment protection — to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.

2. The authority so constituted by the Central Government shall implement the “Precautionary Principle” and the “Polluter Pays Principle”. The authority shall, with the help of expert opinion and after giving opportunity to the polluters concerned assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collectors/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

6. We impose pollution fine of Rs 10,000 each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chidambaram M.G.R. The fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called “Environment Protection Fund” and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act, 1971.

7. The authority, in consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The

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expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.

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8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

b

9. We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to close all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

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10. Government Order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure I to the notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to the authority to direct the relocation of any of such industries.

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11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

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26. We have issued comprehensive directions for achieving the end result in this case. It is not necessary for this Court to monitor these matters any further. We are of the view that the Madras High Court would be in a better position to monitor these matters hereinafter. We, therefore, request the Chief Justice of the Madras High Court to constitute a Special Bench "Green Bench" to deal with this case and other environmental matters. We make it clear that it would be open to the Bench to pass any appropriate order/orders keeping in view the directions issued by us. We may mention that "Green Benches" are already functioning in Calcutta, Madhya Pradesh and some other High Courts. We direct the Registry of this Court to send the records to the Registry of the Madras High Court within one week. The High Court shall treat this matter as a petition under Article 226 of the Constitution of India and deal with it in accordance with law and also in terms of the directions issued by us. We give liberty to the parties to approach the High Court as and when necessary.

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27. Mr M.C. Mehta has been assisting this Court to our utmost satisfaction. We place on record our appreciation for Mr Mehta. We direct the State of Tamil Nadu to pay Rs 50,000 towards legal fees and other out of pocket expenses incurred by Mr Mehta. a

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(BEFORE B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.)

P. KANNADASAN AND OTHERS .. Appellants/
Petitioners; b

Versus

STATE OF T.N. AND OTHERS .. Respondents.

Civil Appeals No. 9847 of 1996 with Nos. 9849, 9780-81, 9905, 9851, 9906-07, 9777, W.Ps. Nos. 269 of 1995, 270 of 1994, 9908-09, 9850, 9778, 9910, 408, 9911-13 of 1996, 518, 9914-15 of 1996, 688 of 1992, 9848, 9774-76, 9916 and 9917 of 1996[†], decided on July 26, 1996 c

A. Mines and Minerals — Cess and Other Taxes on Minerals (Validation) Act, 1992 — S. 2(1), (2) & (3) and the Sch. — Validity — State laws imposing cess or other taxes on minerals found by the Supreme Court/High Courts to be beyond the legislative competence of the State Legislature — Provision in S. 2 validating such State laws, held, not beyond the legislative competence of Parliament — Contention that the said provision sought to overturn the judicial decisions, repelled — Constitution of India, Arts. 245 & 246, 265 and Sch. VII List I Entries 54 & 97 & List II Entries 23 and 50 — Statute Law — Validating statute — Constitutional law — Separation of powers — Words and phrases — “Checks and balances” — Mines and Minerals (Regulation and Development) Act, 1957, Ss. 2, 9 & 9-A and Sch. II — Panchayats and Zila Parishads — T.N. Panchayats Act, 1958 (35 of 1958), S. 115 — Tax — Cess d

B. Mines and Minerals — Cess and Other Taxes on Minerals (Validation) Act, 1992 — S. 2(1) and the Sch. — Validity — State laws imposing cess or other taxes on minerals found by the Supreme Court/High Courts to be beyond the legislative competence of the State Legislature — Provision in S. 2(1) validating such State laws from the date on which they were enacted by the State Legislature concerned, held, not bad for retrospectivity — Statute law — Validating statute — Statute validating a tax retrospectively — Validity — Taxation — Taxing statutes — Retrospective validation of an invalid taxing statute — Taxing Statutes — Constitution of India, Art. 265 e

C. Interpretation of the Constitution — Final arbiter on, held, is the Supreme Court — Constitution of India, Arts. 141, 32 and 136 — Interpretation of the Constitution f

Certain States had enacted statutes imposing a local cess on minerals which were annulled by the Supreme Court/High Courts for want of legislative competence. Therefore, Parliament enacted the Cess and Other Taxes on Minerals (Validation) Act, 1992 deeming such Acts, including Tamil Nadu Panchayats Act, 1958, Section 115, always to have been valid as if enacted by Parliament. The 1992 g

[†] From the Judgment and Order dated 27-6-1994 of the Madras High Court in WP No 14178 of 1989 h

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(BEFORE KULDIP SINGH AND S. SAGHIR AHMAD, JJ.)

M.C. MEHTA

.. Petitioner;

Versus

KAMAL NATH AND OTHERS

.. Respondents.

Writ Petition (C) No. 182 of 1996[†], decided on December 13, 1996

Constitution of India — Arts. 21 and 32 — Ecology — Public Trust doctrine — Is part of the Indian law — It extends to natural resources such as rivers, forests, seashores, air etc. for the purpose of protecting the ecosystem — Lease granted by State Govt. of riparian forest land for commercial purpose to a private company having a Motel located at the bank of river Beas — Motel management interfering with natural flow of river by blocking natural relief/spill channel of the river — Held, State Govt. committed breach of public trust — Prior approval granted by Govt. of India, Ministry of Environment and Forest and lease granted in favour of the Motel quashed — Polluter Pays Principle applicable — Accordingly the polluter company liable to compensate by way of cost for restitution of environment and ecology of the area — Other directions issued — Doctrines — Public Trust

A news item appeared in Indian Express stating that a private company Span Motels Pvt. Ltd., in which the family of Kamal Nath (a former Minister for Environment and Forests) had direct link, had built a club at the bank of River Beas by encroaching land including substantial forest land which was later regularised and leased out to the company when Kamal Nath was the Minister. It was stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future floods. The Supreme Court took notice of the news item because the facts disclosed therein, if true, were be a serious act of environmental-degradation on the part of the Motel. Disposing of the writ petition

Held :

The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case* clearly show the judicial concern in protecting all ecologically important lands, for example fresh

[†] Under Article 32 of the Constitution of India

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- water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is a part of the law of the land. (Paras 23 to 25, 33, 34 and 39)
- a
- “Public Trust Doctrine in Natural Resource Law : *Effective Judicial Intervention*”, Michigan Law Review, Vol. 68, part 1, p. 473, *relied on*
- c
- Illinois Central Railroad Co. v. People of the State of Illinois*, 146 US 387 . 36 L Ed 1018 (1892); *Gould v Greylock Reservation Commission*, 350 Mass 410 (1966), *Sacco v. Development of Public Works*, 532 Mass 670; *Robbins v. Deptt. of Public Works*, 244 NE 2d 577; *National Audubon Society v Superior Court of Alpine County (Mono Lake case)*, 33 Cal 3d 419; *Phillips Petroleum Co. v. Mississippi*, 108 S Ct 791 (1988), *relied on*
- d
- Priewev v. Wisconsin State Land and Improvement Co* , 93 Wis 534 (1896), *Crawford County Lever and Drainage Distt. No. 1*, 182 Wis 404, *City of Milwaukee v State*, 193 Wis 423; *State v Public Service Commission*, 275 Wis 112, *referred to*
- Marks v Whitney*, 6 Cal 3d 251; *United Plainsmen v N.D State Water Cons Comm'n*, 247 NW 2d 457 (ND 1976), *cited*
- The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources. (Para 35)
- e
- f
- g
- In the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. Therefore, the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. The lease transactions are in patent breach of the trust held by the State Government. (Paras 36 and 22)
- h

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Further, the admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. The Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river. It is now settled by the Supreme Court that one who pollutes the environment must pay to reverse the damage caused by his acts. (Paras 21 and 38)

Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647 · JT (1996) 7 SC 375, followed

Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212 : JT (1996) 2 SC 196, cited

Therefore, the Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. NEERI is directed through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use. The Motel shall not discharge untreated effluents into the river. The Himachal Pradesh Pollution Control Board is directed to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report to the Court by 17-12-1996. To be listed on 18-12-1996. (Para 39)

R-M/17231/C

Advocates who appeared in this case :

In person, for the Petitioner,

H.N. Salve, Senior Advocate (M.S. Vashisht, Rajiv Dutta, Shiv Pujan Singh, J.S. Attri and L.R. Rath, Advocates, with him) for the Respondents.

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3. 532 Mass 670, <i>Sacco v. Development of Public Works</i>	409e-f	
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a	7. 244 NE 2d 577, <i>Robbins v. Deptt. of Public Works</i>	409g
	8. 146 US 387 : 36 L Ed 1018 (1892), <i>Illinois Central Railroad Co. v. People of the State of Illinois</i>	408b, 408d-e
	9. 193 Wis 423, <i>City of Milwaukee v. State</i>	410a
	10. 182 Wis 404, <i>Crawford County Lever and Drainage Distt. No. 1</i>	410a
	11. 108 SCt 791 (1988), <i>Phillips Petroleum Co. v. Mississippi</i>	412g, 412g-h
b	12. 93 Wis 534 (1896), <i>Priewev v. Wisconsin State Land and Improvement Co.</i>	410a
	13. 33 Cal 3d 419, <i>National Audubon Society v. Superior Court of Alpine County</i>	410d-e, 412e-f, 412f
	14. 6 Cal 3d 251, <i>Marks v. Whitney</i>	411b-c, 411g

The Judgment of the Court was delivered by

c KULDIP SINGH, J.— This Court took notice of the news item appearing in the *Indian Express* dated 25-2-1996 under the caption — “Kamal Nath dares the mighty Beas to keep his dreams afloat”. The relevant part of the news item is as under:

d “Kamal Nath’s family has direct links with a private company, Span Motels Private Limited, which owns a resort — Span Resorts — for tourists in Kullu-Manali Valley. The problem is with another ambitious venture floated by the same company — Span Club.

e The club represents Kamal Nath’s dream of having a house on the bank of the Beas in the shadow of the snow-capped Zanskar Range. The club was built after encroaching upon 27.12 bighas of land, including substantial forest land, in 1990. The land was later regularised and leased out to the company on 11-4-1994. The regularisation was done when Mr Kamal Nath was Minister of Environment and Forests.... The swollen Beas changed its course and engulfed the Span Club and the adjoining lawns, washing it away.

f For almost five months now, the Span Resorts management has been moving bulldozers and earth-movers to turn the course of the Beas for a second time.

g The heavy earth-mover has been used to block the flow of the river just 500 metres upstream. The bulldozers are creating a new channel to divert the river to at least one kilometre downstream. The tractor-trolleys move earth and boulders to shore up the embankment surrounding Span Resorts for laying a lawn. According to the Span Resorts management, the entire reclaiming operation should be over by March 31 and is likely to cost over a crore of rupees.

h Three private companies — one each from Chandigarh, Mandi and Kullu — have moved in one heavy earth-mover (hired at the rate of Rs 2000 per hour), four earth-movers and four bulldozers (rates varying from Rs 650 to Rs 850 each per hour) and 35 tractor-trolleys. A security ring has been thrown all around. ... Another worrying thought is that of the river eating into the mountains, leading to landslides which are an

occasional occurrence in this area. Last September, these caused floods in the Beas and property estimated to be worth Rs 105 crores was destroyed. ... Once they succeed in diverting the river, the Span management plans to go in for landscaping the reclaimed land. But as of today, they are not so sure. Even they confess the river may just return. a

‘Mr Kamal Nath was here for a short while two-three months ago. He came, saw what was going on and left. I suppose he knows what he is doing’, says another executive.

The District Administration pleads helplessness. Rivers and forest land, officials point out, are not under their jurisdiction. Only the Kullu Conservator of Forests or the District Forest Officer can intervene in this case. b

But who is going to bell the country’s former Environment and Forests Minister? c

Interestingly, a query faxed to Kamal Nath for his views on these developments fetched a reply from Mr S. Mukerji, President of the Span Motels Private Limited.

Admitting that the Nath family had ‘business interests’ in the company since 1981, he said, ‘the company is managed by a team of professional managers and Mr Kamal Nath is not involved in the management activity of the company’. d

‘The Board comprises professionals, some of whom are friends and relatives of the Nath family’, Mr Mukerji said. He expressed surprise that a reference had been made to Rangri and Chakki villagers ‘since these villagers are at least 2/3 kilometres away and not even on the river side’. e

He said the Span Club was ‘not for the exclusive use of any one individual’. ‘We would like to emphasize that we are only “restoring the river” to its original and natural course and are restoring our land and of those of neighbouring villagers similarly affected by the flood.’

He maintained that ‘Mr Kamal Nath has definitely not been to Span Resorts in the last two months and in fact, to the best of my knowledge, has not travelled to Kullu Valley for quite some time now. ... In any case, we had never ‘blocked’ any channel in the vicinity of Span.’” f

2. Mr Kamal Nath filed one-page counter-affidavit dated 8-6-1996. Paras 1 and 3 of the counter are as under:

“I say that I have been wrongly arrayed as a respondent in the above petition inasmuch as I have no right, title or interest in the property known as ‘Span Resorts’ owned by ‘Span Motels Private Limited’. g

I further say that the allegations made in the press reports based on which this Hon’ble Court was pleased to issue notice are highly exaggerated, erroneous, mala fide, mischievous and have been published only to harm and malign the reputation of this respondent.” h

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3. On behalf of Span Motels Private Limited (the Motel), Mr Banwari Lal Mathur, its Executive Director, filed counter-affidavit. Paras 2 and 3 of

a the counter are as under:

“I say that Mr Kamal Nath who has been arrayed as Respondent 1 in the above writ petition has no right, title or interest in the property known as SPAN RESORTS owned by Span Motels Pvt. Ltd. or in the lands leased out to the said company by the State of Himachal Pradesh.

b I say that the shareholding of SPAN MOTELS PVT. LTD. is as under:

	<i>No. of Shares held</i>	<i>% Share- holding</i>
Mrs Leela Nath	32,560	42
EMC Projects Pvt. Ltd.	14,700	19
SHAKA Properties Pvt. Ltd.	15,000	19
c SHAKA Estate & Finance Pvt. Ltd.	15,000	19
Capt. Alok Chandola	250	01
	77,510	100

d 4. It was not disputed before us by Mr Harish Salve, learned counsel appearing for Mr Kamal Nath, that almost all the shares in the Motel are owned by the family of Mr Kamal Nath. We do not wish to comment on the averment made on oath by Mr Kamal Nath that he has “no right, title or interest in the property known as Span Resorts owned by Span Motels Private Limited”.

e 5. Mr B.L. Mathur filed an additional counter-affidavit dated 30-7-1996 on behalf of the Motel. The counter-affidavit mentioned above states that government land measuring 40 bighas 3 biswas situated alongside Kullu-Manali Road on the bank of River Beas was granted on lease to the Motel for a period of 99 years with effect from 1-10-1972 to 1-10-2071. The lessee was granted permission to enter and occupy the said area for the purpose of putting up a Motel and for installing ancillaries in due course as may be subsequently approved by the lessor. We may refer to paras 6 and 7 of the lease deed dated 29-9-1972 which are as under:

f “The lessee shall not dig deep pits of trenches in the said land, which may lead to the danger of erosion and shall make good the lessor defects caused by their acts of defaults within one month of notice by the lessor.

g In the event of said land being required by lesser for any other purpose, whatsoever the lessor will be entitled to terminate this lease at any time by giving six months’ notice in writing to the lessee and the lessee shall not be entitled to any compensation whatsoever on account of such termination.”

h 6. The current management (Shri Kamal Nath’s family) took over the Motel in the year 1981. Fresh lease was signed on 29-11-1981. The new lease was for the same period from 1972 to 2071. Paras 4 and 5 of the additional affidavit are as under:

“I say that the Motel commenced operations in 1975. There are over 800 trees in this area of 40 bighas. The Motel has two clusters with 8 dwelling units of 3 rooms each. The rooms are nowhere near the river — the distance between the cluster of rooms and the beginning of the river basin is about 10 metres — actually the river is another 30 metres therefrom. Thus, the effective distance between the edge of the river and the cluster of rooms is 40 metres. a

I say that in the peak of the flood, the river did not come closer than 10 metres to the rooms and did not, therefore, pose any danger to the rooms, particularly there are no problems qua rooms as the rooms are on a higher level — at least 5-7 metres at their closest point.” b

Along with the additional affidavit the correspondence between the Motel and the Government has been annexed. In a letter dated 19-10-1988 addressed to the Chief Minister, Himachal Pradesh, the Motel gave details of the flood-damage during the year 1988 and finally requested the Government for the following steps: c

“Further it is imperative that the Government take immediate steps to stop erosion of the land under lease to us. It would appear that strong concrete blackened retaining walls will be necessary to be placed at appropriate points to protect the landmass around us.” d

7. The Motel addressed letter dated 30-8-1989 to the Divisional Forest Officer, Kullu. The relevant part of the letter is as under: e

“When we acquired our land on lease, there were no clear demarcations of the surrounding areas and boundaries. There has existed a stretch of waste and ‘banjar’ (Class III) forest land in a longitudinal strip along the river bank admeasuring about 22.2 bighas, contiguous and adjacent to our leased land. Over the years, and especially after the *severe flood erosion* last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and ‘banjar’ area, beautified and landscaped it, planted ornamental, fruiting and varied forest trees extensively such that it blends with our estate and with the surrounding flora and environment in a harmonious manner. A revenue map along with all Revenue Department records covering this entire area, is forwarded enclosed herewith for your reference and perusal. f

