NOTARY
ADV.ULKA BABASAHEB INGAWALE
PUNE
MAHARASHTRA
REGN. NO. 15924
EXPIRY DATE 12/12/2029
GOVERNMENT OF INDIA

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

ORIGINAL APPLICATION NO. 61 OF 2025

IN THE MATTER OF:

SUPREME PALLACIO CO-OPERATIVE HOUSING SOCIETY ... APPLICANT

VERSUS

STATE OF MAHARASHTRA & ORS. ... RESPONDENTS

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THROUGH

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Date: 4.12.2025

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

ORIGINAL APPLICATION NO. 61 OF 2025

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SUPREME PALLACIO CO-OPERATIVE HOUSING SOCIETY ... APPLICANT

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STATE OF MAHARASHTRA & ORS. ... RESPONDENTS

REJOINDER ON BEHALF OF THE APPLICANT IN RESPONSE TO AFFIDAVIT-IN-REPLY FILED BY RESPONDENT NO. 4 ADVIK REAL ESTATE LLP AND RESPONDENT NO. 2 PUNE MUNICIPAL CORPORATION

Most Respectfully Showeth:

1. That the present application has been filed under Section 18(1) r/w Sections 14, 15 and 20 of the National Green Tribunal Act, 2010 raising the substantial question regarding persistent air pollution being caused due to construction of a Residential and Commercial Project located at Survey No. 291, Village Baner, Taluka Haveli, Pune (hereinafter referred to as the 'impugned project') being executed by M/s Advik Real Estate LLP (hereinafter referred to as the 'Project Proponent') in violation of Environmental Clearance ('EC') dated 30.08.2022 and Consent to Operate ('CTO') dated 1.03.2023.
2. That vide orders dated 21.07.2025 and 26.09.2025, this Hon'ble Tribunal had directed all Respondent parties to file their responses. Accordingly, the Respondent No. 4, i.e., the Project Proponent has filed their Affidavit-in-Reply dated 14.11.2025, and the Respondent No. 2 PMC has filed their Affidavit-in-Reply dated 23.09.2025. That vide the present Rejoinder, the Applicant seeks to respond to the contentions raised in the said Affidavits-in-Reply.

3. At the outset, the Applicant denies each and every averment and conclusion made in said Affidavits-in-Reply which are contrary to and/or inconsistent with what has been submitted on record in the present Application. Furthermore, nothing stated in the present Rejoinder on behalf of the Applicant shall be construed as an admission for the want of any specific and para-wise denial or non-traverse unless and until the same is specifically admitted hereinafter.

I. PRESENT PROCEEDINGS AGAINST RESPONDENT NO. 4 ARE NOT BARRED BY SECTION 15C

4. Respondent No. 4 has on **Para 4, Pg. 247**, stated that the Applicant ought to have approached the Adjudicating Officer first, and accordingly assails the maintainability of the present Application. However, the Applicant rejects such contention as being untenable in law.
5. The Applicant submits that the Section 15C cannot be invoked to defeat the Hon'ble Tribunal's jurisdiction where ongoing harm to environment and public health is shown and statutory/regulatory conditions are being violated. The Applicant's pleading, documentary evidence of the MPCB observations, on-site measurements and complaints sustain a cause of action under Sections 14 and 15 of the NGT Act, 2010 and the remedial jurisdiction of this Hon'ble Tribunal.
6. Furthermore, Respondent No. 4's bare assertion that present proceedings are barred is unfounded in law and the EPA 1980 as well. Respondent No. 4 has failed to point to any statutory instrument or judicial order that precludes this Hon'ble Tribunal from adjudicating alleged and continuing violations.
7. That a bare perusal of Section 15 of the EPA 1980 would make it abundantly clear that the said section is only applicable where no penalty for contravention

is provided, therefore being distinct from the present case wherein the penalty for violation of EC Conditions has been provided in Para 6 thereof.

8. Additionally, the powers exercisable by the Adjudicating Officer under Section 15C are limited to imposition of penalty of an amount not less than Rs. 1 lakh, extendable to upto Rs. 15 lakh. However, the relief sought by the Applicants through the present Application invokes the preventive and restitutive powers of this Hon'ble Tribunal under Sections 15 and 20, and accordingly seeks directions *inter alia* for implementation of measures for pollution control.

9. That the Hon'ble Supreme Court in a recent judgment in C.A. Nos. 757-760 of 2013 reported in 2025 INSC 923 has clearly delineated the distinction between compensation imposable by the Pollution Control Boards under Sections 33A and 31A of the Water Act, 1974 and Air Act, 1981, from the penalty imposable by the Adjudicating Officer under Section 15C. A copy of the judgment in **Delhi Pollution Control Committee v. Lodhi Property Co. Ltd.** etc. reported in **2025 INSC 923** is annexed and marked herewith as **ANNEXURE A-20.**

10. Furthermore, it is submitted that the Hon'ble Supreme Court has held that this Hon'ble Tribunal has been created with the laudatory objective of not only preventing damage to the environment, but also protecting it, and accordingly, a interpretive process which will achieve the legislative purpose and will eschew procedural impediment must necessarily be upheld. In support of the said contention, the Applicant relies on the judgment of the Hon'ble Supreme Court dated 7.10.2021 in **Civil Appeals Nos. 12122-12123 of 2018 Municipal Corporation of Greater Mumbai v. Ankita Sinha and Ors.**, a copy of which is annexed and marked herewith as **ANNEXURE A-21.**

II. PREVIOUS COMPLAINTS MADE TO THE POLICE AUTHORITIES

11. Respondent No. 4, as on **Para 5, Pg. 247**, stated that the Applicant ought to have approached the Police Authorities for observed noise pollution. However, the Applicant rejects such a contention as being untenable in law.

12. The Applicant submits that there exists no requirement for institution of criminal complaints as a condition precedent to institution of legal proceedings before this Hon'ble Tribunal for observed violations of EC and CTO Conditions. That no such judicial precedent or statutory provision has been submitted by Respondent No. 4 in support of such contention. Accordingly, the same is rejected as being unsubstantiated in fact and therefore, untenable in law.

13. Notwithstanding the above, the Applicant submits that various complaints to the Police Department have in fact been made by the Applicants over the course of the past several months. A collected compilation of all complaints made by the Applicant Society members to the Police Authorities against Respondent No. 4 are annexed and marked herewith as **ANNEXURE A-22.**

III. RESPONDENT NO. 4 MISLEADING THIS HON'BLE TRIBUNAL

14. Respondent No. 4, as on **Para 18, Pg. 251**, has submitted that the permissible noise limits as per the Noise Rules, 2000, is 65 db(A) for day-time and 55 db(A) for night-time. However, such statement is categorically rejected as being false and has the ability of misleading this Hon'ble Tribunal.

15. It is submitted that the Schedule to the Noise Rules, 2000, clearly provides for the permissible noise levels for residential areas to be 55 db(A) for day-time and 45 db(A) for night-time. That the documents submitted by Respondent No. 4, as on **Pg. 264**, itself records the said permissible noise levels.

16. Therefore, the statements made by Respondent No. 4 as on Para 18, Pg. 251, are at best indicative of a complete absence of mind in preparation of their Affidavit, or at worst, a deliberate attempt at misleading this Hon'ble Tribunal.

17. That furthermore, it is pertinent to note that Respondent No. 4 has failed to justify or provide any explanation for significantly high noise levels recorded by authorized Environmental Laboratory, annexed as Annexure A-7, **Pg. 116**.

IV. NOISE AND DUST POLLUTION, EVIDENCED BY MPCB, PMC AND APPLICANTS, SATISFIES REQUIREMENTS UNDER SEC. 2(m)

18. Respondent No. 4, as on **Para 33, Pg. 254,** has stated that the present Application has been filed on surmises without pointing out specific instances of pollution on the part of Respondent No. 4. However, the Applicant rejects such contention as being wholly misleading and untenable in law.

19. The Applicant submits that the present Application has been filed detailing the persistent noise and dust pollution which is being caused due to the construction of the impugned project by the Respondent No. 4. In support thereof, the Applicant has relied on Noise Monitoring through mobile Applications by members of the Applicant society (Pgs.111-115), Noise monitoring undertaken through an authorized environmental laboratory (Pg. 116), complaint letters submitted by the Applicant to Respondent No. 4 (Pg. 128-131), and photographic evidence (Pg. 125-127).

20. Furthermore, the Applicant submits that noise and dust pollution being caused by Respondent No. 4 has also been observed by the MPCB inter alia in Directions dated 9.09.2025 issued to Respondent No. 4 (Pg. 231), as well as by the PMC in its Stop Work Order dated 14.06.2024 (Pg. 242).

21. Therefore, it is categorically denied that a substantial question relating to the environment has not been made out in the present case, and any assertion to the contrary by Respondent No. 4 is liable to be rejected as untenable in law.

22. It is further submitted that the EC Compliance Reports of December 2024 and June 2025 cannot be relied to arrive at a conclusion of absence of pollution being caused by Respondent No. 4, in the face of countervailing evidence.

23. It is submitted that such self-prepared compliance reports or internal monitoring, while relevant, cannot be determinative where independent regulatory inspections and measurements by the MPCB and the PMC and contemporaneous complaints by residents have shown violations.

24. The Applicant submits that independent third-party monitoring and regulatory observations carry superior probative value because they are unbiased, official, and conducted under statutory powers, and accordingly, the EC Compliance Reports cannot be relied on by Respondent No. 4 to avoid liability.

25. Notwithstanding the above-mentioned, the Applicant submits that the photographs annexed by Respondent No. 4, as on Pgs. 419-420, themselves evidence noise levels in excess of the permissible levels of 55 dB for day-time. Accordingly, it is undeniable that noise pollution is being caused by R.4.

V. SUPPRESSION AND MISREPRESENTATION OF FACTS BY RESPONDENT NO. 2 PUNE MUNICIPAL CORPORATION

26. Respondent No. 2, as on Para 10, **Pg. 238**, has stated that the PMC had issued Rs. 1 lakh penalty upon Respondent No. 4 for non-compliance of Construction and Demolition Waste, and issued Stop Work Order dated 14.06.2024 under Section 267(1) of the MMC Act, 1949 and Section 54 of the MRTP Act, 1966.

27. However, Respondent No. 2 has suppressed a material fact that the said Stop Work Order dated 14.06.2024 has in fact been issued due to the complete failure of Respondent No. 4 in implementing any noise and dust pollution control measures, which is causing adverse conditions for local residents.

28. It is submitted that no mention of the fact of noise and dust pollution, observed by the PMC themselves, has been made by the PMC in its Affidavit-in-Reply dated 23.09.2025, which is a gross suppression of fact. That the PMC has unfairly mispresented the cause of Stop Work Order as violations of Construction and Demolition Waste Rules evidences *mala fide* intent by PMC.

29. Additionally, the PMC has not provided any evidence of payment of Rs. 1 lakh penalty by Respondent No. 4, nor have they annexed any document evidencing withdrawal of the said Stop Work Order dated 14.06.2025, as well as have failed to submit on record the true-translated English version of the said Order.

30. Accordingly, the PMC must necessarily be directed to provide all documentary evidence in support of the submissions made, as well as justify the reasons for deliberate suppression and misrepresentation of fact, failing which punitive action must be instituted upon the PMC for such *mala fide* representations.

31. Additionally, the PMC has submitted as on Para 11(iii), Pg. 239, that the construction work is being carried out between 9 AM and 7 PM. However, the Applicant rejects such a statement as being false and misleading.

V.1. Construction undertaken during all hours of day and night time

32. The Applicants categorically submit that the construction of the impugned project is being undertaken at all hours of the day and night, far surpassing the mandate time-limits of 9 AM to 7 PM.

33. That the Applicants vide IA 830/2025/WZ filed in the present Application have produced on record evidence establishing that Respondent No. 4 is repeatedly violating the mandated time-limit and is carrying out construction both during early hours of day-time, i.e., prior to 9 AM, and well past the mandated night-time limit, i.e., past 7 PM. That such occurrences of construction activity being undertaken in exceedance of the mandated time-limits are becoming increasingly frequent, causing significant adverse impacts to the Applicants.