We are aware that in accordance with the Forest Conservation Act of 1980, the use of forest land by private agency even for natural development and afforestation scheme, requires alternative matching compensatory afforestation land areas to be surrendered by the concerned party, after due approval of the Government. In view of this statutory precondition, we wish to submit that we can immediately surrender to the Government nearly 28 bighas and 13 biswas of private agricultural cultivated land located at Village MAJHACH, (Burua), MANALI, in exchange for the above-mentioned 22.2 bighas of Class III g h

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a banjar forest land adjoining our land in Village Baragran Bihal, which we request for transfer to our company in lieu of the land we are willing to surrender. The specific revenue maps and records concerning this area of land at Village Majhach, are also enclosed herewith for your kind perusal.”

b It is obvious from the contents of the letter quoted above that the Motel had encroached upon an additional area of 22.2 bighas adjoining to the leasehold area. Apart from that the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river banks. The Motel was keen to have the encroached land by way of exchange/lease. A request to that effect was repeated in the letter dated 12-9-1989 addressed to the Divisional Forest Officer, Kullu. The Motel again repeated its request for lease of the additional land by the letter dated 9-7-1991. The said letter further stated as under:

c “We would also like to mention that the banjar land adjoining our hotel, referred to in para 1 above, lies along the bank of River Beas which erodes it every year. About ten years ago almost 4 bighas of this land were washed away and the onflowing water has posed a serious threat to our hotel buildings and adjoining area. To protect our property we were compelled to erect deep protection embankments along the banjar land in question at huge cost the details of which will be sent to you shortly. If our proposal is accepted for the exchange of land it will become possible for us to take further steps to protect this land.”

d 8. The Divisional Forest Officer, Kullu sent reply dated 12-1-1993 which stated as under:

e “In this connection it is intimated that at present we are not having funds to put crates and spurs along the river side near your hotel to check the soil erosion, as indicated in your letter referred to above. In order to protect your property from the damage, you can carry out such works at your level, subject to the condition that the ownership of the land would vest with Forest Department and the Department would not be liable to pay any amount incurred for the purpose by you at a later stage and you would not claim any right on government property.”

f The above-quoted letter can be of no consequence because much before the said letter the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river bank. This is obvious from the contents of the letter dated 30-8-1989 (quoted above).

g 9. The Motel addressed a letter dated 21-6-1993 to the Chief Secretary, Himachal Pradesh wherein it is clearly stated that the adjoining land measuring 22 bighas and 3 biswas had been reclaimed by the Motel. The relevant part of the letter is as under:

h “Adjoining our Resort and contiguous to our leased land is a stretch of Class III — banjar forest land in a longitudinal strip along the river bank admeasuring 22 bighas and 3 biswas. This was a stony piece of land and used to get flooded every year during monsoons and often got

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washed away and reduced in size by river erosion year by year. This land was reclaimed by us and protected by an embankment and filling from the river side.”

a

The said letter further states as under:

“Similarly on the river side part of our leased land there used to be floods and erosion every year. If we would have let this continue, the leased land would have also got reduced every year. In order to protect our leased land and to save damage to our hotel property, we at our own considerable expense and cost built stone and wire-mesh-crated embankment all along the river bank. This not only protected our hotel land but also the forest land....

b

In 1988 there were severe floods when every portion of leased land got washed away. It became imperative for us at considerable expense to build an embankment on the river front along the leased property. In order to build an embankment on the river front along the leased property the washed away area and part of the river bank had to be filled at huge cost. Once the river bed and the washed away area was filled, the choice before us was either to put soil on it and grow grass and trees to secure it or let it remain unsecured and aesthetically displeasing. We chose the former. As a result of land-filling and embankment our leased area when measured will obviously show an increase. This increase is not an encroachment but reclamation with the objective of protecting the leased property.”

c

d

10. In the letter dated 7-8-1993 addressed to the Divisional Forest Officer, the Motel again asked for lease of adjoining area. The relevant part of the letter is as under:

“We had explained in our previous letters dated 21-6-1993 and 23-7-1993 (copies of which have been sent to you with our letter dated 5-8-1993) the circumstances under which we had to spend enormous sum of money in protecting and reclaiming the forest land adjoining our Resort. It had become necessary for us to undertake this reclamation and protection work by filling the land from the river bed, constructing embankments, retaining walls and crating etc. in order to protect the land leased by the Government to our Span Resort and property thereon but we were unable to complete the entire work as we were restrained from carrying on with the work under undue allegations of encroachment on the forest land....

e

f

In order to expedite the process of commencing protection work on an urgent basis on the forest land, we propose that the forest land be given to us on long lease coterminous with the lease of the land granted by the Government for our Span Resorts. This could be done by a supplementary lease as it is imperative to save the land under the original lease.

g

All we have done is to reclaim and protect the land from erosion by constructing crates, retaining walls and embankments along River Beas

h

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a by investing huge amounts which unfortunately have all been washed away due to floods and now requires reconstruction to save the forest land and our adjoining property from total destruction.”

b **11.** The Government of India, Ministry of Environment and Forests by the letter dated 24-11-1993 addressed to the Secretary, Forest, Government of Himachal Pradesh, Shimla conveyed its prior approval in terms of Section 2 of the Forest (Conservation) Act, 1980 for leasing to the Motel 27 bighas and 12 biswas of forest land adjoining to the land already on lease with the Motel. A lease deed dated 11-4-1994 regarding the said land was executed between the Himachal Government and the Motel. The additional affidavit filed by the Motel refers to the prior approval granted by the Government of India as under:

c “In the Ministry of Environment and Forests, the proposal was cleared by the Secretary and forwarded to the Forest Advisory Committee bypassing the Minister concerned. The Forest Advisory Committee cleared the proposal subject to severe restrictions — and also certain restrictions which are not normally imposed in such cases. The proposal was then cleared at the level of the Prime Minister and by a letter of 24-11-1993, approval was communicated to the State Government and SMPL.”

d **12.** It may be mentioned that Mr Kamal Nath was the Minister-in-charge, Department of Environment and Forests at the relevant time. What is sought to be conveyed by the above-quoted paragraph is that Mr Kamal Nath did not deal with the file. The correspondence between the Motel and the Himachal Government referred to and quoted by us shows that from 1988 the Motel had been writing to the Government for the exchange/lease of the additional forest land. It is only in November 1993 when Mr Kamal Nath was the Minister, in charge of the Department that the clearance was given by the Government of India and the lease was granted. Surely it cannot be a coincidence.

e **13.** This Court took notice of the news item — quoted above — because the facts disclosed therein, if true, would be a serious act of environmental-degradation on the part of the Motel. It is not disputed that in September 1995 the swollen Beas engulfed some part of the land in possession of the Motel. The news item stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future floods. In the counter-affidavit filed by the Motel, the allegations in the news item have been dealt with in the following manner:

f *(1)* If the works were not conducted by the Company, it would in future eventually cause damage to both banks of the river, under natural flow conditions.

(m) By dredging the river, depth has been provided to the river channel thus enhancing its capacity to cope with large volume of water.

(n) The wire crates have been put on both banks of the river. This has been done to strengthen and protect the banks from erosion and NOT as any form of river diversion. It is not necessary to divert the river because simply providing greater depth and removing debris deposits enhances the capacity of the river to accommodate greater water flow. a

(o) I further state that the nearly 200 metres of wire crates which have been put on the left bank of the river (the river bank on the opposite side of SPAN) is in the interest of the community and nearby residents/villages. This left bank crating protects the hillside where RANGRI, CHAKKI and NAGGAR are located. b

(s) After the floods, it was observed, that the boulders and rubble deposits were obstructing and hindering the flow of the river and thus, it was the common concern of the Company as well as of the Panchayat of Village BARAGRAN BIHAL to carry out dredging measures to provide free flow of the river water. c

(t) Accordingly alleviation measures conducted by the Company and the villagers of BARAGRAN BIHAL were as under:

(i) *Dredging of debris deposit*: Debris deposits in river basin which had collected due to the floods were removed by dredging. This deepens the channel and thus allows larger flow of water. d

(ii) *Strengthening of both banks with wire crates*: Wire crates are the common method of protection of bank erosion. Accordingly wire crates were put along the opposite side (left bank) to protect the landslide of the hillside wire on which Village RANGRI is perched, Wire crating was also put on the Resort side of the river (right bank) to strengthen and protect the bank against erosion. All the wire crating runs along the river flow and not as an obstruction or for any diversion. e

* * *

(w) It is further submitted that whereas the report mischievously refers to villagers of Rangri, Chakki and Naggar nowhere does it take into account the very real problems of villagers of Baragran Bihal which is located immediately on the right bank near the SPAN Resort who were seriously affected by the floods. Chakki, Rangri and Naggar villages have not at all been affected by the floods and there is no remote possibility of these villages being affected due to the flood-protection works conducted by the Company.” f
g

In the additional affidavit filed by the Motel the facts pleaded are as under:

“(ii) it had become necessary for them to undertake this reclamation and protection work by filling the land from river bed, constructing embankments, retaining walls and crates, etc. in order to protect the land leased by the Government to the Resort and the property thereon. h

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* * *

a (vii) The forest land which is susceptible to heavy river erosion by floods involves high cost for its protection from getting washed away every year and would be protected by construction of embankments and filling from the river side by the Company. ... local community of Kullu and Manali and surrounding villages will benefit.”

b **14.** Mr G.D. Khachi, Under Secretary (Revenue), Government of Himachal Pradesh in the counter-affidavit filed in this Court stated as under:

c “(iii) That subsequently, a piece of land measuring 21-09 bighas was encroached by M/s Span Motels. On coming to the notice of the Government of such encroachment, the Government of Himachal Pradesh in Revenue Department took action and reportedly got the encroached land vacated, and the possession of which has been taken over by the Forest Department.

d That on 21-22 July, 1992, the then Chief Secretary to the Government of Himachal Pradesh visited the site who drew the inference that M/s Span Motels Ltd. were still using the encroached land. The copy of note on inspection of the then Chief Secretary is annexed as R-1.

e That immediately on receipt of the recommendations of the then Chief Secretary (Annexure R-I), the Department of Forest started working at the site but in the meantime, it was decided to lease out a piece of land measuring 27-12 bighas which includes the said encroached land measuring 21-09 bighas. The lease granted by the Government of Himachal Pradesh in Revenue Department vide letter No. Rev. D(G)6-53/93, dated 5-4-1994 is annexed as Annexure R-II after obtaining the approval of Government of India, Ministry of Environment and Forest, New Delhi vide letter No. 9-116/93-ROC, dated 24-11-1993 (copy annexed as Annexure R-III) for the purpose of protecting earlier leased land.

f That the developmental activities which was being undertaken by M/s Span Motels Ltd. came to the knowledge of the Government from the news item which appeared in the Press and field officers of all the departments concerned took an exercise to carry out the inspection and reported the matter to the Government.”

g **15.** C.P. Sujaya, Financial Commissioner-cum-Secretary (Irrigation and Public Health), Government of Himachal Pradesh in her counter-affidavit filed in this Court, inter alia, stated as under:

h “Admitted to the extent that the Span Resorts management had deployed heavy earth-moving machinery to reclaim their land and to divert/channelise the course of river to its course which it was following prior to 1995 floods by dredging and raising of earthen and wire-crated embankments.

The flow of river has been changed/diverted by dredging/raising of wire-crated embankments and creating channel from a point u/s of Span

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Resorts to d/s of Span Resorts. The approximate length of channel is about 1000 metres.

Admitted to the extent that Villages Rangri and Chakki are located on left bank of River Beas. However, channelization of river has been done slightly away from the toe of foothills except for the last about 500 metres where it is running along the foothills. a

The hill on which Villages Rangri and Chakki are situated consists of small boulders embedded in sandy strata and is quite fragile/unstable in nature. Therefore, this reach of river is prone to landslides in the normal course also. However, it is feared that flow of river along the foothills may hasten/aggravate the process of landslides. The Span Management has provided wire-crated embankment in a reach of about 90 metres on left bank and about 270 metres on right bank to channelise the flow and also to reclaim part of land on right bank of River Beas. b

Admitted to the extent that the diversion/channelization of river has been done to restore it to its course of pre-1995 floods and in doing so, by raising the earthen and wire-crated embankments, some land of villagers situated on right bank of River Beas has also been reclaimed along with land of Span Resort.” c

16. This Court by the order dated 6-5-1996 directed the Central Pollution Control Board (the Board) through its Member Secretary to inspect the environments around the area in possession of the Motel and file a report. This Court further ordered as under: d

“Meanwhile we direct that no construction of any type or no interference in any manner with the flow of the river or with the embankment of the river shall be made by the Span Management.” e

17. Pursuant to this Court’s order dated 6-5-1996 the Board filed its report along with the affidavit of Dr S.P. Chakrabarti, Member Secretary of the Board. It is stated in the affidavit that a team comprising Dr Bharat Singh, Former Vice-Chancellor and Professor Emeritus, University of Roorkee, Dr S.K. Ghosh, Senior Scientist and former Head, Division of Plant Pathology (NF), Kerala Forest Research Institute, Peechi, Trichur and Dr S.P. Chakrabarti, Member Secretary, Board was constituted. The team inspected the area and prepared the report. Para 4.2 of the report gives details of the construction done by the Motel prior to 1995 floods. The relevant part of the paragraph is as under: f

“To protect the newly-acquired land, SMPL took a number of measures which include construction of the following as shown in Fig. 2: g

(a) 8 nos. studs of concrete blocks 8 m long and 20 m apart on the eastern face of the club island on the upstream side,

(b) 150 m long stepped wall also on the eastern face of club island on the downstream side, h

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(c) A 2 m high bar of concrete blocks at the entry at the spill channel, and

a (d) Additional 8 nos. studs also 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the SMPL.

While (a) & (b) were aimed at protecting the club island from the main current, (c) was to discourage larger inflow into the spill channel. Item (d) was meant to protect the main resort land of SMPL if heavy flow comes into the spill channel.

b The works executed in 1993 were bank protection works, and were not of a nature so as to change the regime or the course of river. A medium flood again occurred in 1994. Partly due to the protection works, no appreciable damage occurred during this flood. The main current still continues on the left bank.”

c **18.** The happening of events in the vicinity of the Motel during the 1995 flood and the steps taken by the Motel have been stated in the report as under:

d “A big slip occurred on the hillside on the left bank, at a distance about 200 m upstream from the point where division into main and spill channels was occurring, on the afternoon of September 4, 1995. This partially blocked the main left side channel which was relatively narrow at this location. This presumably triggered the major change of course in the river, diverting the major portion of the flow into spill channel towards the right and almost over the entire land area of the club island. The entire club building and the plantation as well as the protection works built in 1993 were washed away. Heavy debris was deposited on this land. Damage occurred on the right bank also but the buildings of the main SMPL resort remained more or less unaffected. A large hotel and many buildings on the right bank, almost adjacent to SMPL in the downstream were also washed away. The bar of blocks at the upstream end of the spill channel as well as most of the studs on this channel were also washed away. Some remnants of five downstream studs could be seen at the time of the visit. After the passage of 1995 flood, SMPL have taken further steps to protect their property as shown in Fig. 3. These are as follows:

e 1. The left side channel (the main channel), which had become less active, has been dredged to increase its capacity. Wire crate revetments (A, B & C) on both banks of this channel have been made to direct the flow through this channel. These revetments and earth restoration work done would curtail the entry of water into the right side relief/spill channel which had developed into the main channel during the flood. A relatively small channel (the relief/spill channel) still exists and carries very little flow. Bulk of the flow is now going into the left bank channel.

h On the left bank, there are steep unstable slopes at higher elevations left after the slides during the flood. These are likely to

slip in any case, and if so happens, may block the left channel again. This land belongs to some villagers from Rangri. The left bank channel is again sub-dividing into two streams (D) and the small stream is flowing close to the toe of the hills for a distance of about 500 to 600 m before it turns towards midstream. Some of the dredged material is piled on the right bank and some on the divide between the main channel and the subsidiary channel on the left. Slips can be seen in this reach of 500-600 m even now, and erosion at toe may aggravate sliding tendency. SMPL has also put 190 m wire crates (C) as protection against erosion of this bank, which may be helpful up to moderate flood conditions.

The dredging and channelisation of the left bank channel, though aimed at protecting SMPL land, should normally keep high intensity of flow away from both banks in moderate floods. This should thus not be a cause of concern. In high floods, the water would spill or spread beyond this channel. Due to restriction of entry in the right relief/spill channel, though the works may not withstand a high flood, there may be a tendency for more flow towards the left bank. However, the river is presently in a highly unstable regime after the 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future.”

The conclusion given by the inspecting team in the report are as under:

“6.4 M/s Span Motels Private Limited had taken some flood-control measures at the immediate upstream by construction of wire crates (Fig. 3) on both sides (A, B and C) and also dredged the main channel of the river by blasting the big boulders and removing the debris. The flood-control measures, taken by them on the right bank of the main channel and at the mouth of relief channel after the 1993 flood, were also washed off. There is no sign of any boundary of the premises of the newly-acquired land.