34. Additionally, the PMC has stated on **Para 11(i), Pg. 239,** that an "acoustic system has been installed". However, no details whatsoever regarding such acoustic system have been provided by the PMC.

35. The Applicant rejects the said submissions of the PMC owing to the fact that Respondent No. 4 has not provided 'adequate' measures for noise pollution control, as has been evidenced by the MPCB on **Para 4(III), Pg. 206**. The PMC's submission of installation of acoustic system does not ipso facto indicate compliance by Respondent No. 4, as the adequacy of such system is not clear.

VI. NECESSITY OF IMPOSING COSTS FOR OBSERVED ENVIRONMENTAL VIOLATIONS UPON RESPONDENT NO. 4

36. The Applicant submits that the detailed observations of the MPCB contained in its Affidavit dated 16.09.2025, the PMC Stop Work Order dated 14.06.2024 as well as noise monitoring results submitted by the Applicant, all clearly evidence past violations by Respondent No. 4 likely to have resulted in pollution. Invoking the 'Polluter Pays Principle' the Applicant submits that punitive damages must be imposed on Respondent 4, as such damages will act as a deterrent in preventing further violations likely to arise during construction.

Pass any other order as deemed fit by this Hon'ble Tribunal in the interest of justice, equity, and good conscience in the prevailing facts and circumstances.

APPLICANT

THROUGH

MAITREYA PRITHWIRAJ GHORPADE
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COUNSELS FOR THE APPLICANT
Mobile: 7024102546
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VERIFICATION

I, PRAJAY GIRIPAT CHUDASAMA, authorized Representative of the Applicant, R/o Valencia, Supreme Pallacio CHS, Baner, Pune, do hereby verify that the contents of the present Interlocutory Application abovementioned are true to my personal knowledge and nothing material has been concealed therefrom.

Date:
Place:

APPLICANT

NOTARY ADV.ULKA BABASAHEB INGAWALE PUNE MAHARASHTRA REGN. NO. 15924 EXPIRY DATE 12/12/2029 GOVERNMENT OF INDIA

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 61 OF 2025

IN THE MATTER OF:

Supreme Pallacio Co-Operative Housing Society ...APPLICANT

VERSUS

State of Maharashtra & Ors. ... RESPONDENTS

AFFIDAVIT

I, PRAJAY GIRIRAJ CHUDASAMA, authorized Representative of the Applicant above-named, R/o Valencia, Supreme Pallacio CHS, Baner, Pune, do hereby solemnly affirm and state as under:

1. That I am the authorized Representative of the Applicant in the above titled Application and am conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.

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

Chudasama

DEPONENT

VERIFICATION

Verified on this ___ of _____ 2025 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom.

04 DEC 2025

Chudasama

DEPONENT

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BEFORE ME

ULKA BABASAHEB INGAWALE
ADVOCATE & NOTARY
GOVT. OF INDIA
PUNE, MAHARASHTRA

2025 INSC 923

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 757-760 OF 2013

DELHI POLLUTION CONTROL COMMITTEE ...APPELLANT(S)

VERSUS

LODHI PROPERTY CO. LTD. ETC. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 1977-2011 OF 2013

J U D G M E N T

Contents

1. Introduction.

1. The Delhi Pollution Control Committee (DPCC)[1] is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981[2] on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an *ex-ante* measure to prevent potential environmental damage. These powers are

[1] DPCC is a regulatory body in the National Capital Territory of Delhi, established as a 'State Board'. These Boards are constituted under section 4 of the Water Act and under section 4 or section 5 of the Air Act, and exercise powers granted under section 33A of the Water Act and section 31A of the Air Act. Our interpretation of section 33A and 31A herein will apply to any such body established under said Acts.
[2] Hereinafter referred to as the Water Act and Air Act respectively.

incidental and ancillary to the empowerment under Sections 33A and 31A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

2. Facts.

3. It is the case of the Delhi Pollution Control Committee that pursuant to the directions of the Ministry of Environment, Forest and Climate Change (MoEFCC) to take appropriate action against certain entities operating in violation of the environmental norms, show cause notices were issued for violation of Section 25 of the Water Act and Sections 21 and 22 of the Air Act. These entities were either residential complexes, commercial complexes or shopping malls. The show cause notices were issued on the ground that they proceeded with construction and in fact, were operating without obtaining the mandatory "consent to establish" and "consent to operate" under Section 25 of the Water Act and Section 21 of the Air Act. The show cause notices were challenged by way of 38 writ petitions before the Delhi High Court. The challenge culminated in the judgement of a single judge dated 30.09.2010 in

the case of *Splendor Landbase Ltd. v. DPCC*[3]. The learned single judge considered the question as to whether a State Board can levy environmental damages in the form of fixed sums of money or require an entity to furnish a bank guarantee as a condition for grant of consent under Section 33A of Water Act and/or Section 31A of Air Act. Similar writ petitions were considered and decided by another single judge bench in *Bharti Realty Ltd. v. DPCC* and *Anush Finlease and Construction v. DPCC* on 20.07.2011 and 15.09.2011 and were disposed of in terms of the decision in *Splendor Landbase Ltd. v. DPCC*. The reasoning adopted in the judgement and orders passed by the Single Judges are as follows.

3. Single Judge's Judgement and Orders.

4. In *Splendor Landbase Ltd. v. DPCC*[4], the ld. single judge by his judgement dated 30.09.2010 dealt with two major issues – firstly, whether proprietors of properties over 20,000 square meters are required to obtain *consent to establish* and *consent to operate* under Water Act and Air Act independently, despite obtaining EIA Clearance from the Ministry; and secondly, whether Boards can levy penalties, fines, environmental damages in form

[3] 2012 (195) DLT 177.
[4] Hereinafter referred to as *Splendor.*

of fixed sums of monies or call for bank guaranties as a condition to grant consent under Water and Air Acts? While the first question was answered in the affirmative, the second was answered in the negative.

4.1 It was held that the power to levy penalty is in the nature of a penal power and as such a penalty cannot be imposed without there being an enabling statutory power. For this reason, the single judge held that Board has no power to levy penalty or damage, even on the basis of the general powers under Sections 31A or 33A of the Acts. The learned Judge criticized the monetary demand as a pre-condition for grant of consent under the Acts on the ground that it has no statutory backing.