6.5 The mouth of the natural relief/spill channel has been blocked by construction of wire crate and dumping of boulders (A & B). The area has almost been levelled. Although a little discharge was observed due to seepage through boulders and flowing through the remnants of the relief channel to the downstream, the channel is blocked by a stonewall across the channel (F) at the downstream of M/s SMPL by a private property owner who has even constructed two wells (E) on the bed of the channel. This indicates the intention of the occupiers of the right bank properties in the concerned stretch in favour of filling up of the natural spill/relief channel.

6.6 M/s Span Motels has not consulted any Flood Control Expert as it appeared from the way of construction of the wire crate. No proper reventment was done while crating. As such, these cratings may not last long.

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a 6.7 In the process of channelising the main course, the main stream has been divided into two, one of which goes very near to the left bank (G) because of which fresh land slip in future is not ruled out.

6.8 The relief channel is supposed to be the government land. Construction of any sort to block the natural flow of water is illegal and no permission has been taken from the department concerned.

b 6.9 The lease agreement of 1994 had the clause for protection of the land but it should have been done not by blocking the flood spill/relief channel.

6.10 Relief channel is the shortest path between the two bends. Any future slip on left bank due to training of discharge at its foot may cause flood on the right bank where the leasehold land (1994) exists.

c 6.11 No new construction should be allowed in this flood-prone area except flood-protection measures. No economic activity should be undertaken in the aforementioned stretch.

d 6.12 Since newly-acquired land of M/s SMPL is located on the flood plain sandwiched between the main channel and the relief/spill channel, the land may be de-leased and the Forest Department take care of plantation in the area after adequate flood-control measures are taken by the Irrigation Department. This is necessitated in view of the fact that the left bank opposite SMPL is very steep (almost vertical) and is subjected to potential threat of land slip to block the channel and cause change of course of the river flow again.

6.13 Even if land slips occur, the impact will be local, limited only to the stretch of Beas River near SMPL .

e 6.14 The river is presently in a highly unstable regime after 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future. A long-term planning for flood control in Kullu Valley needs to be taken up immediately with the advice of an organisation having expertise in the field, and permanent measures shall be taken to protect the area so that recurrence of such a heavy flood is mitigated permanently.”

f **19.** On a careful examination of the counter-affidavits filed by the parties, the report placed on record by the Board and other material placed on record, the following facts are established:

g 1. The leasehold area in possession of the Motel is a part of the protected forest land owned by the State Government.

2. The forest land measuring 27 bighas and 12 biswas leased to the Motel by the lease deed dated 11-4-1994 is situated on the right bank of the river and is separated from the Motel by a natural relief/spill channel of the river.

h 3. A wooden bridge on the spill channel connects the main Motel land and the land acquired under the 1994 lease deed.

4. 22.2 bighas out of the land leased to the Motel in 1994 was encroached upon by the Motel in the years 1988/89.

5. Prior to the 1995 floods the Motel constructed 8 studs of concrete blocks 8 m long and 20 m apart on the upstream bank of the river, 150 m long stepped wall on the downstream side of the river and 2 m high bar of concrete blocks at the entry of the spill channel and additional 8 studs 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the Motel. a

6. After the 1995 floods the Motel has dredged the left side channel (the main channel) of the river to increase its capacity. Wire crate revetments on both banks of the main channel of river have been made to direct the flow through the said channel. This has been done with a view to curtail the entry of water into the right side relief/spill channel. b

7. The Motel has constructed 190 m wire crates on the bank of the river (upstream). The dredged material is piled up on the banks of the river. The dredging and channelising of the left bank has been done on a large scale with a view to keep high intensity of flow away from the Motel. c

8. The dredging of the main channel of river was done by blasting the big boulders and removing the debris. c

9. The mouth of the natural relief/spill channel has been blocked by wire crates and dumping of boulders.

10. The construction work was not done under expert advice.

11. The construction work undertaken by the Motel for channelising the main course has divided the main stream into two, one of which goes very near to the left bank because of which, according to the report, fresh land slip in future cannot be ruled out. e

20. The report further indicates that the relief channel being part of the natural flow of the river no construction of any sort could be made to block the said flow. According to the report no permission whatsoever was sought for the construction done by the Motel. The Board in its report has further opined that the clause in the lease agreement for protection of land did not permit the Motel to block the flood spill/relief channel of the river. The report categorically states that no new construction should be allowed in this flood-prone area and no economic activities should be permitted in the said stretch. It has been finally recommended by the inspection team that the land acquired by the Motel under the 1994 lease deed is located on the flood plain, sandwiched between the main channel and the relief/spill channel and as such it should be de-leased so that the Forest Department may take care of the plantation in the area and also preserve the ecologically fragile area of River Beas. f
g

21. Mr Harish Salve vehemently contended that whatever construction activity was done by the Motel on the land under its possession and on the area around, if any, was done with a view to protect the leasehold land from floods. According to him the Divisional Forest Officer by the letter dated h

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- 12-1-1993 — quoted above — permitted the Motel to carry out the necessary works subject to the conditions that the department would not be
- a liable to pay any amount incurred for the said purpose by the Motel. We do not agree. It is obvious from the correspondence between the Motel and the Government, referred to by us, that much before the letter of the Divisional Forest Officer dated 12-1-1993, the Motel had made various constructions on the surrounding area and on the banks of the river. In the letter dated 30-8-1989 addressed to the Divisional Forest Officer, Kullu — quoted above
- b — the Motel management admitted that “over the years, and especially after the severe flood erosion last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and banjar area”. The “Banjar area” referred to in the letter was
- c the adjoining area admeasuring 22.2 bighas which was not on lease with the Motel at that time. The admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. We have no hesitation in holding that the Motel interfered with
- d the natural flow of the river by trying to block the natural relief/spill channel of the river.

22. The forest lands which have been given on lease to the Motel by the State Government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left.
- e The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of River Beas where the Motel is located mostly comes under forest, the left bank consists
- f of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.

23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been
- g summed up by David B. Hunter (University of Michigan) in an article titled *An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources* published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

- h “Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis

of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

‘[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment’s limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.’

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

‘We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that “we choose death”.’

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the

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natural world. An understanding of the laws of nature must therefore inform all of our social institutions.”

- a **24.** The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine. Under the Roman law
- b these resources were either owned by no one (*res nullious*) or by every one in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust
- c by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “*Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention*”, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:
- d “The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain
- e interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — ‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent
- f infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”
- 25.** The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to
- g make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on
- h governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

26. The American law on the subject is primarily based on the decision of the United States Supreme Court in *Illinois Central Railroad Co. v. People of the State of Illinois*¹. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands — a mile strip along the shores of Lake Michigan extending one mile out from the shoreline — to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust — for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in *Illinois Central*¹ “articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties”.

27. In *Gould v. Greylock Reservation Commission*² the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The

1 146 US 387 : 36 L Ed 1018 (1892)

2 350 Mass 410 (1966)

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a plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:

b “The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority’s borrowed funds for what seems, in part at least, a commercial venture for private profit.”

Professor Sax’s comments on the above-quoted paragraph from *Gould* decision are as under:

c “It hardly seems surprising, then, that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State’s authority to change the use of a certain tract of land.... *Gould*, like *Illinois Central*, was concerned with the most overt sort of imposition on the public interest: commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem — that concerning projects which clearly have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland or to fill a wetland.”

f 28. In *Sacco v. Development of Public Works*³, the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:

“the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for ... is to preserve such lands so that they may be enjoyed by the people for recreational purposes.”

g 29. In *Robbins v. Deptt. of Public Works*⁴, the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, “wetlands of considerable natural beauty ... often used for nature study and recreation” for highway use.

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3 532 Mass 670
4 244 NE 2d 577

30. Professor Sax in the article (Michigan Law Review) refers to *Priewev v. Wisconsin State Land and Improvement Co.*⁵, *Crawford County Lever and Drainage Distt. No. 1*⁶, *City of Milwaukee v. State*⁷, *State v. Public Service Commission*⁸ and opines that “the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State”.

31. Professor Sax stated the scope of the public trust doctrine in the following words:

“If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private lands in a State where governmental permits are required.”

32. We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society v. Superior Court of Alpine County*⁹. The case is popularly known as “the Mono Lake case”. Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (*sic*) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperilled. The plaintiffs environmentalist — using the public trust doctrine — filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge’s request for clarification of the

5 93 Wis 534 (1896)

6 182 Wis 404

7 193 Wis 423

8 275 Wis 112

9 33 Cal 3d 419

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State's public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

- a “By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.’ (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns ‘all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.’”
- b The Court explained the purpose of the public trust as under:
 “The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in *Marks v. Whitney*¹⁰, ‘[p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses — navigation, commerce and fishing — did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that ‘[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is not burdened with an outmoded classification favouring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands — a use encompassed within the tidelands trust — is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favourably affect the scenery and climate of the area.’
- c
- d
- e
- f Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a ‘fishery’ under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological — the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under *Marks v. Whitney*¹⁰, it is clear that protection of these values is among the purposes of the public trust.”
- g The Court summed up the powers of the State as trustee in the following words:
 “Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes,
- h marshlands and tidelands, surrendering that right of protection only in

¹⁰ 6 Cal 3d 251

rare cases when the abandonment of that right is consistent with the purposes of the trust....”

The Supreme Court of California, inter alia, reached the following conclusion: a

“The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653, 654.) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen v. N.D. State Water Cons. Comm’n*¹¹ at pp. 462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust.” b

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin. c

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case*⁹ clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*⁹ to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co. v. Mississippi*¹² the United States Supreme Court upheld Mississippi’s extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*¹² assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but d

¹¹ 247 NW 2d 457 (ND 1976)

¹² 108 S Ct 791 (1988) e

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a on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

b 34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

c 35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution.

d But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

e

f 36. Coming to the facts of the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed. Even the Board in its report has recommended de-leasing of the said area.

g 37. This Court in *Vellore Citizens' Welfare Forum v. Union of India*¹³ explained the "Precautionary Principle" and "Polluters Pays Principle" as under: (SCC pp. 658-59, paras 11-13)

h "Some of the salient principles of 'Sustainable Development', as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication

¹³ (1996) 5 SCC 647 : JT (1996) 7 SC 375

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of Poverty and Financial Assistance to the developing countries. We are, however, of the view that 'the Precautionary Principle' and 'the Polluter Pays Principle' are essential features of 'Sustainable Development'. The 'Precautionary Principle' — in the context of the municipal law — means:

- (i) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The 'onus of proof' is on the actor or the developer/ industrialist to show that his action is environmentally benign.

'The Polluter Pays Principle' has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹⁴. The Court observed: (SCC p. 246, para 65)

'... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'.

The Court ruled that: (SCC p. 246, para 65)

'... Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity *irrespective* of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on'.

Consequently the polluting industries are 'absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas'. The 'Polluter Pays Principle' as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land."

38. It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts.

39. We, therefore, order and direct as under:

14 (1996) 3 SCC 212 : JT (1996) 2 SC 196

M.C. MEHTA v. KAMAL NATH (*Kuldip Singh, J.*)

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1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.

a 2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated 24-11-1993 and the lease deed dated 11-4-1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions.

b 3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.

c 4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

d 5. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated 29-9-1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

e 6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

f 7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

g 8. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report by 17-12-1996. To be listed on 18-12-1996.

h 40. The writ petition is disposed of except for limited purpose indicated above.

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a given by the respondent tenant in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 37 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act.

b **32.** For all the reasons aforesaid, the order of eviction passed by the Additional Rent Controller on 28-2-2001 stands restored, the impugned order of the High Court as well as the order of the Additional Rent Controller, Delhi, are set aside and the application filed by the landlord under Section 14(1)(e) of the Rent Act stands allowed.

c **33.** Considering the facts and circumstances of the present case, we grant time to the respondent tenant to vacate the tenanted premises within a period of six months from this date provided the respondent tenant files an usual undertaking in this Court within one month. In the event, if no undertaking is filed within a month mentioned hereinabove, it will be open for the appellant landlord to proceed and take delivery of possession in accordance with law.

d **34.** The appeal is thus allowed. There will be no order as to costs.

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(BEFORE V.S. SIRPURKAR AND DEEPAK VERMA, JJ.)

e PRIYANKA ESTATES INTERNATIONAL
PRIVATE LIMITED AND OTHERS .. Appellants;

Versus

STATE OF ASSAM AND OTHERS .. Respondents.

Civil Appeals No. 8026 of 2009[†] with Nos. 8025 of 2009[‡],
8027 of 2009^{††}, 8028 of 2009^{‡‡} and 8029-32 of 2009^{‡‡},
decided on December 3, 2009

f **A. Town Planning — Unauthorised additional construction — Construction in violation of sanctioned plan and approval — Demolition of, when warranted — Held, unlawful constructions are against public interest and hazardous to safety of occupiers and residents of multistoreyed buildings — If constructions are in absolute violation of sanctioned or approved plans, the necessary consequence is demolition — Courts not to approve of such illegal activities**

† Arising out of SLP (C) No. 14480 of 2006. From the Judgment and Order dated 28-7-2006 of the Gauhati High Court in WPs Nos. 5018, 5146 of 2002 and 2747 of 2006

‡ Arising out of SLP (C) No. 15546 of 2006

h †† Arising out of SLP (C) No. 15547 of 2006

‡‡ Arising out of SLP (C) No. 16898 of 2006

‡‡ Arising out of SLPs (C) Nos. 28291-94 of 2009

— Appellant was permitted to construct residential-cum-commercial complex up to 5½ floors — Permission for construction of additional floors beyond 5½ floors was rejected being contrary to building bye-laws — Further, permissible ratio of height of building was that it could be no more than twice the width of road, and road width was 38 ft, so building could not be raised more than 76 ft — In appeal, Standing Appellate Committee (SAC) directed Commissioner, Guwahati Municipal Corporation (GMC) to consider grant of permission, but same was not considered by Commissioner, GMC — Despite no permission, builder continued construction up to 8 floors under pretext of stay obtained from High Court against notices of demolition by GMC — PIL against — High Court allowed PIL upholding demolition of additional floors beyond sanctioned plan — Sustainability

— Contention that construction was not illegal since proposed width of road is 50 ft and height of building was only 93 ft and also SAC granted sanction for construction of additional floors — Additionally, purchasers of flats in unsanctioned floors contended violation of principles of natural justice since individual notices were not issued

— Held, building bye-laws stipulate that “existing width” of road to be considered for grant of sanction, but not its “proposed width” — Order of SAC is not sanction since Commissioner, GMC is only authorised to sanction and approve building plan — Further, individual notices to flat-owners not required in view of public notice in newspapers issued by GMC to all proposed purchasers to ensure that completion and occupancy certificate duly issued, had been obtained by the builder before purchasing flats — Also, construction of additional floors fall beyond compoundable items — Hence, construction of said additional floors in violation of sanctioned plan was illegal and liable to be demolished — However, as constructions on 5th floor beyond permission fall under compoundable items in terms of building bye-laws, GMC directed to consider representations in accordance with law in a time-bound manner — Guwahati Municipal Corporation Act, 1971 — Ss. 337, 416 and 438 — Guwahati Metropolitan Development Authority Act, 1985, S. 88

(Paras 37 to 44 and 50 to 56)

B. Town Planning — Guwahati Metropolitan Development Authority Act, 1985 — S. 88 — Demolition of unauthorised construction — Notice to purchasers of illegal flats for demolition — Individual notices, requirement if any — Notice to public at large, when sufficient (Para 39)

C. Town Planning — Unauthorised construction — Demolition of — Purchasers of illegal flats, right against demolition — Individual rights — When to yield to public rights — An individual has a right, including a fundamental right, within a reasonable limit — However, if it encroaches on public rights leading to public inconvenience, held, it is to be curtailed to that extent — Jurisprudence — Conceptual Jurisprudence — Entitlements — Rights — Individual vis-à-vis public rights — Balancing of — Constitution of India — Pt. III (Paras 56 and 57)

D. Town Planning — Unauthorised construction — Duty of citizens against — Held, rules, regulations and bye-laws are made taking in view larger public interest of society — It is bounden duty of citizens to obey and follow them (Para 56)

Corpn. of Calcutta v. Mulchand Agarwala, AIR 1956 SC 110 : 1956 Cri LJ 285; *Syed Muzaffar Ali v. MCD*, 1995 Supp (4) SCC 426; *Muni Suvrat-Swami Jain S.M.P. Sangh v.*

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a Arun Nathuram Gaikwad, (2006) 8 SCC 590; *Municipal Corpn., Ludhiana v. Inderjit Singh*, (2008) 13 SCC 506; *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545; *S.L. Kapoor v. Jagmohan*, (1980) 4 SCC 379; *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*, (1999) 6 SCC 464; *Friends Colony Development Committee v. State of Orissa*, (2004) 8 SCC 733; *Royal Paradise Hotel (P) Ltd. v. State of Haryana*, (2006) 7 SCC 597; *Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar*, (2005) 4 SCC 99, *relied on*

b **E. Town Planning — Unauthorised construction — Demolition of — Purchasers of illegally constructed flats — Indemnity against loss caused — Compensation — Relief to affected parties — Considerations — In present case, Supreme Court restraining itself from awarding compensation under Art. 142, but gave liberty to affected parties to exhaust remedy available under law — Constitution of India — Art. 142 — Exercise of power under — Compensation — Contract Act, 1872 — Ss. 17 to 19, 23 and 73 — Contract and Specific Relief — Contractual Obligations and Rights — Implied obligations — Statutorily implied obligations — Consumer Protection — Services — Housing — Transfer of Property Act, 1882, Ss. 55(1)(a), (b) & (c)**

c *Held :*

The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorised or illegal construction having been erected by builder/coloniser is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders. In the case in hand, a number of occupiers were put in possession of the respective flats by the builder/developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles, ultimately the flat owners are going to be the greater sufferers rather than the builder who has already pocketed the price of the flat. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly. In the case in hand, admittedly, at no point of time was the builder able to show to its prospective purchasers the occupancy certificate or completion certificate issued by the authorities concerned.