4.2 In the other batch of cases i.e. in *Bharti Realty Ltd. v. DPCC* and *Anush Finlease and Construction Ltd. v. DPCC*, decided on 12.07.2011 and 15.09.2011, the learned Single Judge was constrained to enquire into the matter in detail as writ appeals against the judgement in *Splendor* were already pending before a Division Bench. Therefore, the Single Judge allowed the writ petitions following the decision in *Splendor* and holding that the Board has no power to impose and collect compensatory damages. In these cases, the learned Judge also directed refund of the

amounts collected. However, no interest was granted to the respondents as they chose to comply with the demand instead of challenging the same at the relevant point in time.

4. Impugned Order of the Division Bench.

5. The decisions of the single judges were challenged by the appellant before the Division Bench of the High Court. By the judgement impugned before us, the Division Bench upheld the findings of the Single Judge in *Splendor* that the power to issue directions under Sections 33A and 31A under the two Acts does not confer the power to levy 'penalty'. The High Court further observed that under Chapter VII and Chapter VI of the Water and Air Acts penalties can be levied only by courts and that too after taking cognizance of offences specified under the two Acts. Provided that the procedure so prescribed under the statute has to be followed mandatorily, the Division Bench held that the appellant would not be entitled to impose compensation or direct deposit of bank guarantees. The relevant portion of the Division Bench of the High Court is as follows –

> *"37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that, the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the*

Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent jurisdiction and no more.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application, seeking prior consent and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping, commercial complexes and pertaining to air pollution, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions

of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 [5] SCC 535 Mafatlal Industries Ltd. & Ors. Vs UOI & Ors., under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld."

5. Submissions.

6. Mr. Pradeep Mishra appearing on behalf of the appellant DPCC submitted that the High Court erred in holding that the State Boards are not empowered to impose environmental damages under Sections 33A and 31A of Water and Air Acts. He has argued that the application of the principle of *Polluter Pays* is distinct from the requirement of authority of law to impose tax or penalty.

7. We have requested Mr. Ninad Laud, learned counsel to assist us in the matter. He has gracefully accepted and has eminently assisted the Court. He has submitted that as per broad scheme of the Acts and also the statement of objects and reasons, State Boards are empowered to act on their own while enforcing Sections 25 and 26 and also while issuing directions under Sections 33A and 31A. However, when faced with non-compliances, recourse to

judicial process is contemplated under Sections 49 and 43 of Water and Air Acts respectively. Further, neither Rule 34 of Water (Prevention & Control of Pollution) Rules 1975 nor Rule 20A of Air (Prevention & Control of Pollution) Rules 1983, while providing a mechanism to administer Section 33A and Section 31A, contemplate monetary penalties. Countering the submission of Mr. Pradeep Misra on the principle of *Polluter Pays* to encourage reading the power to impose and collect environmental damages under Sections 33A and 31A of the respective Acts, he would submit such an approach is impermissible as the said power is specifically and separately provided under Chapters VII and VI therein. Relying on the decision of this Court in *MC Mehta v. Kamal Nath*[5], he would submit, after considering the scheme of penal provisions under Water Act, Air Act and Environment (Protection) Act 1986, the Supreme Court held that penalties under the Acts befall a person only after finding of guilt upon trial by a court of law. Referring to the legitimacy of State Board's action demanding bank guarantees to secure compliance with conditions, he would submit that no penalty, other than that contemplated in the

[5] (2000) 6 SCC 213, para 13-17.

statute or statutory scheme can be imposed.[6] We have also heard Mr. Pinaki Misra, Senior Advocate and other learned counsel and they have strongly supported the decision of the Division Bench.

7.1 Counsel for M/s Laxmi Buildtech Pvt Ltd[7] has submitted that they have neither violated nor acted in breach of any provision of environmental laws and therefore they cannot be subjected to any penalty or criminal prosecution. Counsel for other respondents further submitted that they have deemed consent as well as EIA clearance from the Ministry. They have also submitted that imposition and collection of damages by the State Boards is outside the powers vested in them under the Water and Air Acts.

7.2 Counsel for M/s Bharti Realty Ltd has submitted that it is a settled principle of law that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other.[8] This principle, according to the learned counsel, squarely applies to the present case as Chapter VII and Chapter VI of the Water and Air Acts have a prescribed procedure to be followed before imposing penalties. It is further argued that the

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[6] *State of MP v. Centre for Environment Protection Research & Development,* (2020) 9 SCC 781.
[7] Civil Appeal No. 2001 of 2013.
[8] *Chandra Kishore Jha v. Mahavir Prasad & Ors*, (1999) 8 SCC 266.

role of any State Board is in the nature of a complainant and not that of an adjudicatory authority. In this vein, it is submitted that any other interpretation would render the chapter on 'Penalties and Procedures' nugatory and otiose. It is also submitted that the power to give directions under Sections 33A and 31A of the Water and Air Acts is "subject to provisions of this Act". Written submissions also refer to the recent amendments to the Water and Air Acts, empowering an Adjudicating Officer, not below the rank of Joint Secretary of Government of India or Secretary to State Government, for imposing penalties for contravention of provisions of the Acts.

6. Issue.

8. The core question in these appeals is - whether the regulatory boards can, in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage?

7. Existing Legal Regime for Pollution Control in India.

9. Under the Water Act and the Air Act, the State Boards have a broad statutory mandate to prevent, control and abate water pollution and air pollution. Under Section 17 of the Water Act, the State Boards are to shoulder enormous responsibilities and their functions are reproduced herein for ready reference -

> ***"Section 17. Functions of State Board*** *– (1) Subject to the provisions of this Act, the functions of a State Board shall be—*
> *(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;*
> *(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;*
> *(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;*
> *(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;*
> *(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;*
> *(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;*
> *(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;*
> *(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;*

(i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;
(l) to make, vary or revoke any order—
(i) for the prevention, control or abatement of discharges of waste into streams or wells;
(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;
(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
(o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.
(2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents."

10. Section 17 of the Air Act[9], substantially similar to its equivalent under the Water Act, also indicates the crucial

[9] Section 17 of Air Act states –
17. Functions of State Boards.— *(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, the functions of a State Board shall be—*
(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
(b) to advise the State Government on any matter concerning the prevention, control or abatement relating to air pollution;

responsibilities of the State Boards in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue, modify or withdraw consent[10], power to obtain information[11], power of entry and inspection[12] and power to take samples[13].

8. Insertion of Sections 33A & 31A in Water and Air Acts.

11. In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give

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(c) to collect and disseminate information relating to air pollution;
(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise a mass-education programme relating thereto;
(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;
(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

[10] Sections 25, 27 of Water Act and Section 21 of Air Act
[11] Section 20 of Water Act and Section 25 of Air Act
[12] Section 23 of Water Act and Section 24 of Air Act
[13] Section 21 of Water Act and Section 26 of Air Act

directions under Section 33A of the Water Act and Section 31A[14] of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

> ***"Section 33A. Power to give directions.—****Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*
>
> *Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*
>
> *(a) the closure, prohibition or regulation of any industry, operation or process; or*
>
> *(b) the stoppage or regulation of supply of electricity, water or any other service."*

12. The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any

[14] Section 31A of the Air Act states –
31A. Power to give directions*.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*
Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—
(a) the closure, prohibition or regulation of any industry, operation or process; or
(b) the stoppage or regulation of supply of electricity, water or any other service.

industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows –

> *"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties.…*
>
> *3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:—*
>
> *….*
>
> *(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987;*
>
> *….*
>
> *(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;"*

13. Similar objective is expressed for the amendment introduced in the Air Act. [15]

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010[16]. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

15. Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of

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[15] Statement of Objects and Reasons for Air Act states, *"2. The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and have brought these to the notice of Government. The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Governments and the Central and State Boards. Taking into account the views expressed, the Government have decided to make certain amendments to the Act in order to remove such difficulties. 3. The Bill, inter alia, seeks to make the following amendments in the Act, namely—*

....

iv) In order to prevent effectively air pollution, the punishments provided in the Act are proposed to be made stricter.

....

(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishments or stoppage or regulation of supply of services such as, water and electricity. (viii) It is proposed to empower the Boards to approach courts to obtain orders restraining any person from causing air pollution."

[16] Act 19 of 2010.

imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

9. Interpretation of and for Environmental Institutions.

16. Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tempered with the necessary guidelines and parameters of

exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is that remedial powers or restitutionary directives are a necessary concomitant of both the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV A of the constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV A and Article 48 A. The State's *'endeavour to protect and improve the environment'* will be partial, if it does not encompass a duty to restitute.

17. Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with *institutional foresight* by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain *institutional memory* so that they can act on the basis of the experience, data and information that they would have

gathered and processed. *Institutional expertise* is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain *institutional integrity* by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is *institutional transparency and accountability*. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act.

10. Duty to Restitute v. Power to Punish and Penalise.

18. There is a distinction between an action for environmental damages for restitution or remediation and imposition of penalties or fines levied at the culmination of a punitive action. This Court in *M.C. Mehta* (supra), while referring to the provisions of the Water Act, Air Act and the Environment Protection Act observed –

> *"17. All the three Acts, referred to above, also contemplate the taking of the cognizance of the offences by the court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone can he be punished with imprisonment and fine or both. The sine qua non for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty."*

> *"24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay*

> *damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender....”*

19. Therefore, Indian law distinguishes between the imposition of a monetary penalty or fine, which constitutes punitive action following a determination of guilt after adherence to the statutorily prescribed procedure, and the payment of damages for restitution or remediation as compensatory relief.

20. In this context, it is important to turn to one of the key principles of Indian environmental law – the *Polluter Pays* principle. This principle has been a part of Indian jurisprudence since 1996. In *Indian Council for Enviro-Legal Action* v. *Union of India*[17], this Court held that according to the *Polluter Pays* principle the responsibility for repairing the damage is that of the offending industry. The Court further held that the powers of the Central Government to issue directions under Section 5 read with Section 3 of the Environment Protection Act include the power to impose costs for remedial measures -

> *“60. ... Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government (or its delegate, as the case may be) to “take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...”. Section 5 clothes the Central Government (or its delegate) with the power to issue*

[17] (1996) 3 SCC 212

> *directions for achieving the objects of the Act. Read with the wide definition of 'environment' in Section 2(a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. …*
>
> *67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle. …Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit."*
>
> (emphasis added)

21. Subsequently, the Court in *Vellore Citizens' Welfare Forum* v. *Union of India*[18], has held that the liability for environmental damage includes both a compensatory aspect and a restorative or remedial aspect-

> *"12. … The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the*

[18] (1996) 5 SCC 647

> *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."*
>
> (emphasis added)

22. Application of the *Polluter Pays* principle not only includes payment for restoring the damaged environment, taking remedial action to deal with the damage and compensating for the direct harm caused, but also for avoiding pollution. In *Research Foundation for Science (18)* v. *Union of India*[19], this Court held -

> *"29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case."*
>
> (emphasis added)

23. The Court further held that the observations of the Court in in *Deepak Nitrite Ltd.* v. *State of Gujarat*[20] that *"mere violation of the law in not observing the norms would result in degradation of environment would not be correct"* were confined to the facts of that

[19] (2005) 13 SCC 186.
[20] (2004) 6 SCC 402

case. The Court clarified that the actual degradation of the environment is not a necessary condition for the application of polluter pays principle, as long as the offending activities have the potential of degrading the environment -

> *"30…The decision also cannot be said to have laid down a proposition that in the absence of actual degradation of environment by the offending activities, the payment for repair on application of the polluter-pays principle cannot be ordered. The said case is not relevant for considering cases like the present one where offending activities have the potential of degrading the environment. In any case, in the present case, the point simply is about the payments to be made for the expenditure to be incurred for the destruction of imported hazardous waste and amount spent for conducting tests for determining whether it is such a waste or not…"*
>
> (emphasis added)

24. The distinction between a punitive action and a direction to pay environmental damages was made by the National Green Tribunal in *State Pollution Control Board, Odisha* v *M/s Swastik Ispat Pvt Ltd and Others*[21]. The Tribunal in this case was considering the legality of forfeiture of bank guarantees in case a defaulting industry did not comply with the regulatory conditions within the stipulated timeframe. The Tribunal expressly considered the opinion of the High Court in the impugned judgment before us today and held -

> *"45. It is evident from the above facts and the reasoning that there was actual levy of penalty or damages by the DPCC and*

[21] 2014 SCC OnLine NGT 13.