(Paras 57 to 60)

f The instant case is not a case of breach of contract. It is a clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances**. Even though invocation of the jurisdiction under Article 142 of the Constitution of India so as to do complete justice between the parties and to direct awarding of reasonable/suitable compensation/interest to the flat owners, whose flats are ultimately going to be demolished, was considered *g* but, ultimately it was decided not to, for variety of reasons and on account of various disputed questions that may be posed in the matter. However, liberty is granted to those, whose flats are ultimately going to be demolished, to exhaust the remedy that may be available to them in accordance with law.

(Paras 61 and 62)

h **[Ed.: But would not the latter obligation identified by the Court be a statutorily implied obligation in the contract in light of Ss. 55(1)(a), (b) & (c) of the Transfer of Property Act, 1882? Another line of analysis would be that the latter obligation is one imposed by law *anterior* to the entering into of the contract to purchase the flat, in which case the

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remedy of the purchaser would be to seek rescission of the contract for fraud or misrepresentation *vide* Ss. 17 and 18, respectively, or a declaration that it is void for being illegal *vide* S. 23 of the Contract Act, 1872, and based thereon seek refund of all payments made with interest. There would probably also be a cause of action in the tort of deceit and/or the tort of breach of statutory duty and the right to sue for damages based thereon. *See* generally the discussion on the distinction between suing for breach of contract on the one hand, and rescission of the contract due to vitiating of the consent on the other hand, in the *Preface* to Vol. 13, *Complete Digest of Supreme Court Cases*, 2nd Edn., pp. I-7 to I-12.]

Appeals dismissed

N-D/44331/C

Advocates who appeared in this case :

L. Nageswara Rao, Shekhar Naphade, Mukul Rohatgi, Vijay Hansaria, Anoop G. Chaudhari, Ms June Chaudhari, Ms Milly Hazarika and Ramji Srinivasan, Senior Advocates [P.I. Jose, Anupam Mishra, Ms Kajori Roy, Vivek Kafari Ray, Dhruv Mehta, Yashraj Singh Deora, Mohit, T.S. Sabarish (for M/s K.L. Mehta & Co.), Shankar Divate, Kamal Mohan Gupta, Manish Goswami (for M/s Map & Co.), Jagjit Singh Chhabra, H. Baruah, Balbir Dosanjh, Rameshwar Prasad Goyal, Jitendra Kumar, Ranjan K. Pandey, Galib Kabir, M/s Corporate Law Group (NP) and Rauf Rahim, Advocates] for the appearing parties.

Chronological list of cases cited

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| 2. (2006) 8 SCC 590, <i>Muni Suvrat-Swami Jain S.M.P. Sangh v. Arun Nathuram Gaikwad</i> | 41a | d |
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| 5. (2004) 8 SCC 733, <i>Friends Colony Development Committee v. State of Orissa</i> | 41d-e | |
| 6. (1999) 6 SCC 464, <i>M.I. Builders (P) Ltd. v. Radhey Shyam Sahu</i> | 41d-e | e |
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| 9. (1980) 4 SCC 379, <i>S.L. Kapoor v. Jagmohan</i> | 41d | |
| 10. AIR 1956 SC 110 : 1956 Cri LJ 285, <i>Corpn. of Calcutta v. Mulchand Agarwala</i> | 40e-f | f |

The Judgment of the Court was delivered by

DEEPAK VERMA, J.— Leave granted. The principal question that emerges for consideration in these appeals is whether to sustain the order of demolition as passed by the Gauhati High Court *vide* impugned judgment and order or to put an imprimatur of this Court to the unauthorised constructions raised by Priyanka Estates International (P) Ltd. (Appellant 1 herein) beyond 5½ floors. Facts material for deciding the said appeals are mentioned hereinbelow.

2. For the sake of convenience, the facts appearing in SLP (C) No. 14480 of 2006 titled as *Priyanka Estates International (P) Ltd. v. State of Assam* are taken into consideration. Appellant 1 is a company of which Appellants 2 and 3 are Directors.

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3. Appellant 1 herein purchased an open piece of land approximately admeasuring 4.62 kathas from one Smt Nandita Banerjee on 9-8-1999 by registered deed of sale. Prior to execution of sale, the vendor of Appellant 1 applied to Guwahati Metropolitan Development Authority (hereinafter referred to as “GMDA”) for grant of “no-objection certificate” for sale of land. The said permission was accorded on 17-7-1999 mentioning therein that permission is granted for “residential-cum-commercial use” of the said plot and that the proposed width of the road abutted by plot is approximately 50 feet.

4. Pursuant to the said permission, sale deed was executed in favour of Appellant 1, whereafter it applied to Guwahati Municipal Corporation (hereinafter referred to as “GMC”) on 16-11-1999 for according permission for construction of basement, ground, mezzanine; first, second, third, fourth and half of fifth floors. The permission was accorded to Priyanka Estates International (P) Ltd. on 3-2-2000 by GMC for construction of basement, ground floor, mezzanine up to fourth floor and half on the 5th floor. For first floor to fourth, the floor area permissible was 7283 sq ft but on fifth floor, the permissible floor area was fixed at half of it i.e. 3817 sq ft only. It was granted on certain conditions as mentioned in the sanction dated 3-2-2000.

5. Thereafter, on 8-2-2000, Appellant 1 applied for grant of permission for construction of remaining part of 5th, 6th, 7th and 8th floors. This permission was refused by GMC on 27-3-2000 on the following grounds:

“(i) Maximum allowable height of building can be 76’ and proposed height would be 93’.

(ii) The margin on both sides and rear is less than required norms.

(iii) FAR is exceeded than allowable 300.

(iv) The structural certificate is not submitted.”

So, to the proposal for 5th (part) 6th, 7th and 8th floor building, permission was rejected.

6. Feeling aggrieved by the said rejection by GMC, the appellants preferred an appeal under Section 438 of the Guwahati Municipal Corporation Act, 1971 (hereinafter referred to as “the Act”) before the Standing Appellate Committee (in short “SAC”). This came to be disposed of on 5-5-2000 with the following directions:

“In view of the above discussion as well as observation, in our considered opinion, the appellant’s case deserves consideration. Accordingly, we hold that the appellant be accorded permission as sought for. We hereby set aside the impugned order, as aforesaid, passed by the Commissioner, GMC, the respondent.

In the result, the appeal is allowed.”

7. Since despite the fact that SAC had allowed the appeal of the appellants with regard to construction of 5th (part), 6th, 7th and 8th floors, no formal permission was still accorded by the Commissioner, GMC to it, they moved further application on 28-8-2001 before the Administrator-cum-Minister, Guwahati Development Department, as it appears by that time,

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GMC had been dissolved. The said appeal was considered by the Administrator-cum-Minister and the appeal verdict was reviewed on 29-5-2002 with certain conditions as mentioned hereinbelow:

- “(i) To obtain NOC from the State Fire Department;
- (ii) Submit affidavit regarding the structural certificate;
- (iii) Compulsory covered parking and private service system like drainage, sewage, storm drain, water supply, etc.;
- (iv) No further FAR beyond 487.00;
- (v) To submit completion certificate and obtain occupancy certificate from GMC;
- (vi) To pay a penal charge to the Corporation amounting to Rs 10,00,000.00 (ten lakhs);
- (vii) Your building is liable for instant demolition at your own risk and cost in case of non-compliance with the above.”

8. However, it appears that without compliance with the aforesaid conditions fully and without getting actual sanction for construction of building beyond 5½ floors from the Commissioner of GMC, the appellants continued with the construction activities and tried to complete the same.

9. Guwahati Metropolitan Development Authority (already referred to as “GMDA”) now came into picture and issued notice to Appellant 2 on 2-2-2001 to show cause and to give explanation as to without grant of proper sanction under the GMDA Act, how the construction work is progressing.

10. Another notice by GMDA was issued to Appellant 2 on 5-9-2001 asking to remove/demolish the building/construction/development or the portion erected by them which is in violation of the provisions of the Guwahati Metropolitan Development Authority Act (for short “the Development Act”). No replies to the aforesaid two notices were sent by the appellants herein on the ground that the same were not received.

11. The last and final notice in this regard was issued by GMDA on 18-2-2002 mentioning therein with regard to the earlier two notices sent on 2-2-2001 and 5-9-2001 and finally asking the appellants to remove the construction within three days from the receipt of this last notice failing which, necessary action as per the provisions of the Development Act will be initiated without giving further intimation. The appellants replied to the said last notice on 18-2-2002 mentioning therein that they had not received the earlier two letters but mentioned that permission has been granted by GMC on 3-2-2000, and is still operative, which clarified the position of construction of the building beyond 5½ floors also but did not actually present any sanctioned or approved plans/maps beyond 5½ floors.

12. Not being satisfied with the reply to the show-cause notice, submitted by the appellants, the respondents proceeded to issue another notice to Appellant 2 on 3-5-2002, with a categorical statement that construction over and above 6th and 7th floors was wholly illegal, without due sanction and therefore, the same be removed/demolished. It appears that, thereafter, some correspondence between the parties continued.

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13. Finally, on 31-7-2002 by two orders, the Commissioner, GMC informed Appellant 1 that plans submitted by them are insufficient for the following reasons and requested it to furnish the required materials as under and to forthwith stop the construction:

- a
1. Affidavit for structural design as per format in the building bye-laws.
 2. NOC from the State Fire Department.
 3. Declaration in affidavit to maintain the FAR within 487.”

b The appellants, therefore, were constrained to move the High Court challenging the said order dated 31-7-2002 by filing WP (C) No. 5018 of 2002 purportedly under Articles 226 and 227 of the Constitution of India.

14. Further order of demolition came to be issued to Appellant 2 by GMDA on 30-5-2006, clearly mentioning therein that no sanction was obtained by the appellants under Sections 24 and 25 of the Development Act and had actually violated the provisions of building bye-laws of Guwahati Municipal Corporation (for short “building bye-laws”), in the following manner:

- c
1. FAR of the building is 490 which exceeds allowable FAR 300.
 2. Maximum floor height 93’ exceeds allowable height 76’ in this road.
 - d 3. Since the building is for mixed use with residential at top floors, setback required is 15’ side to 20’ rear, which is not maintained.
 4. Balcony projection is allowed, maximum ¼ of the building length in any side, which is not maintained.
 5. Two staircases and lift on opposite direction is required which is not available in the building as per building plan.
 - e 6. Construction of building is going on despite our order to stop construction.”

The said order further directed demolition of the building beyond the sanctioned plan dated 3-2-2000. The appellants, therefore, challenged the said order dated 30-5-2006 issued by the Chief Executive Officer, GMDA by filing another WP (C) No. 2747 of 2006.

f **15.** In WP (C) No. 5018 of 2002, (earlier WP filed in the Gauhati High Court) an order of status quo came to be passed on 12-8-2002 and it further directed that the Municipal Authority shall take no steps to pull down the building and the operation of the letter dated 31-7-2002 was stayed. It appears that pursuant to the said order, the appellants continued with the construction activities presumably on the ground that the order of status quo is against the respondents in the writ petition and not against the appellants. Thus, Sanatan Dharam Sabha, Guwahati filed an application seeking permission to be impleaded in the said petition and also bringing to its notice that despite the order of maintenance of status quo, the appellants are continuing with the construction. Thus, another order clarifying the earlier order came to be passed by the High Court on 20-9-2002 whereby a categorical direction was issued that no further construction over the said land shall be made and all construction activities should come to a standstill

g

h

immediately. It appears that only after passing the said order, the appellants stopped the construction work.

16. Sanatan Dharam Sabha along with three residents of Panbazar locality of Guwahati City filed WP (C) No. 5146 of 2002 in the Gauhati High Court against the action of GMC and GMDA granting permission to the appellant, M/s Priyanka Estates for multistoreyed building in question and prayed for its demolition. a

17. Thus, all the three petitions, i.e. WP (C) No. 5018 of 2002, WP (C) No. 2747 of 2006 and WP (C) No. 5146 of 2002 were consolidated for the purpose of analogous hearing and have been disposed of by a Division Bench of the Gauhati High Court vide impugned judgment and order dated 28-7-2006. Vide impugned judgment, the writ petitions preferred by the appellants herein numbered as 5018 of 2002 and 2747 of 2006 having been found devoid of merit and substance were dismissed but WP (C) No. 5146 of 2002 filed by Sanatan Dharam Sabha has been allowed to the extent indicated in the impugned order. b

18. Feeling aggrieved and dissatisfied with the aforesaid judgment and order, civil appeal arising out of SLP (C) No. 14480 of 2006 titled, *Priyanka Estates International (P) Ltd. v. State of Assam* has been filed by the builder and its Directors; civil appeals arising out of SLP (C) No. 15546 of 2006 titled, *Vishal Saraf v. State of Assam* and civil appeal arising out of SLP (C) No. 15547 of 2006 titled, *Suresh Kumar Harlalka v. State of Assam* have been filed by the owners of flats on 7th floor and civil appeal arising out of SLP (C) No. 16898 of 2006 titled, *Sarla Devi Lahoty v. State of Assam* has been filed by the owner of one flat on 6th floor. Insofar as civil appeals arising out of SLP (C) Nos. 28291-28294 of 2009 titled, *Shyam Sunder Agarwala v. State of Assam* are concerned, the same have been filed by the owner of one flat on 5th floor only. Since the matters were common and identical challenging primarily the order passed by the Division Bench of the High Court and pertained to the same building claiming identical reliefs, these appeals have been heard together. Perused the records. c

19. Mr Shekhar Naphade, learned Senior Counsel, Mr Mukul Rohatgi, learned Senior Counsel with Mr Shankar Divate, Mr Dhruv Mehta, Mr Yashraj Singh Deora, Advocates, Mr Vijay Hansaria, learned Senior Counsel with Mr P.I. Jose and Mr Kamal Mohan Gupta, Advocates appeared for the appellants in the aforesaid appeals. Mr L. Nageswara Rao, learned Senior Counsel with Ms Millie Hazarika and Mr Manish Goswami appeared for the respondents. d

20. The respondents have contended that for construction of any building, permission from GMC is a condition precedent and unless such permission is granted no construction can be raised. It has further been submitted that such construction has to be as per the sanctioned plan approved by GMC and no deviation from such approved plan can be made. According to them, Appellant 1 was admittedly granted permission for construction of 5½ storeyed building, apart from basement, ground and mezzanine floor vide order dated 3-2-2000, thereafter, no further permission e

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a has been granted for raising any construction on remaining part of the 5th floor and upwards. The order of SAC dated 5-5-2000 setting aside the order of the Commissioner, GMC dated 27-3-2000 rejecting the permission to raise construction on part of the 5th floor up to 8th floor was itself illegal, beyond the jurisdiction and competence of SAC as it violated the building bye-laws.

b **21.** In view of the admitted position that the width of the road is only 38 feet and under the building bye-laws, maximum allowable height can be double the width of the road i.e. 76 feet but in the instant case SAC has allowed construction up to 93 feet, which contravenes the building bye-laws, therefore, such an order of SAC has no legal force and cannot be basis for construction beyond 76 feet, allowable under building bye-laws.

c **22.** It has been submitted by them that the order of SAC dated 5-5-2000 lost its force and sanctity after the communication dated 29-5-2002 was issued by GMC by which the appellants were asked to comply with certain conditions before granting any permission for construction of a building for remaining part of the 5th floor and above. It has also been contended that even though the order passed in the appellants' writ petition was to maintain status quo but taking advantage thereof, they continued with the construction and only on subsequent order being passed on 20-9-2002, the construction activities were stopped but by that time the appellants had already raised construction up to 8th floor, in flagrant violation of the building bye-laws.

d **23.** They have also contended that GMDA passed an order under Section 88 of the Development Act for demolition of construction for remaining part of the 5th floor and above and that too after issuance of notices to the appellants and giving reasonable opportunity to them to show cause. The appellants were aware that construction beyond 5½ floor was without due sanction and approval, thus, obviously illegal, yet they continued with the same. They further submitted that there was no violation of principles of natural justice. It was contended that Appendix III of the building bye-laws provides for compoundable and non-compoundable items. It is evident therefrom that construction of extra floor falls in the category of non-compoundable items meaning thereby if extra floor is constructed without due sanction/approval, then, it would be beyond the purview of compoundable items. As regards violation of principles of natural justice, they have contended that before passing the order of demolition, notices were issued to the appellants to show cause, as required under Section 88 of the Development Act but they did not take any action thereon.

e **24.** Whenever the respondents asked for sanctioned/approved plans for construction beyond 5½ floors, the appellants only showed them the plans which were sanctioned and/or approved for construction of, only up to 5½ floors. It was also contended by them that even up to that stage the appellants had failed to show any approved sanctioned plans and maps allowing them to construct beyond the permissible limit of 5½ floors. Thus, they have contended that the building constructed beyond 5½ floors is absolutely illegal, unauthorised and without any sanctioned plans, thus liable to be demolished.