> *it was in consequence of such imposition of penalty/damages that the Units were called upon to furnish bank guarantees for granting of consent. In other words, bank guarantee was required to be furnished in furtherance to the imposition of a penalty or damages in that case. It was not an act de hors the imposition of penalty and had the element of punitive action. In the present case, it is not a consequence of a punitive or penal action but is in exercise of the powers vested in the Board in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment. In the cases in hand, the Board has not imposed any penalty upon the units but has granted consent to them on certain conditions, none of which is punitive. They squarely fall within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. Thus, on facts, the judgments of the High Court in Splendor (supra) do not have any application to the present case. In any case, we are of the considered view that asking for a bank guarantee as an interim measure for due performance of the conditions of the consent order being compensatory in nature, is not punitive.*
>
> *46. We have already noticed above that there is a clear distinction between a penal and a compensatory provision. In such matters, the paramount question that would normally fall for determination before a court or tribunal would be whether the action contemplated is penal or compensatory. This issue shall have to be decided with reference to the facts of the case, the provisions of the law applicable and the intent of the authority concerned. Once it falls in the 'compensatory' field, then it will necessarily be beyond the purview of penalty…."*
>
> (emphasis added)

25. In *Swastik Ispat,* the Green Tribunal correctly interpreted Sections 33A and 31A of the Water and Air Acts. The judgment of the High Court in *Splendor* had not yet been taken up or considered by this Court at that time, the Tribunal had to distinguish the facts of *Splendor* to arrive at its own conclusion. In view of our reasoning and interpretation of Sections 33A and 31A

of the Water and Air Acts, we have no hesitation to hold that the Green Tribunal is correct in its approach.

26. More recently, in *T.N. Godavarman Thirumulpad, In Re* v. *Union of India*[22], this Court while considering the issue of illegal construction in the Corbett Tiger Reserve drew the distinction between action against persons violating the law and measures for restoration of the environmental damage. The Court held -

> *"173. … However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures that are localised to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.*
>
> *175. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage."*
>
> (emphasis added)

11. Principles.

27. Based on a review of precedents on this issue, the following legal position emerges –

[22] (2025) 2 SCC 641

I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an *ex-ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated[23] the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws.[24] The invocation of this principle is triggered in the situations[25]; i) when an established threshold or prescribed requirement is exceeded or

[23] *Indian Council for Enviro-Legal Action* (supra n.12); *Vellore* (supra n 13).
[24] ***Section 20. Tribunal to apply certain principles****- The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.*
[25] Loveleen Bhullar, 'The Polluter Pays Principle: Scope and Limits or Judicial Decisions'; in Shibani Ghosh (ed.), *Indian Environmental Law* (Orient BlackSwan 2019).

breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage and also iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

IV. Environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. *Ex-ante* action shall be taken by these regulators and for this purpose a certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Acts is necessary.

V. The powers of the Boards under Sections 33A and 31A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilise the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33A and 31A of the Acts.

28. Having considered the principles that govern our environmental laws and on interpretation of Sections 33A and 31A of the Water and Air Acts, we are of the opinion that that the Division Bench of the High Court was not correct in restrictively reading powers of the Boards. We are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential or actual environmental damage.

29. There is no doubt that Section 33A of the Water Act and Section 31A of the Air Act give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same. The National Green Tribunal's judgment in *Swastik Ispat* correctly identified the Boards powers to issue directions for payment of environmental damages under Section 33A of the Water Act and the Section 31A of the Air Act. A restrictive interpretation which fails to differentiate between environmental damages and punitive action significantly encumbers the Boards ability to discharge its duties.

30. The Board's powers under Section 33A of the Water Act and Section 31A of the Air Act have to be read in light of the legal position on the application of *Polluter Pays* principle as formulated and explained. This means that State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act and Section 31A of the Air Act.

31. At this stage, we must also take note of the recent 2024 amendments[26] to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation[27] and introduction of the office of "Adjudicatory Officer"[28]. Even after the

[26] The Water (Prevention and Control of Pollution) Amendment Act, 2024, Jan Vishwas (Amendment of Provisions) Act, 2023.

[27] Section 41 in the erstwhile Water Act has been substituted by sections 41 and 41A, whereby contravention of directions issued under section 20 (for obtaining information), 32 (for imposing emergency measures in case of pollution), 33 (for restraining apprehended pollution) or 33A would now be punishable by penalty alone; thereby replacing the earlier penal framework comprising of imprisonment *and* fine. Similar amendments done for section 42 (penalty for certain acts), section 43 for contravention of directions under section 24 (prohibiting use of stream or well), section 44 (prohibiting alteration of meter, etc.), and section 45A (residuary). Correspondingly, under the Air Act criminal liability under section 37 for contravention of directions under section 22 (restricting emission beyond standards) or section 31A has been restricted to fine alone. Similar amendments have been brought in section 38 and 39 (residuary). Punishment for imprisonment has been retained only for violation of section 21 and failure to pay penalty or additional penalty under section 39D.

[28] In the Water Act, section 45B puts in place a new office by the title of 'Adjudicating Officer', who would be an officer not below the rank of Joint Secretary to the Centre or Secretary to the State, appointed by the Central Government. Adjudicating Officer is empowered to inquire

amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been

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and impose penalties under sections 41, 41A, 42, 43, 44, 45A and 48. Appeal against such imposition lies before the National Green Tribunal as per section 45C. The Adjudicating Officer is further empowered to file a complaint for cognizance under section 49. Corresponding additions have been made under the Air Act as well under sections 39A (Adjudicating Officer), 39B (Appeal to NGT) and 43 (Cognizance of offences).

polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

A. Board's Responsibility to Choose Appropriate Course of Action.

32. Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both.

B. Powers Must Be Guided by Transparency and Non-Arbitrariness.

33. While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.

34. This Court has underscored the importance of strong institutional frameworks in environmental governance that are effective, accountable and transparent. In *Bengaluru Development Authority* v. *Sudhakar Hegde*[29], this Court held -

> *"95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place."*
>
> (emphasis added)

[29] (2020) 15 SCC 63

35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document "*General framework for imposing environmental damage compensation*" issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT.[30] It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation.