25. In order to understand the various provisions of the Act, it is necessary to know the import of the relevant sections of the Act material for deciding the appeals.

26. Section 327 of the Act prohibits any person from erecting or re-erecting any building without written permission from the Corporation. Section 328 provides for submission of an application by a person interested to erect or re-erect a building to the Corporation for approval of the site together with site plan with land title document, elevation and sections of the building, specification of the work and also containing such particulars as may be required by bye-laws in that behalf. Section 329 empowers the Commissioner of GMC to refuse such permission and to disapprove the site on the grounds formulated in Section 330. Section 331 provides for the grounds on which permission to erect or re-erect the building can be refused by GMC. Section 332 empowers the Commissioner to direct modification of the sanctioned plan. Section 333 stipulates the period within which erection or re-erection is to be completed.

27. Section 337 empowers the Commissioner to require the removal or alteration of the work which may not be in conformity with bye-laws, etc. Section 416 of the Act empowers GMC to formulate different bye-laws including the bye-laws relating to the building. Section 438 of the Act provides for appeal from the order passed by the Commissioner including the order refusing to grant permission to construct or reconstruct a building to SAC. Sub-section (3) of Section 438 of the Act empowers the State Government to call for the records of any matter from the Corporation and to pass such orders as may be deemed necessary after examination of such records.

28. It is necessary to refer to Section 88 of the Development Act which reads as under:

“88. *Power of demolition of building.*—(1) Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or development scheme or without the permission, approval or sanction referred to in Section 25 and Section 30 of the Act or in contravention of any conditions subject to which such permission, approval or sanction has been granted, the authority may in addition to any prosecution that may be instituted under the Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner, occupier, manager or by any person at whose instance the development has been commenced or is being carried out or has been completed within such period not being less than five days and more than thirty days from the date on which a copy of the order of removal with brief statement of the reasons thereof has been delivered to the owner, occupier and manager or the person at whose instance the development has been commenced or is being carried out or has been completed as may be specified in the order and on his failure to comply with the order, the authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner, occupier, manager or any person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue;

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provided that no such order shall be made unless the owner, occupier, manager or the person concerned has been given a reasonable opportunity to show cause why the order shall not be made.

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(2) The provisions of this section shall be in addition to and not in derogation of any other provision relating to demolition of buildings contained in any other law for the time being in force.

(3) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of any development under this section or the discontinuance of the development under Section 87 of this Act.”

b

29. Mr Shekhar Naphade, learned Senior Counsel for the appellants firstly strenuously contended before us that NOC dated 17-7-1999 granted by GMDA clearly stipulated that the plot purchased by the appellants would fall in the category of “residential-cum-commercial use” and width of the road abutted by the plot is proposed to be 50 feet. Thus, according to him, the height of the building can be 100 feet, being the double of the width of the road. Since the height of the building of the appellants even after construction up to 8th floor is only 93 feet, the part of the building beyond 5½ floors is not liable to be demolished. It was also contended by him that initial permission was granted by GMC whereas notices of demolition have been issued by GMDA which appears to be absolutely contrary and against the provisions of law. It was also contended that the respondents have failed to prove that any notices were sent to them on 2-2-2001 or 5-9-2001 by GMDA as it has been categorically mentioned by the appellants pursuant to the third notice received by them and replied to.

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30. It was also argued that in the light of specific order passed by SAC, conscious decision has been taken by the Government and denial of hearing itself would amount to prejudice, consequently, violation of principles of natural justice. If the Commissioner was dissatisfied with the modification of his order by SAC then as provided under sub-section (2) of Section 438 of the Act, he was required to make a reference to the Corporation within 60 days thereof which he failed to do. He was, therefore, bound by the appellate order of SAC and could not have superimposed his own views or conditions.

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31. Mr Mukul Rohatgi, learned Senior Counsel appearing for Shyam Sunder Agarwala submitted that he is the owner of part of the 5th floor which has not been sanctioned. According to Mr Mukul Rohatgi half of the 5th floor has already been sanctioned and even if the width of the road abutted to the building is taken as 38 feet, the height allowed would be 76 feet. Thus, it will have no height problem. At the most, the only objection can be with regard to FAR which objection can be waived as the same falls within compoundable items.

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32. Shri Shyam Sunder Agarwala had purchased the said flat on 18-4-2005 for a total amount of Rs 9,43,850. It has also been contended that after purchase of the said flat his name has been mutated in the Corporation records. He is paying property tax, water tax, etc. which the Corporation is accepting. Thus, for this reason also it is not liable to be demolished. He further contended that two parallel bodies, that is, GMC and GMDA cannot

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take action for demolition of the building as the permission was accorded by GMC whereas notices of demolition have been issued by GMDA. Thus, according to him, whole procedure is illegal and void, thus liable to be quashed. a

33. In the light of this, it has been contended that Section 88 of the Development Act could not be put into service against the appellants as the same amounts to violation of principles of natural justice as no notice has been served on the said appellant.

34. Mr Vijay Hansaria, learned Senior Counsel appearing for other appellants submitted that they are the owners of Flat Nos. 7A/7C and 7D b having purchased on 14-6-2004 and 3-1-2005 for a sum of Rs 17,72,460 and Rs 9,43,850 respectively. He has reiterated that Section 88 of the Development Act has not been complied with inasmuch as no opportunity to show cause has been given to these appellants, thus violation of principles of natural justice is writ large from the record. The Commissioner had no other alternative but to abide by the appellate order of SAC and in any case it should have been treated as deemed sanction. c

35. Shri Kamal Mohan Gupta, learned counsel appearing for Sarla Devi Lahoty, the owner of a flat on 6th floor has also reiterated the aforesaid arguments already advanced by M/s Shekhar Naphade, Vijay Hansaria and Mukul Rohatgi. Additionally, he has submitted that Sarla Devi Lahoty d purchased a flat on 27-12-2004 for Rs 8,63,010, after making due inquiries with regard to sanction of building plans, etc. Thus, she would be a bona fide purchaser for value and for any acts of omission or commission said to have been committed by builder Priyanka Estates International (P) Ltd. this appellant cannot be put to any loss.

36. After having gone through the record carefully, the crux of the matter e is whether Priyanka Estates International (P) Ltd. is in possession of any approved or sanctioned plan beyond 5½ floors i.e. for the remaining 3½ floors or not. If not, then what is the effect thereof?

37. It is clear from the record that the only plan approved was on 3-2-2000 for 5½ floors by GMC. The order dated 5-5-2000 passed by SAC also does not give them blanket permission to construct up to 8th floor. f

38. It is also to be seen that the respondents have come to the conclusion and have fairly conceded before us that plan or sanction approved by either of the two authorities, that is, GMC or GMDA will hold good and permission from both the authorities simultaneously would not be required for the same, if it has already been accorded by any one of the authorities. On the strength of this, we can safely proceed that if no permission under Sections 24 and 25 g of the Development Act was obtained by Priyanka Estates International (P) Ltd. then it would not be detrimental to the interest of the appellants, provided there is sanction and approval of plans by the Corporation for remaining 3½ floors i.e. beyond 5½ floors.

39. Here, it is pertinent to point out that the respondents had also issued a public notice on 2-7-2002, published in local newspaper in vernacular giving h general warning and information to all proposed purchasers of flats that

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unless the builder is able to show completion certificate and occupancy certificate duly issued by authorities, no one should enter into agreement to purchase flat/flats from the builder. It is, therefore, to be construed that public notice will hold good even with regard to adherence to the requirement of Section 88 of the Development Act, if individual person had not been noticed by the authorities.

40. Clause (a) of Building Bye-law 37 stipulates that for the purpose of calculation of building height, existing width of the road shall be taken into account and not the proposed width. Even if the proposed width is 40 feet or 50 feet, it will not make any difference because it clearly contemplates that what is to be taken into consideration is the existing width of the road. There is nothing on record to show that the existing width of the road is more than 38 feet. Thus, at the most, the construction could have been only up to the height of 76 feet, provided there was sanction granted by either of the two authorities.

41. Appendix III of building bye-laws deals with penalties to be levied for violation of provisions of Master Plan/Zoning Plan Regulations and Bye-laws. Certain items are compoundable items but certain items fall in the category of non-compoundable items. However, addition of extra floor falls in the category of non-compoundable items. Thus, in any case anything that has been constructed beyond 5th floor would be non-compoundable and same cannot be compounded at all. In other words, minor deviations from the sanctioned plan should be confined only to FAR permissible but should not extend to the extra floor. For better appreciation of the aforesaid provision the same is reproduced hereinbelow:

“Appendix III

Penalties to be levied for violations of provisions of Master Plan/Zoning Plan Regulations and Bye-laws.

(i) All provisions of Bye-laws except items given below shall not be compounded/regularised and shall have to be rectified by alteration/demolition at the risk and cost of owner.

Compoundable items:

- | | | | |
|-----|--------------------------|---|-----------------------|
| (1) | Coverage | — | maximum of 15% |
| (2) | FAR | — | maximum of 10% |
| (3) | Setback | — | up to 2' 6" |
| (4) | Open space | — | maximum 10% reduction |
| (5) | Total height of building | — | 1.5% |

Non-compoundable items:

- (1) Use of building
- (2) Addition of extra floor
- (3) Parking norms
- (4) Projection/encroachment of public land.”

Critical and analytical perusal of the same would show that addition of extra floor falls within the ambit of non-compoundable items.

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42. The order of SAC cannot be construed as an order of sanction as it is not a semblance of permission. It was not the end of the matter because necessary sanction or permission could have been granted only by the Municipal Commissioner and not by the appellate authority. Admittedly, even after passing of the order by SAC in appeal, there was no further sanction by the Municipal Commissioner or by the Chief Executive Officer of the Development Authority granting permission to raise the height of the building up to 8th floor. a

43. Thus, looking to the matter from all angles, we are of the opinion that construction of the building beyond 5½ floors was not only illegal, unauthorised and without any sanction or approval of plans but was also against the spirit of the appellate order of SAC. Thus, except for directing the respondent authorities to demolish the 6th, 7th and 8th floors, we are left with no alternative. b

44. As regards construction of two flats on remaining half of 5th floor, Mr L. Nageswara Rao, learned Senior Counsel for the respondent authorities fairly conceded that on suitable representations being made by the occupants, their cases can be considered afresh to find out if the same would fall within the category of compoundable items or not. If the same are found within the category of compoundable items then necessary order by the respondents in this regard would be passed otherwise order of demolition would follow for them also. Thus, on the promise of Senior Advocate Mr L. Nageswara Rao, we hope and trust, suitable orders would be passed by the Authorities as regards the two flats on the 5th floor are concerned, within two months from the date of submission of the representations. c

45. Even though various authorities had been placed before us by the learned counsel appearing for parties, it is not required to deal with them in extenso. However, a cursory reference to the same would meet the ends of justice. d

46. Mr Shekhar Naphade has placed reliance on *Corpn. of Calcutta v. Mulchand Agarwala*¹ to contend that it should be a last resort to direct demolition of a building and if it falls within the compoundable limit then it should not be directed to be demolished. To advance contentions further in this regard, reliance has been placed on para 4 of an order of this Court in *Syed Muzaffar Ali v. MCD*² which is reproduced hereunder: (SCC p. 427) e

“4. However, it is to be pointed out that the mere departure from the authorised plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorised constructions. Some are amenable to compounding and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition.” f

1 AIR 1956 SC 110 : 1956 Cri LJ 285 g

2 1995 Supp (4) SCC 426 h

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a 47. Reliance has also been placed on yet another judgment of this Court in *Muni Suvrat-Swami Jain S.M.P. Sangh v. Arun Nathuram Gaikwad*³ which dealt with Section 351 of the Bombay Municipal Corporation Act to hold that if execution of work has commenced contrary to provisions of the Act, then to give notice to the person carrying on the construction work to show cause why it should not be pulled down, is a must. The use of the word “shall” would signify that it is mandatory to issue notice and then to pass any order. Lastly, a recent judgment of this Court in *Municipal Corpn., Ludhiana v. Inderjit Singh*⁴ has been pressed into service. This also deals primarily with the requirement of issuance of show-cause notice to the person who had raised construction, so as to enable the said party to show cause, if the construction has been made in total violation of the sanctioned map or it falls within the category of compoundable items.

c 48. Mr Vijay Hansaria has placed reliance on the famous oft quoted judgment of this Court in *Olga Tellis v. Bombay Municipal Corpn.*⁵ which dealt with plight of the pavement dwellers, who were in unauthorised possession and were sought to be evicted. He sought to contend that the fundamental rule of principles of natural justice should have been followed before passing the order of demolition. Further, with regard to opportunity of hearing he has placed reliance on a judgment of this Court in *S.L. Kapoor v. Jagmohan*⁶.

e 49. On the other hand, Mr L. Nageswara Rao has placed reliance on various judgments of this Court viz. *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*⁷; *Friends Colony Development Committee v. State of Orissa*⁸; *Royal Paradise Hotel (P) Ltd. v. State of Haryana*⁹ and *Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar*¹⁰ to contend that where constructions have been made in absolute and flagrant violation of the sanctioned plan then the only alternative is to direct demolition of the same.

f 50. It is not necessary to deal with the aforesaid judgments of this Court in greater detail as the consistent ratio decidendi of this Court is that if the constructions are in absolute violation of sanctioned or approved plans and are not likely to fall in the category of compoundable items, then the necessary consequence is to order its demolition and seal of approval for such illegal activities is not required to be given by this Court.

51. It is pertinent to mention here that hearing of the appeals had commenced on 22-10-2009 and had almost concluded on 28-10-2009. But on the said date, Mr Anoop George Chaudhari and Ms June Chaudhari, learned Senior Counsel appeared with Mr Kamal Mohan Gupta for Sarla Devi

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- 3 (2006) 8 SCC 590
 - 4 (2008) 13 SCC 506
 - 5 (1985) 3 SCC 545
 - 6 (1980) 4 SCC 379
 - 7 (1999) 6 SCC 464
 - 8 (2004) 8 SCC 733
 - 9 (2006) 7 SCC 597
 - 10 (2005) 4 SCC 99
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Lahoty and submitted that they would be replying to the arguments advanced by learned counsel for the respondents. Though not approved as a healthy practice, yet we granted them permission. It was submitted by them that if cases of two flat owners on the 5th floor are to be considered so as to find out whether the constructions raised by the builder in their cases would fall within the compoundable items or not, then the case of Sarla Devi Lahoty should also be directed to be considered on a suitable representation being made by her, as her flat is situated on the 6th floor. It was contended that even after taking the height of 6th floor, it would not cross the maximum height of 76 feet looking to the width of the existing road.

52. However, the said contention cannot be accepted as construction of an extra floor does not fall within the category of compoundable items which is manifest from Appendix III of the building bye-laws of the Corporation reproduced hereinabove.

53. However, with regard to two flats on 5th floor, a direction can be given to the respondents to consider their cases if they submit their representations within a period of 30 days hereof. The respondents would examine whether their cases fall within the compoundable items/limit or not. In case, the respondents come to the conclusion that these two flats constructed on 5th floor fall within the compoundable limit, then necessary orders be passed in this regard, after charging compounding fees as may be applicable to the facts of the case, in accordance with law, otherwise, they would also face the wrath of demolition.

54. Even a conjoint reading of the order dated 5-5-2000 passed by SAC and the Order dated 29-5-2002 of the Administrator-cum-Minister makes it clear as noonday that it does not clothe the appellants to continue with the construction work beyond 5½ floors as these orders were passed subject to fulfilling certain conditions contained therein. It is obvious that what would ultimately constitute a sanctioned and duly approved map would be the one approved by the Commissioner as he alone has authority to do so. The appellants have failed to produce any such duly approved map.

55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.

56. Even though on earlier occasions also, under similar circumstances, there have been judgments of this Court which should have been a pointer to all the builders that raising unauthorised construction never pays and is

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- against the interest of society at large, but, no heed has been given to it by the builders. Rules, regulations and bye-laws are made by Corporations or by
- a Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such rules which are made for their benefit. If unauthorised constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent.
- b **57.** The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorised or illegal construction having been erected by builder/coloniser is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders.
- c **58.** In the case in hand, it is noted that a number of occupiers were put in possession of the respective flats by the builder/developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles it cannot be disputed that ultimately the flat owners are going to be the greater sufferers rather than the builder who has already pocketed the price of the flat.
- d **59.** It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly.
- e **60.** In the case in hand, admittedly, at no point of time was Appellant 1, Priyanka Estates International (P) Ltd. able to show to its prospective purchasers the occupancy certificate or completion certificate issued by the authorities concerned. The same could not even be shown to us and without it, Appellant 1 could not have embarked into sale of flats as it was mandatorily required.
- f **61.** The instant case is not a case of breach of contract. It is a clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances.
- g **62.** Even though at the first instance, we thought of invoking this Court's jurisdiction conferred under Article 142 of the Constitution of India so as to do complete justice between the parties and to direct awarding of reasonable/suitable compensation/interest to the flat owners, whose flats are ultimately going to be demolished, but, with a heavy heart, we have restrained ourselves from doing so, for variety of reasons and on account of various disputed questions that may be posed in the matter. However, we grant liberty to those,
- h whose flats are ultimately going to be demolished, to exhaust the remedy that may be available to them in accordance with law.