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great

[30] Pursuant to the NGT in its order in O.A. No. 606/2018 dated 24.04.2019.

importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

37. While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts, we issue the following consequential directions.

38. In view of the fact that the show cause notices in these cases relate to the year 2006 and those show cause notices were set-aside by the Single as well as by the Division Benches of the High Court, we are of the opinion that no purpose will be served in reviving the said show cause notices at this point of time. In the facts and circumstances of the case while we allow the appeal on the principle of law there shall not be any consequential direction for reviving the show cause notices which have been set-aside concurrently by the Single as well as by the Division Bench of the

High Court. If certain amounts have been collected on the basis of the said show cause notices they shall be returned by DPCC within a period of six weeks from the date of this order, and if amounts are not deposited or collected the appellant, DPCC shall not take any further action.

39. For the reasons stated above:

(a) we allow these appeals and set aside the judgement and order dated 23.01.2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show cause notices that have been set aside by the High Court shall not be revived.

(b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.

(c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex-ante* measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after

detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[MANOJ MISRA]

NEW DELHI;
AUGUST 04, 2025

TRUE COPY

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12122-12123 OF 2018

MUNICIPAL CORPORATION OF GREATER MUMBAI …

APPELLANT(S)

VERSUS

ANKITA SINHA & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 86/2019

CIVIL APPEAL NO. 5902/2019

CIVIL APPEAL NO. 6273 OF 2021
(Arising out of SLP(C) No. 6732/2021)

CIVIL APPEAL NO. 6274 OF 2021
(Arising out of SLP(C) No. 5930/2021)

CIVIL APPEAL NO. 6275 OF 2021
(Arising out of SLP(C) No. 6733/2021)

CIVIL APPEAL NO. 6276 OF 2021
(Arising out of SLP(C) No. 16448 OF 2021)
Diary No. 11655/2021

CIVIL APPEAL NO. 6277-6278 OF 2021
(Arising out of SLP(C) No.16449-16450 OF 2021)
Diary No. 13789/2021

CIVIL APPEAL NO. 6279 OF 2021
(Arising out of SLP(C) No. 16451 OF 2021)
Diary No. 13811/2021

CIVIL APPEAL NO.6280-6281 OF 2021

(Arising out of SLP(C) No.16452-16453 OF 2021)
Diary No. 13890/2021

CIVIL APPEAL NO. 2897/2021

CIVIL APPEAL NO. 6282 OF 2021
(Arising out of SLP(C) No. 11426 OF 2021)

CIVIL APPEAL NO. 6283 OF 2021
(Arising out of SLP(C) No. 11427 OF 2021)

CIVIL APPEAL NO. 6262 OF 2021
Diary No. 16948 OF 2021

CIVIL APPEAL NO. 6284 OF 2021
(Arising out of SLP(C) No. 11798 OF 2021)

CIVIL APPEAL NO. 6285 OF 2021
(Arising out of SLP(C) No. 12669 OF 2021)

CIVIL APPEAL NO. 6286 OF 2021
(Arising out of SLP(C) No. 16454 OF 2021)
Diary No. 19534/2021

J U D G M E N T

Hrishikesh Roy, J.

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

1. Leave granted in the Special Leave Petitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.1 Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered Vs. Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was

2 **(2013) 15 SCC 341**

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

10.2 Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore Vs. Union of India*[3], opined on behalf of a Division Bench that,

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

10.3 The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak Vs. Achyut Kashinath*[4], observed as under : -

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

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

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

11.1 The second limb of contention is that the Act is applicable to '*disputes*' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors*.[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

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

5 **(2018) 11 SCC 734**

> restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> **20.** ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
>
> ' "*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.' "

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

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

12.1 Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.,*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

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

6 **(2019) 19 SCC 479**

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."

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

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

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

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

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

see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under 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."

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

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

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in L. Chandra Kumar vs. Union of India, 1997 (3) SCC 261.
>
> No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

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

7 **Chapter II, 186th Law Commission Report.**

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

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

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

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

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."

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

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

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

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

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

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

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

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

III. THE NEED FOR PURPOSIVE INTERPRETATION_

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

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

15.3 The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which *"shall suppress the mischief and advance the remedy"* as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. vs. State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

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

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

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

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

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

Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo’s phraseology in *Panama Refining Co. Vs. Ryan*, and the same is taken as a lodestar in our quest,

> “the meaning of a statute is to be looked for, not in any single section, but in all

9 **47 Columbia Law Review 527**

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

15.6 The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT -

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

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10 **293 U.S. 388 (1935) (dissenting)**

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

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.

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

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

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

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

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

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

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

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

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

V. NON-ADJUDICATORY ROLES OF NGT

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

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

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

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

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

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

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

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

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

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

19.1 With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India*[14], highlighted the NGT's role in the context, in the following words: -

> "40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

14 **(2012) 8 SCC 326**

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

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

VI EXERCISE OF *SUO MOTU* POWER BY NGT

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

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

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

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

15 **(2019) 18 SCC 494**

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

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

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

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

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

21.4 Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* vs. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of *'Merits Review'* and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

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

16 **2021 SCC Online SC 7.**

the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

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

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

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

17 **(1999) 2 SCC 718**

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

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

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

22.2 The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok

Bhushan in *State of Meghalaya vs. All Dimasa Students Union*[18], fittingly observed thus:-

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] , wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)
>
> "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and

18 **(2019) 8 SCC 177**

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

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

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

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

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

VIII. THE SUI GENERIS ROLE OF NGT

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

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

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

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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**

“38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

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

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

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

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

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

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

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

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

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

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

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

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

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

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

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

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

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

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

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

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

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

specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab & Anr. Vs. Shamlal Murari & Anr.*[22] has so correctly prioritized the substantive rights and observed succinctly,

> "8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

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

22 **(1976) 1 SCC 719**

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

X. THE PRECAUTIONARY PRINCIPLE

26.1 Tracing the origin of the *Precautionary Principle,* Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage: -

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through

23 **Scott LaFranchi, *Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool*, 32 B.C. Envtl. Aff. L. Rev. 679 (2005)**

> comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

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

26.3 As earlier seen, S.20 of the NGT Act which includes the term *"decision",* in addition to *"order"* and *"award"*, also require the Tribunal to apply the *'Precautionary Principle'* and the statutory mandate being relevant is extracted: -

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

26.4 The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other *'decisions'* or *'orders'* to governmental authorities or polluters, when they fail to *"to anticipate, prevent and attack the causes of environmental degradation"*[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

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

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

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

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

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

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

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

and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

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

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

> “Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity," which is understood to mean the fair distribution of environmental risks and protection from environmental harms.”[26]

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

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

26 **Schiffer, L. J., & Dowling, T. J. (1997).** ***Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27*****(2), 327–342.**

27 **Jeff Todd, A “Sense of Equity” in Environmental Justice Litigation, 44 HARV. ENVTL. L. REV. 169, 193 (2020).**

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

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

the form of ‘Public Interest Litigation’ or widening the scope of *locus standi*.

> “The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities.” [28]

27.5 In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the *‘Blindfold of Lady Justice’*, which symbolizes *“the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class.”*[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

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

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

larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India,* have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

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

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30 ***Rural Litigation And Entitlement Kendra & Ors V. State Of U. P. & Ors*** **AIR 1985 SC 652,** ***Charan Lal Sahu Vs. Union of India*** **(1990) 1 SCC 613,** ***Virender Gaur Vs. State of Haryana*** **(1995) 2 SCC 577**

31 **See M.A.A. Baig,** ***Environmental Law And Justice(1996)*****. Domenico Amirante,** ***Environmental Courts In Comparative Perspective: Preliminary Reflections On The National Green Tribunal Of India (2012)*****. M.K. Ramesh,** ***Environmental Justice: Courts And Beyond*****, Indian Jo. Of Envtl. L. 20(2002).**

pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar Vs. State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

28.3 Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the *'Absolute Liability Principle'* [34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

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32 **Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.**
33 **(1991) 1 SCC 74.**
34 **M.C. Mehta vs. Union of India, 1987 SCC (1) 395.**

mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. . . .The right was recognized as part of the right to life in 1991. . . . The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

28.4 It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the *'at risk'* nature of some

35 **Rajamani, Lavanya. 2007. *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*. Journal of Environmental Law**

36 **Supra, Note 19.**

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

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

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

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

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37 ***M.C. Mehta vs. Union of India*** **(1986) 2 SCC 176,** ***Indian Council for Environmental-Legal Action v. Union of India*** **(1996) 3 SCC 212,** ***A.P. Pollution Control Board vs. M.V. Nayudu*** **(1999) 2 SCC 718,** ***A.P. Pollution Control Board II vs. M.V. Nayudu*** **(2001) 2 SCC 62.**

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

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

28.7 Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority vs. Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which

39 **(2021) 4 SCC 309**

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

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

> "With reference to the judicial enforcement of environmental law – which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order – the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade." [40]

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

X. CONCLUSION:

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

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

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

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

India’s increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

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

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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.**

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

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the *"global impacts of climate change will fall disproportionately on minority and low-income communities"*.[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself

43 **Supra Note 23.**

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

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

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

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

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

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

contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

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

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

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

41. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

……..J.
[A.M. KHANWILKAR]

……J.
[HRISHIKESH ROY]

……J.
[C.T. RAVIKUMAR]

NEW DELHI
OCTOBER 7, 2021

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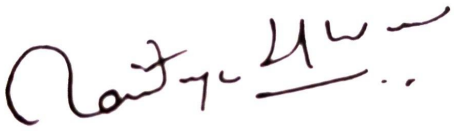

SUPREME PALLACIO
Apartmentos de Castillo

SUPREME PALLACIO CO-OPERATIVE HOUSING SOCIETY LTD

Registration No. PNA/PNA(4)/HSG/(TC)/12383/2012-13

Date -28-06-2025

To
The Commissioner of Policer
Pune City

Subject: Complaint Regarding Excessive Construction Noise Pollution from Kohinoor Business Tower

Respected Sir/Madam,

I am writing on behalf of the residents of Supreme Pallacio Co-operative Housing Society Ltd, located on New Pancard Club Road, Baner, Pune–411045, to raise a formal complaint regarding excessive noise pollution caused by the ongoing construction at Kohinoor Business Tower, located adjacent to our society.

The noise levels from this construction site, especially during extended hours, have repeatedly exceeded the permissible limit of 55 dB, causing significant disturbance and health issues among our residents. Despite the cessation of active construction work at night, the water pump and generator set (genset) are left operational overnight, resulting in continuous noise throughout the night.

Several residents in our society include super senior citizens, individuals undergoing cancer treatment, and those with neurological and cardiac conditions. The constant exposure to high noise levels has led to severe headaches, sleep disruption, anxiety, and even signs of hearing discomfort among vulnerable individuals.

Details of the Source of Noise:

- Source: Kohinoor Business Tower
- Address: Next to Supreme Pallacio Society, Pancard Club Road, Dhankude Wasti, Baner, Pune–411045
- Timings of Disturbance:

1. Construction Activity: 9:00 AM to 6:00 PM
2. Operational Noise from Equipment (Pump/ Genset): 10:00 PM to 6:00 AM (overnight)

We sincerely request you to kindly investigate the matter and take necessary legal and regulatory action against those responsible for violating noise pollution norms. Immediate intervention is crucial to safeguard the health and peace of our residents.

Thank you for your attention and support.

Sincerely,

Vijay Khude
Property Manager
Supreme Pallacio Co-operative Housing Society Ltd
Mob: 7030977262

Supreme Pallacio Co-operative Hsg. Soc. Ltd. PNA PNA(4)HSG (TC)/12383/ 2012-13

एक खिडकी योजना
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encrypted. (October 12, 2025 at can read, listen to, or share them. Learn more.

Forwarded

Complaint regarding late night construction work going on.

There is construction work going on at SN 291/1,291/2,291/3(part) , Pancard club road Dhankude wasti Baner, Pune 411045 by Kohinoor Builders executed by advik LLP .

The noise levels are very high , the permissible noise limit is 55 dB but the

Message

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