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 46/2018

(With Report dated 12.05.2020)

Nuggehalli Jayasimha

Applicant(s)

Versus

Government of NCT of Delhi

Respondent(s)

Date of hearing: 20.05.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Aditya Singra and Ms. Priyanka Bangari, Advocates

Respondent(s): Mr. Satish Kumar, Advocate for CPCB
Mr. Rajkumar, Advocate for DPCC
Mr. Daleep Dhyani and Mr. Pradeep Misra, Advocates for UPPCB
Ms. Puja Kalra, Advocate for North MCD and SDMC
Mr. Balendu Shekhar, Advocate for EDMC

ORDER

1. This order may be read in continuation of order dated 24.01.2020, on the subject of remedial action for compliance of environmental norms by the dairies throughout India.
2. The matter has been dealt with earlier by this Tribunal and directions have been issued from time to time with a view to enforce the statutory mandate under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 for

compliance of environmental norms. Against the order of the Tribunal dated 08.07.2019, to which reference will be made in the later part of this order, *Civil Appeal No. 7285/2019* filed by the SDMC was dismissed by the Hon'ble Supreme Court. As earlier noted, the issue was also dealt with by the Delhi High Court in *Common Cause v. UOI, (2007 SCC Online (Del) 863)*, wherein Municipal Corporation of Delhi was directed to formulate a licensing policy under Section 417 of the Delhi Municipal Corporation Act, 1957. While issuing such direction, the High Court noticed unsatisfactory state of affairs. The High Court observed that the dairies need to be relocated on account of hazard of stray cattle on the roads and trauma faced by the cattle in the cities on account of traffic. Reference was also made to the filth, squalor and outbreak of diseases. As a short-term measure, preventive steps were required for hygiene and protection of environment. Our attention has been drawn to a policy framed by the MCD on 17.07.2010 prohibiting keeping of cattle in any premises without license. Authorized dairy areas were specified and standards and measures were also specified. Reference has also been made to the report of an Expert Committee constituted by the Indian Council for Agricultural Research, Government of India, dated 01.11.2016 under the Chairmanship of Dr. Arjava Sharma, Director, ICAR-NBAGR, Karnal. The report dealt with sustainable management of unproductive cattle. The report specifies land requirement, feeding requirement, labour requirement and health management.

3. Vide order dated 01.04.2019, the Tribunal considered the allegation of air, water and soil pollution by the dairy industries in Delhi. It was alleged that solid and liquid waste releasing gaseous emissions

was generated and dumped by the dairies in Delhi into the drains, meeting the river Yamuna, resulting contamination of river Yamuna. The waste clogged the drainage system which was becoming breeding ground for mosquitoes and other insects and thus creating health hazard. Waste generated was also resulting in discharge of Ammonia and Nitrogen oxides in the air and nitrate in soil and ground water. The odour from dairies negatively impacted the air quality. Ammonia wafted into the air from manure lagoons. Gases known as volatile organic compounds were created by the huge piles of feed. The foul smell from the dairy caused migraine, severe headache and people had no option but to inhale the impure/foul air present in the atmosphere. In the light of inspection reports dated 04.12.2015 and 15.12.2015, prepared by the Animal Welfare Board of India, it was noted that there was rampant use of Schedule H drugs, oxytocin injections, syringes, plastic bottles and other veterinary drugs etc. which are disposed of improperly and in unscientific manner, in violation of Bio-medical Waste Management Rules, 2016. The dairies were not following waste management practices. There was also violation of Food Safety and Standards (Licence and Registration of Food Businesses) Regulations, 2011.

4. The Tribunal also noted various articles on the subject¹ which highlight adverse consequences on the environment due to illegal and unscientific dairy activities. It was also observed that there was

¹“Delhi is major contributor of population in Yamuna” published in “The Hindu” dated 17.04.2007, “Feeding on plastic poses high risk to lives, output of stray cattle” published in “Indian Today” dated 08.05.2017, “Serious farm population breaches rise in UK-and many go unprosecuted” published in “Guardian” dated 21.05.2017, “How growth in Dairy is affecting the environment” published in “The New York Times” dated 01.05.2015 and “Stray cows clog South Delhi roads” published in “The Times of India” dated 05.08.2012 and research papers titled “Nitrogen pollution by dairy cows and its mitigation by dietary manipulation”, “Impact of Dairy Effluent on Environment-A Environmental Science and Engineering (Subseries: Environmental Science)”, apart from other documents and photographs.

violation of various provisions of the Delhi Municipal Corporation Act, 1957.

5. After quoting the observation from the report of the Committee, the stand of the Delhi Pollution Control Committee (DPCC) that it was not concerned with the subject despite the violation being clearly acknowledged was rejected in view of statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, (Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Environment (Protection) Act, 1986 and rules framed thereunder. It was noted that though various authorities of the Delhi Government were parties and represented by Counsel, no authority came forward to take the responsibility and none of the Counsel made any suggestion for enforcement of law. In this background, the Tribunal by order dated 01.04.2019 directed the Chief Secretary of Delhi to call a meeting of all concerned and fix their accountability. The Tribunal also noted that the DPCC had failed to perform its statutory duties under the Water Act, the Air Act and the Environment (Protection) Act, 1986 (EP Act) in preventing polluting activities, prosecuting the polluters and recovering compensation for restoration of the environment from the polluters. The Tribunal also required DPCC, South Delhi Municipal Corporation (SDMC) and North Delhi Municipal Corporation (North DMC) to pay sum of Rs. 10 Lakhs each as an interim compensation and furnish a performance guarantee of Rs. 10 Lakhs each with the Central Pollution Control Board for taking necessary steps within three months for restoration of the environment. The amount could be recovered from the erring officer and polluters. The Chief Secretary, Delhi was to furnish an action taken report.

6. The matter was further reviewed on 08.07.2019 in the light of the report of the DPCC dated 03.07.2019. Commenting on the said report, this Tribunal found that DPCC was trying to avoid responsibility by taking untenable plea that only Municipal Corporations or other Departments were to monitor the pollution caused by the dairies. Accordingly, DPCC was directed to enforce its statutory obligation of closing polluting activities, prosecute the polluters and recover compensation on 'Polluter Pays' principle. **The Tribunal also directed CPCB to undertake a study and lay down appropriate guidelines for management and monitoring of environmental norms by dairies throughout country.** The observations of the Tribunal are reproduced for ready reference:

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7. We find that in spite of observations in the earlier order of this Tribunal as well as repeated orders in large number of cases, the DPCC seems to be avoiding its statutory responsibilities under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and to cover up their inaction, is passing the order of imposition of fines on other statutory bodies, without any jurisdiction. Learned Counsel for the Delhi Government as well as DPCC have not been able to show any legal authority for doing so. While the DPCC may take action on 'Polluter Pays' principle against polluting activities of any statutory body, it has no authority to recover compensation for alleged inaction by such statutory authorities. Such authorities are not authorized to enforce the Water (Prevention and Control of Pollution) Act, 1974 or Air (Prevention and Control of Pollution) Act, 1981 which DPCC itself has to enforce. Even if they have overlapping powers under other statute, the DPCC cannot avoid its obligation under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981. It is undisputed that the dairies are operating in violation of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 as already noted in the order of this Tribunal dated 01.04.2019. The DPCC is required to ensure that the polluting activities, without consent to operate, are stopped by way of prohibitory order, prosecution and

recovery of compensation which has not been done. Just as local bodies cannot fine DPCC for its utter failure, DPCC also cannot shift its onus and responsibility to local bodies and absolve from its responsibility. It has to proceed against polluters which it is avoiding to do.

8. We find that as per the circular dated 05.03.2016 issued by the MoEF&CC, the dairy industries fall under the 'Orange' category industries. Consent to operate is necessary under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. Under the Environment (Protection) Rules, Schedule-I, read with Rule-3, lays down the norms for discharge by various activities or operations. Entry 56 deals with 'dairies' (industrial units) and provides for standards of effluents and violation of such standards.

9. Faced with the above, learned Counsel for the DPCC has undertaken to withdraw the notices issued to other statutory authorities and not to indulge in such illegal activities in future.

10. We find that the action of the DPCC is inadequate. Under Section 15 of the NGT Act, 2010, this Tribunal has to deal with enforcement of statutes mentioned in Schedule-I which include Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. Such violations may also be overlapping with the other statutory violations for which concerned statutory authorities have to take action on that ground. The local bodies have the responsibilities under the SWM Rules, 2016² but on that ground, the DPCC cannot avoid its responsibility. Local bodies must perform their statutory duties.

11. In view of above, while disapproving the above illegal action of DPCC as well as its inaction, we expect the DPCC now to enforce its concerned statutory obligations by closing polluting activities, prosecuting the polluters and recovering compensation from the polluters in accordance with law and to furnish a further report to this Tribunal by e-mail at judicial-ngt@gov.in before the next date.

12. We may note that livestock is a major source of methane emissions and studies on the subject show that the problem in India is severe. Results of a recent study ³show that the Indian livestock emitted 15.3

²See Rule 3(46) read with Rule 15 of the Solid Waste Management Rules, 2016.

³ Study carried out by the Indian Institute of Technology Delhi and the Deenbandhu Chhotu Ram University of Science and Technology, Murthal in Ecotoxicology and Environmental Safety, Climate change impact of livestock CH₄ emission in India: Global Temperature change Potential (GTP) and surface temperature response, <https://www.sciencedirect.com/science/article/pii/S0147651317305766>, Volume 147, January 2018, Pages 516-522.

million tonnes of methane in 2012⁴. Enteric methane emission from Indian livestock contributed 15.1% of total global enteric methane emission. In India, contribution of enteric methane was 91.8% of the total GHG emissions, followed by manure methane (7.04%) and manure Nitrous Oxide (1.15%) in the year 2010⁵. The livestock sector in India has the potential to cause surface temperatures to surge up to 0.69 millikelvin over 20 year time period which is roughly 14 per cent of the total increase caused by the global livestock sector. Methane has a warming potential 20 times higher than carbon dioxide. Globally, livestock sector generates 65 percent of human-related nitrous oxide, which has 296 times the Global Warming Potential (GWP) of CO₂. Most of this comes from manure.⁶ While the dairy industry is covered by 'Orange category' under the circular dated 05.03.2016 issued by the MoEF&CC, no such guidelines are said to be existing for management and rearing of livestock. Needless to say that such activity have potential of causing air and water pollution as already noted in the context of Delhi. Accordingly, instead of limiting the scope of remedying the compliance of environment norms by dairies to Delhi, we consider it necessary to expand the same for the whole country. Let the CPCB undertake a study in the matter and lay down appropriate guidelines for management and monitoring of environmental norms by the dairies throughout India and furnish a report in the matter by e-mail at judicial-ngt@gov.in before the next date. The local bodies in all the States/ UTs be required to file inventory of dairies in their respective jurisdiction so that state PCB can compile such information in their respective reports furnished to CPCB."

7. Thereafter, vide order dated 24.01.2020, this Tribunal considered the action taken report filed by the DPCC that it has issued notice for closure under the Water Act and the Air Act and also directed disconnection of electricity and water supply. Show cause notice has also been issued for enforcement of the guidelines prepared by the CPCB. The local bodies have been asked to perform their duties. The Tribunal then considered the reports dated 18.08.2019 and 22.01.2020 filed by the CPCB as follows:

⁴ *Id.*

⁵ <https://www.ajas.info/journal/view.php?number=4850>.

⁶ <http://www.fao.org/newsroom/en/news/2006/1000448/index.html>

“9. CPCB has filed two reports. First report is dated 18.09.2019, to the effect that an expert group was constituted. **After discussion and interaction with the stakeholders, Guidelines for Environmental Management of Dairy Farms and Gaushalas were finalized. As per available statistics, prepared by the CPCB population of adult female bovine in the country is 13,32,71,000. Many dairy farms and gaushalas discharge the cattle dung along with wastewater into the drains, leading to clogging, which ultimately reach rivers and creates water pollution. Also, these clogged drains become breeding ground for mosquitoes, creating health hazards and odour nuisance. The dung produces many gases/compounds such as Carbon dioxide, Ammonia, Hydrogen sulphide, Methane, etc. which are emitted into the atmosphere and are responsible for degradation of air quality. The greenhouse gases, mainly Methane and Carbon dioxide, produced by dung also impact the climate. Disposal of cow/buffalo dung is the biggest challenge in dairy farms and gaushalas. However, cattle dung, if effectively utilised, can be an excellent resource of manure & energy and reduce the adverse impact on environment. The cattle dung contains many beneficial constituents which may be used as fuel source either by direct combustion or converted to biogas, soil conditioner, fertilizers, material for wall plastering, construction of granaries, livestock & fish feeding, etc. The draft Guidelines stipulate solid waste management, waste water management, air quality management, monitoring mechanism to be adopted by the local authorities/ Corporations/ PCBs/ PCCs. The guidelines also prescribed a Performa for monitoring by the local authorities/Corporations for preparing inventories of dairies farm and gaushala.**

10. **Second report dated 22.01.2020 is to the effect that the inventory Performa was circulated to the PCBs/PCCs to which response was received from 31 States/UTs. No response was received from Andhra Pradesh, Maharashtra, Manipur, Uttarakhand and Delhi. 20 States provided the details while 11 States/UTs have yet to provide details. Observations and conclusion in the report are :-**

“3.0 Observations:

Following are the observations based on the information as received from SPCBs/PCCs about dairies and gaushalas operating in the States/UTs:

- i. The total number of dairies operating in 19 States/UTs is 93,033 (ninety three thousand**

and the EP Act are special laws dealing with the environment which do not stand excluded by application of other Municipal Laws. Regulatory regime of the Water Act, the Air and the EP Act is required to be followed and enforced by the State PCBs/PCCs, independent of the powers of local bodies to enforce the municipal laws. Precautionary and Sustainable Development principles are over arching principles which are not only enforceable by this Tribunal under Section 20 of the National Green Tribunal Act, 2010, but are also part of the Article 21 of the Constitution, which is a Fundamental Right, creating reciprocal obligation on all State authorities. **Thus, the Guidelines prepared by the CPCB need to be revised by specifying that State Boards/Committees must enforce 'consent mechanism' and, in particular, follow an appropriate siting policy in the light of the carrying capacity of the area for commercial dairy activities, having potential for air and water pollution. Dairy activities have been categorized as 'Orange' category as per the laid down guidelines.**

15. The second report relating to analysis of action taken by all States/UTs is incomplete for want of data. For this purpose, we direct that all the local bodies may furnish relevant information to the State PCBs within one month from today. Private operators, including cooperative societies or other entities, not falling within the jurisdiction of Local Bodies, may also furnish the requisite information to the State PCBs within the same time. **The State PCBs may, apart from compiling information and forwarding the same to the CPCB, perform their statutory obligations under the Water Act, the Air Act and the EP Act for enforcing environmental norms by such dairy activities with a view to protect the environment and the public health. The State PCBs/PCCs may publish an appropriate notice on the subject within two weeks from today requiring furnish of information and also adopting all necessary safeguards in the matter. Thereafter, the State PCBs/PCCs may furnish factual and action taken reports in the matter to the CPCB latest by 30.04.2020. CPCB may compile the data received and file a comprehensive report before this Tribunal by e-mail at judicial-ngt@gov.in before the next date.**

A copy of this order be forwarded to CPCB, SPCBs/ PCCs, Chief Secretaries of all the States/UTs. The SPCBs/PCCS may forward a copy of this order to all the local bodies in their respective jurisdiction within one week from today.

Since the issue being dealt with is an issue in rem and enforcement is left to the statutory bodies, we do not find it necessary to consider individual matters in these proceedings which may be dealt with by the concerned

statutory authorities in accordance with law.⁷ Accordingly, the private parties will stand deleted from the memo of parties.”

(emphasis supplied)

8. Accordingly, the CPCB has filed a status report on 12.05.2020 in the light of recommendations of Expert Group recommending issuance of guidelines for Environment Management of Dairy Farms and Gaushalas. Apart from the draft guidelines annexed to the report, CPCB has also furnished status of inventory of Dairy Farms and Gaushalas in compliance of Hon'ble NGT order. The report states that except Manipur and Delhi, response has been received from 34 States/UTs. 28 States/UTs have provided the details, while six States are in the process. The observations of CPCB in this regard are:

- “i. The total number of dairies operating in 26 States/UTs are 2,73,437 (two lakhs, seventy-three thousand, four hundred & thirty-seven) and total number of animals in these dairies are 21,34,018 (twenty-one lakhs, thirty-four thousand & eighteen).*
- ii. There are 2793 dairy colonies/clusters in 26 States/UTs.*
- iii. The total number of gaushalas operating in 28 States/UTs are 5,964 and total number of animals in these gaushalas are 4,36,727.*
- iv. The total amount of dung generated/produced by animals in dairies and gaushalas in the 28 States/UTs are 2,60,922 tons/day and 1,49,945 tons/day, respectively.*
- v. In general, the methods used in States/UTs for disposal/utilization of cattle dung include using dung as manure in fields, vermi-composting, biogas generation, fish feed, fuel for cremation etc.*

⁷ In *M.C Mehta Vs. Union of India & Ors.*, (2001) 3 SCC 756 - Para 8, the Hon'ble Supreme Court observed that while issuing a direction in rem, all affected individuals need not be heard. (The said case concerned shifting of diesel to CNG by all the bus operators and plea that all the bus operators were required to be individually heard was rejected.)

- vi. *SPCBs/PCCs have not provided the information about disposal/utilization of wastewater, however, Chhattisgarh, Kerala and Mizoram states that wastewater being used for fodder cultivation.*
- vii. *The area-wise inventory of dairies and gaushalas in the States/UTs are provided at Annexure-V. The dairies in urban, peri-urban and rural are 6%, 3% and 91% respectively whereas the animals in them are 12%, 4% and 84 % respectively. The gaushalas in urban, peri-urban and rural area are 47%, 5% and 48% respectively whereas animals in them are 23%, 13% and 64% respectively."*

9. With regard to direction to State PCBs/PCCs to issue a public notice with a view to protect environment, it is stated that out of 36 States/UTs, 12 have published such notices. Conclusion in the report are:

"4. Conclusion:

- i. ***The local authorities/corporations should carry out inventory of all the dairy farms and gaushalas located in their jurisdiction in the prescribed performa. The same should be updated and shared with the concerned SPCB/PCC on annual basis (calendar year wise).***
- ii. ***All the dairy farms and gaushalas should be registered with the local bodies/corporations preferably through online mode. The local bodies/corporations should display the same at their websites.***
- iii. ***The dairy farms (having animal population of 10 & above animals) and gaushalas should obtain consent to establish and consent to operate under Water Act, 1974 as well as Air Act, 1981 from the concerned SPCBs/PCCs.***
- iv. ***The local bodies/ SPCBs/ PCCs/ Gram Panchayat in the States/UTs shall ensure that dairies and gaushalas operating should follow the "Guidelines for Environmental Management of Dairy Farms and Gaushalas."***

10. At this stage, we may refer to the salient features of the information compiled by the CPCB and the proposed guidelines. Statistics provided is as follows:

“The dairies/gaushalas may be categorised on the basis of nos. of animals (adult cows & female buffaloes) in a dairy/gaushala i.e. Category-I (upto 25 animals), Category-II (26-50 animals), Category-III (51-75 animals), Category-IV (76-100 animals) and Category-V (above 100 animals).

As per the Livestock Census, carried out by the Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture and Farmers Welfare, the year-wise livestock population of adult female bovine is as follow:

Sl. No.	Year	Adult Cows	Adult Female Buffaloes	Total Cows & Buffaloes
1	195	5,44,00,00	2,10,00,000	7,54,00,000
2	195	4,73,00,00	2,17,00,000	6,90,00,000
3	196	5,10,00,00	2,43,00,000	7,53,00,000
4	196	5,18,00,00	2,54,00,000	7,72,00,000
5	197	5,34,00,00	2,86,00,000	8,20,00,000
6	197	5,46,00,00	3,13,00,000	8,59,00,000
7	198	5,92,00,00	3,25,00,000	9,17,00,000
8	198	6,21,00,00	3,91,00,000	10,12,00,000
9	199	6,44,00,00	4,38,00,000	10,82,00,000
10	199	6,44,00,00	4,68,00,000	11,12,00,000
11	200	6,45,00,00	5,10,00,000	11,55,00,000
12	200	7,30,00,00	5,45,00,000	12,75,00,000
13	201	7,67,00,00	5,66,00,000	13,33,00,000
14	2019	8,14,00,000	5,50,00,000	13,64,00,000

Also, as per the Livestock Census carried out by the Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture and Farmers Welfare, in 2019, the state-wise total population of adult female bovine is as follow:

Sl. No.	State/UT	Adult Cows	Adult Female Buffaloes	Total Cows & Buffaloes
1.	Andhra Pradesh	19,80,000	31,61,000	51,41,000
2.	Arunachal	1,02,000	2,000	1,04,000
3.	Assam	38,18,000	1,38,000	39,56,000
4.	Bihar	71,47,000	36,70,000	1,08,17,000
5.	Chhattisgarh	33,79,000	3,83,000	37,62,000
6.	Goa	30,000	14,000	44,000
7.	Gujarat	44,94,000	56,71,000	1,01,65,000
8.	Haryana	9,45,000	21,00,000	30,45,000
9.	Himachal	9,32,000	3,69,000	13,01,000

10	Jammu &	12,31,000	4,02,000	16,33,000
11	Jharkhand	34,58,000	4,35,000	38,93,000
12	Karnataka	40,63,000	16,71,000	57,34,000
13	Kerala	6,90,000	8,000	6,98,000
14	Madhya Pradesh	73,42,000	52,96,000	1,26,38,000
15	Maharashtra	56,99,000	33,19,000	90,18,000
16	Manipur	77,000	10,000	87,000
17	Meghalaya	3,33,000	3,000	3,36,000
18	Mizoram	21,000	1,000	22,000
19	Nagaland	21,000	3,000	24,000
20	Odisha	31,94,000	1,52,000	33,46,000
21	Punjab	15,25,000	22,76,000	38,01,000
22	Rajasthan	68,19,000	70,15,000	1,38,34,000
23	Sikkim	68,000	0	68,000
24	Tamil Nadu	48,20,000	2,61,000	50,81,000
25	Telangana	14,93,000	21,86,000	36,79,000
26	Tripura	3,03,000	3,000	3,06,000
27	Uttarakhand	8,22,000	4,96,000	13,18,000
28	Uttar Pradesh	92,07,000	1,57,32,000	2,49,39,000
29	West Bengal	72,73,000	1,93,000	74,66,000
30	A & N Islands	16,000	1,000	17,000
31	Chandigarh	8,000	8,000	16,000
32	Dadar & Nagar	4,000	1,000	5,000
33	Daman & Diu	1,000	0	1,000
34	Delhi	Not available	Not available	Not available
35	Lakshadweep	1,000	0	1,000
36	Puducherry	37,000	2,000	39,000
37	All India	8,13,53,000	5,49,82,000	13,63,35,000

11. The report mentions environmental issues as follows:

“2. Environmental Issues in Dairy Farms and Gaushalas

The major environmental issues of dairy farms and gaushalas are discharges of dung and urinal wastewater. The poor handling of dung and wastewater causes odour problem also. A Bovine animal, on an average, weigh 400 kg and discharges 15-20 kg/day of dung and 15-20 litres/day of urine.

Many dairy farms and gaushalas discharge the cattle dung along with wastewater into the drains, leading to clogging, which ultimately reach to rivers and create water pollution. Also, these clogged drains become breeding ground for mosquitoes creating health hazards and odour nuisance. The dung produces many gases/compounds such as carbon dioxide, ammonia, hydrogen sulphide, methane, etc. which emitted into the atmosphere and responsible for odour issue.

The disposal of cow/buffalo dung is the biggest challenge in dairy farms and gaushalas. However, cattle dung, if effectively utilised, can be a resource of manure & energy. The cattle dung contains many beneficial constituents which may be used as fuel source either by direct combustion (dung wood) or converted to biogas, soil conditioner, fertilizers, material for wall plastering, construction of granaries, livestock & fish feeding, etc.”

(emphasis supplied)

12. The guidelines are:

“3. Guidelines for Waste Management in Dairy Farms and Gaushalas:

3.1 Solid Waste Management

The solid wastes produced from dairy farms and gaushalas are basically organic in nature, consisting of cattle dung, feed residue, bedding, etc. The waste produced is not hazardous in nature but its proper handling and disposal needs attention. The guidelines for the management of solid wastes are as follow:

- i. Dairies and gaushalas should collect dung from the floor of the shed at regular interval, so as to keep the floor clean. The surrounding areas should also be cleaned regularly to prevent obnoxious smell in the area.*
- ii. Dairy premises and its surrounding areas should be properly sanitized and disinfected, e.g. by sprinkling crushed lime, regularly.*
- iii. The solid wastes should be collected & stored properly for its treatment.*
- iv. Dairies and gaushalas should dispose the biomedical wastes (vaccines, vials, medicines, syringes, etc.) as per the provisions of "Biomedical Waste Management Rules, 2016".*
- v. Dairies and gaushalas should not wash dung & fodder residue etc. into drains in order to avoid clogging of drains. The local bodies/corporations/SPCBs should ensure that untreated wastes are not discharged outside the dairy premises.*
- vi. Dairies and gaushalas should have adequate infrastructure to ensure proper handling, treatment and disposal of solid wastes and wastewater. They may set-up individual or common treatment facilities wherein cluster. The local government bodies/corporations/SPCBs should facilitate the dairies/gaushalas/ entrepreneurs/ NGOs in setting up of individual or common treatment facilities.*

vii. *vii. The following methods for disposal/ utilisation of solid wastes (dung) may be adopted:*

- a. Composting/Vermicomposting: *Composting is a manure management practice to reduce the impact on the environment. Composting is the biological decomposition and stabilization of organic material. The process produces a final product that is stable, free of pathogens, reduced odours and can be applied on the land. Vermicomposting is the method of preparing compost with the use of earthworms that enriches soil quality by improving its physicochemical and biological properties. It is becoming popular as a major component of organic farming system.*
- b. Biogas/Compressed biogas (CBG) production (anaerobic digestion): *Biogas plants are the best way to handle the dung waste. Biogas is generated in the process of biodegradation of organic materials under anaerobic conditions which may be utilised for cooking and power generation. The Biogas plant provides the digested organic manure for crops. Biogas can be processed and filled in cylinders. The bio-gas may be further purified to remove hydrogen sulphide (H₂S), carbon dioxide (CO₂) & water vapour and compressed (known as Compressed Bio Gas, CBG) which has methane (CH₄) content of more than 90% as per BIS standard IS 16087:2016. CBG has calorific value and other properties similar to CNG and hence can be utilized as green renewable fuel as replacement of CNG in automotive, industrial and commercial areas.*
- c. Manufacture of dung wood to be used as fuel: *The cattle dung can be used as fuel as a replacement of firewood. The cattle dung can be dewatered and converted to value added products such as logs, powder etc. by mechanized/semi-mechanized machines. This option can be easily adopted at dairy farms and gaushalas in economical manner, creating substantial value & no damage to the environment.*

3.2 Wastewater Management

The guidelines for the management of wastewater are as follow:

- i. *Dairies and gaushalas should take necessary steps for the judicious usage of water for drinking & bathing of cattles and other services including floor cleaning, however, the same should not exceed 150 litres/day/cattle.*

- ii. *Dairies and gaushalas should ensure that the wastewater, being discharged, is adequately treated so as to meet the standards as prescribed by SPCBs/PCCs.*
- iii. *Dairies and gaushalas should ensure that the wastewater does not percolate through ground and pollutes the groundwater. The flooring of the shed should be properly paved (impervious) with a wastewater collection system. However, the floor should not be slippery in order to ensure safety of animals.*

3.3 Air Quality Management

The guidelines for the management of air quality/emissions (includes gaseous emissions, odour and dust) from dairy farms and gaushalas are as follow:

- i. *The animal housing should be adequately ventilated allowing sufficient supply of fresh air to remove humidity, dissipate heat and prevent build-up of gases such as methane, carbon dioxide, ammonia, etc.*
- ii. *Dairy farms and gaushalas should follow good housekeeping practices like maintaining proper sanitary conditions, protecting dung from unwanted pests/insects in order to minimize odour nuisance.*
- iii. *The floor, feeding, water and air spaces available for each animal should be adequate for standing, resting, loafing, movement, feeding, watering and ventilation. The space requirements should be provided as per the standards prescribed by the Bureau of India Standards (BIS).*
- iv. *Dairy farms and gaushalas should improve/modify the quality and dosage of feed/forage/supplements in order to reduce enteric methane generations from livestock. It is beneficial to animal health/nutrition and reduced impact on environment. They should obtain ration advisory for the same from any of the agricultural institutes/ departments like Krishi Vigyan Kendra, State Dairy Department, Animal Husbandry Department, NDRI, NDDB, etc.*
- v. *Dairy farms and gaushalas should plant trees or develop green belts to provide a barrier against the spread of foul smell or noise originating from them.*

4. Siting Policy:

The siting policy for dairy farms and gaushalas are as follow:

- i. **Dairy farms and gaushalas should be located outside city/village boundaries and away from residential dwellings, hospitals, schools.**
- ii. **Dairy farms and gaushalas should not be located in flood prone areas, subject to flooding at 1-in-25-year or more frequent levels in order to avoid contamination of water bodies.**
- iii. **Dairy farms and gaushalas should not be located in areas with shallow groundwater depth of about 10 to 12 feet and in particular in alluvium areas in order to avoid groundwater contamination.**
- iv. **Dairy farms and gaushalas may be allowed to follow minimum distance criteria given below which may be subject to vary with the local conditions:**
 - a. **National and State Highways: 200 meters from National Highway and 100 meters from State Highway in order to avoid odour nuisance and road accident caused due to cattle.**
 - b. **Major drinking water reservoir on catchment side: 500 meters in order to avoid water contamination due to leakages/spillages from the dairy farms and gaushalas.**
 - c. **Drinking water source like wells, summer storage tanks, other tanks (drinking water): 100 meters in order to avoid water contamination.**
 - d. **Major watercourses like River and Lake: 500 meters in order to avoid water contamination.**
 - e. **Canals: 200 meters in order to avoid water contamination.**

5. Regulatory/ Monitoring Mechanism:

- i. **The local authorities/corporations should carry out inventory of all the dairy farms and gaushalas located in their jurisdiction in the prescribed performa given at Annexure-II. The same should be updated and shared with the concerned SPCB/PCC on annual basis (calendar year wise).**
- ii. **All the dairy farms and gaushalas should be registered with the local bodies/corporations preferably through online mode. The local bodies/corporations should display the same at their websites.**

- iii. **The dairy farms (having animal population of 10 & above animals) and gaushalas should obtain consent to establish and consent to operate under Water Act, 1974 as well as Air Act, 1981 from the concerned SPCBs/PCCs.**
- iv. **SPCBs/PCCs should provide training and consultation to the Gram Panchayat for implementation of guidelines in their jurisdiction. Gram Panchayat should ensure the implementation of the guidelines by dairy farms and gaushalas falling under their jurisdiction for handling and management of the wastes.**
- v. **The concerned local bodies/corporations/SPCBs/PCCs should monitor the dairy farms and gaushalas on regular basis to ensure the proper disposal of cattle dung and wastewater to check compliance of environmental norms. The SPCBs/PCCs will considered the carrying capacity of the surroundings while allowing a new establishment and laying down the environmental norms.**
- vi. **Hands on practical trainings on environment/waste management & treatment technologies, scientific feeding for enteric methane reduction, waste to wealth management programme, etc. should be provided to dairy workers/entrepreneurs by the local bodies/SPCBs/PCCs on regular interval.**

(emphasis supplied)

13. We are of the view that the guidelines proposed may be finalized and enforced as per the mandate of the statute which will bind the States PCBs/PCCs. Compliance thereof may be monitored by the CPCB. The CPCB may evolve appropriate monitoring mechanism in this regard, including a provision for audit of compliance atleast once in six months.

14. With regard to siting policy, atleast minimum distance must be specified from habitations, water bodies, etc. as well as *inter-se* distance of such establishments, consistent with the carrying capacity of the area, as may be necessary for protection of

environment. Needless to say that any violation of environment norms under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 has to be dealt with by the concerned PCB/PCC/Local Body by way of stopping polluting activities, recovering compensation and initiating prosecution. It will be appropriate that broad and indicative compensation regime is expressly specified by the CPCB. While local bodies may undertake the exercise of preparing inventory as per applicable Municipal law, the State PCBs/PCCs must also not avoid their responsibility of enforcing the mandate of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

15. Guidelines may be finalized and issued by the CPCB within one month from today. Compliance reports be sought from the State PCBs/PCCs within two months thereafter. A consolidated report based on the information received may be filed by the CPCB on or before 30.09.2020. Report be sent by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image/PDF.

16. Since CPCB is to monitor the issue and furnish consolidated report, it is not necessary for individual local bodies or PCBs/PCCs to appear before this Tribunal.

List for further consideration on 08.10.2020.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

May 20, 2020
O.A. No. 46/2018
DV



Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 46/2018

(With report dated 01.10.2020)

Nuggehalli Jayasimha

Applicant

Versus

Government of NCT of Delhi

Respondent

Date of hearing: 08.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Raj Panjwani, Senior Advocate with Mr. Aditya Singla,
Advocate

Respondent: Mr. Aman Bhalla, Advocate for CPCB

ORDER

1. The issue for consideration is the enforcement of environmental norms in functioning of dairies. The Tribunal earlier considered the grievance that unscientific management of solid and liquid waste from such dairies, by dumping such waste in drains or in open generates Ammonia and Nitrogen oxides in the air and nitrate in soil and ground water. The odour from dairies negatively impacts the air quality. Ammonia is wafted into the air from manure lagoons. Gases known as volatile organic compounds are created by the huge piles of feed. The foul smell from the dairy causes migraine and headache. People have no option but to inhale the impure/foul air present in the atmosphere. In the light of inspection reports dated 04.12.2015 and 15.12.2015,

prepared by the Animal Welfare Board of India, it was noted that there was rampant use of Schedule H drugs, oxytocin injections, syringes, plastic bottles and other veterinary drugs etc. which are disposed of improperly and in unscientific manner, in violation of Bio-medical Waste Management Rules, 2016. The dairies were not following waste management practices. There was violation of Food Safety and Standards (Licence and Registration of Food Businesses) Regulations, 2011.

2. The Tribunal issued directions for enforcement of norms against which *Civil Appeal No. 7285/2019*, filed by the SDMC, was dismissed by the Hon'ble Supreme Court. The Tribunal referred to the judgement of the Delhi High Court in *Common Cause v. UOI, (2007 SCC Online Del 863)*, wherein Municipal Corporation of Delhi was directed to formulate a licensing policy under Section 417 of the Delhi Municipal Corporation Act, 1957. The High Court observed that the dairies need to be relocated on account of hazard of stray cattle on the roads and trauma faced by the cattle in the cities on account of traffic. Reference was also made to the filth, squalor and outbreak of diseases. As a short-term measure, preventive steps were required for hygiene and protection of environment. Our attention has been drawn to a policy framed by the MCD on 17.07.2010 prohibiting keeping of cattle in any premises without license. Authorized dairy areas were specified and standards and measures were also specified. Reference was also been made to the report of an Expert Committee constituted by the Indian Council for Agricultural Research, Government of India, dated 01.11.2016 under the Chairmanship of Dr. Arjava Sharma, Director, ICARNBAGR, Karnal. The report dealt with sustainable management of unproductive cattle. The report specifies land requirement, feeding requirement, labour requirement and health management. The Tribunal also noted various

articles on the subject¹ which highlight adverse consequences on the environment due to illegal and unscientific dairy activities. It was also observed that there was violation of various provisions of the Delhi Municipal Corporation Act, 1957.

3. The stand of the Delhi Pollution Control Committee (DPCC) that it was not concerned with the subject was rejected in view of statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, (Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Environment (Protection) Act, 1986 and rules framed thereunder.

4. The matter was last considered on 20.05.2020 in the light of report of the CPCB dated 12.05.2020 giving relevant data and compliance status. The CPCB also mentioned draft of the Guidelines issued for enforcement of the environmental norms. The Tribunal observed:-

*“13. We are of the view that the guidelines proposed may be finalized and enforced as per the mandate of the statute which will bind the States PCBs/PCCs. Compliance thereof may be monitored by the CPCB. **The CPCB may evolve appropriate monitoring mechanism in this regard, including a provision for audit of compliance at least once in six months.***

*14. **With regard to siting policy, at least minimum distance must be specified from habitations, water bodies, etc. as well as inter-se distance of such establishments, consistent with the carrying capacity of the area, as may be necessary for protection of environment.** Needless to say that any violation of environment norms under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981*

¹ “Delhi is major contributor of population in Yamuna” published in “The Hindu” dated 17.04.2007, “Feeding on plastic poses high risk to lives, output of stray cattle” published in “Indian Today” dated 08.05.2017, “Serious farm population breaches rise in UK-and many go unprosecuted” published in “Guardian” dated 21.05.2017, “How growth in Dairy is affecting the environment” published in “The New York Times” dated 01.05.2015 and “Stray cows clog South Delhi roads” published in “The Times of India” dated 05.08.2012 and research papers titled “Nitrogen pollution by dairy cows and its mitigation by dietary manipulation”, “Impact of Dairy Effluent on Environment-A Environmental Science and Engineering (Subseries: Environmental Science)”, apart from other documents and photographs.

*and the Environment (Protection) Act, 1986 has to be dealt with by the concerned PCB/PCC/Local Body by way of stopping polluting activities, recovering compensation and initiating prosecution. **It will be appropriate that broad and indicative compensation regime is expressly specified by the CPCB. While local bodies may undertake the exercise of preparing inventory as per applicable Municipal law, the State PCBs/PCCs must also not avoid their responsibility of enforcing the mandate of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.***

15. *Guidelines may be finalized and issued by the CPCB within one month from today. Compliance reports be sought from the State PCBs/PCCs within two months thereafter. A consolidated report based on the information received may be filed by the CPCB on or before 30.09.2020. Report be sent by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image/PDF.”*

5. Accordingly, a further report dated 01.10.2020 has been filed by the CPCB to the effect that the Guidelines have been finalized on 05.06.2020. The same have been uploaded on the website and circulated to all the State PCBs/PCCs. The Guidelines deal with solid waste management, water waste management, air quality management, siting policy and regulatory/monitoring mechanism. We consider it appropriate to quote extracts dealing with the Siting Policy and Regulatory/Monitoring mechanism:

“4. Siting Policy:

The siting criteria will be applicable for new establishment, however, the existing establishments should take appropriate pollution control measures as per the guidelines. The siting policy for dairy farms and gaushalas are as follow:

- i. *Dairy farms and gaushalas should be located outside city/village boundaries, atleast 200 meters away from residential dwellings and 500 meters away from hospitals & schools.*
- ii. *Dairy farms and gaushalas should not be located in flood prone areas, subject to flooding at 1-in-25-year or more frequent levels in order to avoid contamination of water bodies.*

- iii. Dairy farms and gaushalas should not be located in areas with shallow groundwater depth of about 10 to 12 feet and in particular in alluvium areas in order to avoid groundwater contamination.
- iv. Dairy farms and gaushalas may be allowed to follow minimum distance criteria given below which may be subject to vary with the local conditions:
 - a. National and State Highways: 200 meters from National Highway and 100 meters from State Highway in order to avoid odour nuisance and road accident caused due to cattle.
 - b. Major drinking water reservoir on catchment side: 500 meters in order to avoid water contamination due to leakages/spillages from the dairy farms and gaushalas.
 - c. Drinking water source like wells, summer storage tanks, other tanks (drinking water): 100 meters in order to avoid water contamination.
 - d. Major watercourses like River and Lake: 500 meters in order to avoid water contamination.
 - e. Canals: 200 meters in order to avoid water contamination.
 - f. Inter-se distance between two establishments should be atleast 5 meters for ventilation. Each unit should provide atleast 2.5 meters from each side and develop the green belt.

5. Regulatory/ Monitoring Mechanism:

- i. **The local authorities/corporations should carry out inventory of the dairy farms and gaushalas** located in their jurisdiction in the modified inventory proforma given at **Annexure-A**. The same should be updated and shared with the concerned SPCB/PCC on annual basis (calendar year wise).
- ii. **The local bodies/municipal corporations shall publish a public notice in newspapers and on their website for registration of dairy farms and gaushalas as per municipal law.** The registration may be done preferably through online mode and same may be displayed at their websites.
- iii. **The SPCBs/PCCs shall publish a public notice for dairy farms and gaushalas to obtain consent to establish and consent to operate under Water Act, 1974 as well as Air Act, 1981 as per the categorization of industries.** CPCB issued directions on 10.07.2020 under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 regarding classification of Dairy Farms and Gaushalas into Orange and Green Category, respectively.

- v. **The SPCBs/PCCs/local bodies/municipal corporations shall upload the environmental guidelines and Form-A for compliance status of environmental guidelines on their website and also circulate to all the dairy farms and gaushalas.** The compiled status of compliance in the form of report shall be submitted once in six months by SPCBs/PCCs to CPCB for Audit purpose. The concerned SPCBs/PCCs/local bodies/corporations should monitor the dairy farms and gaushalas on regular basis to ensure the proper disposal of cattle dung and wastewater to check compliance of environmental norms. The SPCBs/PCCs will considered the carrying capacity of the surroundings while allowing a new establishment and laying down the environmental norms.
- vi. **The SPCBs/PCCs shall carry out environmental audit of at least 2 dairy farms and 2 gaushalas, randomly selected from each district of the state/UT and submit the compliance and action taken report to CPCB on half yearly basis.**
- vii. CPCB shall carry out environmental auditing of 4 dairy farms and 4 gaushalas in each state/UT, randomly selected based on the information received from SPCBs/PCCs on annual basis.
- viii. In case of any violation of environmental norms under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and Environmental (Protect) Act, 1986 by dairy farms and gaushalas, **the concerned SPCBs/PCCs should impose environmental compensation as per the CPCB methodology for "Environmental Compensation to be levied on Industrial Units",** for damaging the environment and in order to stop polluting activity and initiate prosecution for repeatedly polluting units.
- ix. SPCBs/PCCs should provide training and consultation to the Gram Panchayat for implementation of guidelines in their jurisdiction. Gram Panchayat should ensure the implementation of the guidelines by dairy farms and gaushalas falling under their jurisdiction for handling and management of the wastes.
- x. Hands on practical trainings on environment/waste management & treatment technologies, scientific feeding for enteric methane reduction, waste to wealth management programme, etc. should be provided to dairy workers/entrepreneurs by the local bodies/SPCBs/PCCs on regular interval.”

6. Shri Raj Panjwani, learned Senior counsel appearing for the applicant has made some pertinent observations and submissions about

the report contained in the written note filed. The CPCB may consider the same and if necessary, also have oral interaction with Shri. Panjwani on telephone/video conference, as agreed to by him. In the light thereof, suitable changes may be made and either the Guidelines may be suitably revised considering all the points or a corrigendum may be issued. This exercise may be completed within one month. Thereafter, the CPCB may forward the finalized Guidelines for compliance to the Chief Secretaries of all the State/UTs and the State PCBs/PCCs. The State PCB/PCCs and all other statutory authorities may strictly follow the Guidelines and take remedial action wherever any violation comes to the notice of such authorities. The CPCB may also develop an App, if not already done, for redressal of any grievances relating to violation of such norms and such App may be circulated to the general public. The CPCB may also monitor this aspect from time to time.

The Application is disposed of.

A copy of this order be sent to the CPCB by email for compliance.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

October 08, 2020
Original Application No. 46/2018
AK

2021 SCC OnLine SC 897

In the Supreme Court of India
(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

Civil Appeal Nos. 12122-12123 of 2018
Municipal Corporation of Greater Mumbai ... Appellant(s);
Versus
Ankita Sinha and Others ... Respondent(s).

With

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

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal
No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

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

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

“Estragon : Let's go.

Vladimir : We can't.

Estragon : Why not?

Vladimir : We're waiting for Godot.”¹

2. Leave granted in the Special Leave Petitions.

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

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

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

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

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

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

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

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

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

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered v. Dharminder Bhojra* wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus. Section 19(25)

conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore v. Union of India*³, opined on behalf of a Division Bench that,

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

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak v. Achyut Kashinath*⁴, observed as under:—

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

14. The second limb of contention is that the Act is applicable to 'disputes' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara v. Rajendra Singh Bhandari*⁵ wherein the term 'substantial question relating to environment' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

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

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

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

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

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

'Dispute.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'

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

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*⁶ Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

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

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

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

'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England, Vol. 9, p. 349*]'."

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL [BSNL v. TRAI, [(2014) 3 SCC 222]*, we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests, [2014 SCC OnLine NGT 6860]* must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

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

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

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

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

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

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

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

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

“Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar v. Union*

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."²

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

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

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

6. In view of the foregoing paragraphs, a need has been felt to establish a

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

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

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

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

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

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

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

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

"When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.

It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds : a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

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

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. v. State of Bihar*⁸,

"...the office of all judges is to make such construction as shall suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

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

'A purposive construction of an enactment is one which gives effect to the legislative purpose by—

- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
- (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

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

'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

...

Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'.⁹

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co. v. Ryan*, and the same is taken as a lodestar in our quest,

"the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"¹⁰.

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.¹¹ The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

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

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

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

40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to

the environmental principles and even hauling up authorities for inaction, when need be.

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

42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

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

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum v. UOI*¹²; *M.C. Mehta v. UOI*¹³ etc.]

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

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

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

"The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

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

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*¹⁴, highlighted the NGT's role in the context, in the following words:—

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

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

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

VI EXERCISE OF SUO MOTU POWER BY NGT

51. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

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

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

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

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

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

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri v. DDA*¹⁶ was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of 'Merits Review' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

"503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

56. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

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

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

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

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

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

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya v. All Dimasa Students Union*¹⁸, fittingly observed thus:—

"163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT* [*L. Hirday Narain v. CIT*, [(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14 : (SCC p. 359)

"14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen."

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

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

"The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."¹⁹

VIII. THE SUI GENERIS ROLE OF NGT

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

"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 arbitrate is entrusted acts *sui generis*, that is, on its own and not under any law."

64. In *DG Nhai v. Aam Aadmi Lokmanch*²¹, Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

"38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

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

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

65. 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.

66. 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.

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

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

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

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

"14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose : Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

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

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

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

the NGT is required to pass "award" and "order" and the statute repeatedly uses the word "decision". Therefore, it is appropriate to correlate the word "decision" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab v. Shamlal Murar*²² has so correctly prioritized the substantive rights and observed succinctly,

"8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

75. While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10 of the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise²³ has expounded on the proactive role of the authorities in the following passage:—

"Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."¹⁶ The precautionary foundation of *Vorsorgeprinzip* has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies."

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

78. As earlier seen, S.20 of the NGT Act which includes the term "decision", in addition to "order" and "award", also require the Tribunal to apply the '*Precautionary Principle*' and the statutory mandate being relevant is extracted:—

"20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

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

prevent and attack the causes of environmental degradation"²⁴. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, '*The Nature of the Judicial Process*', stated thus,

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

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

XI. ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.²⁵ Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

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

"Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."²⁶

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

"Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

whereas the people who reside there do little or nothing to harm their community."²⁷

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

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

"The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."²⁸

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the '*Blindfold of Lady Justice*', which symbolizes "the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."²⁹ The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights³⁰, liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.³¹

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.³² Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar v. State of Bihar*, this Court explicitly held the following,

"Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."³³

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the '*Absolute Liability Principle*'³⁴ by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

mechanisms in this sphere have been created, on account of this Court's initiative.

"The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."³⁵

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.³⁶ There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the 'at risk' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.³⁷

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

"The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.

...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."³⁸

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

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority v. Central Empowered Committee*³⁹ so succinctly said that,

"40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are *sui generis*. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

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

"With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade."⁴⁰

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

X. CONCLUSION:

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

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

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists⁴¹ with many countries declaring climate emergencies and many others being urged to follow suit⁴².

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

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

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

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 *servicing the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

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

104. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

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

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

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

108. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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

² (2013) 15 SCC 341

³ (2008) 1 SCC 125

⁴ (2011) 9 SCC 541

⁵ (2018) 11 SCC 734

⁶ (2019) 19 SCC 479

⁷ Chapter II, 186th Law Commission Report.

⁸ (1955) 2 SCR 603; AIR 1955 SC 661

⁹ 47 Columbia Law Review 527

¹⁰ 293 US 388 (1935) (dissenting)

¹¹ *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279.

¹² (1996) 5 SCC 647

¹³ (1997) 2 SCC 353

¹⁴ (2012) 8 SCC 326

¹⁵ (2019) 18 SCC 494

¹⁶ 2021 SCC OnLine SC 7.

¹⁷ (1999) 2 SCC 718

¹⁸ (2019) 8 SCC 177

¹⁹ GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall? *Asian Journal of Law and Society*, 7(1), 85-126.

²⁰ (1999) 2 SCC 131

²¹ 2020 SCC OnLine SC 572

²² (1976) 1 SCC 719

²³ Scott La Franchi, *Surveying the Precautionary Principle's Ongoing Global Development : The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Env'tl. Aff. L. Rev. 679 (2005)

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

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

²⁶ Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. *Environmental Law*, 27(2), 327-342.

²⁷ Jeff Todd, *A "Sense of Equity" in Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

²⁸ *Supra* Note 26.

²⁹ *Ibid*

³⁰ *Rural Litigation And Entitlement Kendra v. State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613, *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577

³¹ See M.A.A. Baig, *Environmental Law And Justice*(1996). Domenico Amirante, *Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India* (2012). M.K. Ramesh, *Environmental Justice : Courts And Beyond*, Indian Jo. Of Env'tl. L. 20(2002).

³² Maheshwara Swamy, N. *Law Relating to Environmental Pollution and Protection*. India, Thompson Reuters, Vol.I, Ed.5.

³³ (1991) 1 SCC 74.

³⁴ *M.C. Mehta v. Union of India*, [(1987) 1 SCC 395.

³⁵ Rajamani, Lavanya. 2007. *Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*. *Journal of Environmental Law*

³⁶ *Supra*, Note 19.

³⁷ *M.C. Mehta v. Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action v. Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II v. M.V. Nayudu*, (2001) 2 SCC 62.

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

³⁹ (2021) 4 SCC 309

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

⁴¹ Indian Network for Climate Change Assessment, *Climate Change and India : A 4X4 Assessment - A sectoral and regional analysis for 2030s*, Ministry of Environment and Forests, Government of India, 16 November 2010

⁴² Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.

⁴³ *Supra* Note 23.

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