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**BEFORE THE NATIONAL GREEN TRIBUNAL
AT THE WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 65 OF 2025**

IN THE MATTER OF:

Sandeep Salelkar

... APPLICANT

VERSUS

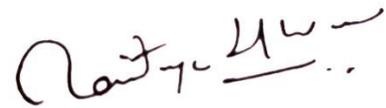
State of Goa & Ors.

... RESPONDENTS

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THROUGH



MAITREYA PRITHWIRAJ GHORPADE

ADVOCATE

COUNSEL FOR THE APPLICANT

Mobile: 7024102546

Email: maitreya.ghorpade@gmail.com

DATE: 28.01.2026

PLACE: GOA

**BEFORE THE NATIONAL GREEN TRIBUNAL
AT THE WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 65 OF 2025**

IN THE MATTER OF:

Sandeep Salelkar

... APPLICANT

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State of Goa & Ors.

... RESPONDENTS

**REJOINDER ON BEHALF OF THE APPLICANT IN RESPONSE TO THE
AFFIDAVIT-IN-REPLY BY RESPONDENT NO. 6 M/S VEDANTA LTD.**

1. The present Application filed under 18(1) r/w Sections 14, 15 and 20 of the NGT Act, 2010, raising substantial questions related to transportation of mined iron ore mineral ('mined mineral') by M/s Vedanta Ltd. (hereinafter referred to as the 'Project Proponent') from Mineral Block – I ('MB-I') located in Sirigao village, Goa in violation of the conditions of Environmental Clearance ('EC') dated 23.01.2024 issued to the Project Proponent by Respondent No. 5, i.e., the Ministry of Environment, Forest & Climate Change ('MoEF&CC').
2. That vide order dated 17.06.2025, this Hon'ble Tribunal had observed that a substantial question relating to environment had been raised in the present Application, and had accordingly directed the Respondents to file their responses. That accordingly, Respondent No. 6 Project Proponent has filed their Affidavit-in-Reply dated 17.11.2025.
3. At the outset, the Applicant denies each and every averment and conclusion made in said Joint Committee Report which is 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

Application 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. APPLICANT HAS LEGITIMATE LOCUS STANDI

4. It is submitted that the Applicant is a resident of Pilgao Panchayat, and resides in close proximity to the impugned Mining Project. Furthermore, it is submitted that the Applicant has previously been elected as a member of the Village Panchayat of Pilgao between 2017-2022 and has also served as a Sarpanch during his tenure as a member of the village Panchayat. Therefore, such past antecedents of the Applicant indicate his persistent efforts and interest in social work. That the present Application raises issues of environmental conservation.
5. Furthermore, the Applicant relies on the final order and judgment of this Hon'ble Tribunal dated 17.07.2014 in *O.A. No. 12 of 2014 titled M.C. Mehta v. University Grants Commission and Ors.* wherein this Hon'ble Tribunal has clearly enunciated that neither Section 14 nor 15 place any restriction on the locus or character of the Applicant for seeking relief under the said Sections. A copy of the order dated 17.07.2014 of this Hon'ble Tribunal in *O.A. No. 12 of 2014 titled M.C. Mehta v. University Grants Commission and Ors.* is annexed and marked herewith as **ANNEXURE A-17.**
6. The Applicant submits that this Hon'ble Tribunal has already observed vide order dated 17.06.2025, that there exists a substantial question related to environment which has been raised in the present Application, after duly considering the contents of the Application. Accordingly, the Applicant submits that the said order has attained finality and is now binding on all parties.

7. Notwithstanding the same, the Applicant submits that the present Application has been filed invoking the powers of this Hon'ble Tribunal under Sections 14, 15 and 20 of the NGT Act, 2010, and the present Application raises issues pertaining to the violations of the Environmental Clearance (EC) granted to the Project Proponent, and seeks remedial action against such violations.
8. That the EC has been issued under the provisions of the EIA Notification, 2006, such being a subordinate legislation issued as per the provisions of the Environment (Protection) Act, 1986, which has been included in the Schedule of the NGT Act, 2010. Accordingly, it is submitted that the present Application falls squarely within jurisdictional purview of this Hon'ble Tribunal.

II. BASELESS ALLEGATION OF MALA FIDE AGAINST THE APPLICANT

9. The allegation made by Respondent No. 6 that the Applicant has an "axe to grind" is wholly baseless, vague, and unsupported by any material particulars.
10. The Applicant submits that such allegations of mala fide cannot be sustained in law, particularly in environmental proceedings, as held by the Hon'ble Supreme Court in **Union of India & Ors. v. Ashok Kumar & Ors., (2005) 8 SCC 760**, wherein it has been held that *mala fides* must be specifically pleaded and strictly proved. Accordingly, the submissions of Respondent No. 6 are liable to be rejected. A copy of the order in **Union of India & Ors. v. Ashok Kumar & Ors., (2005) 8 SCC 760** is annexed and marked herewith as **ANNEXURE A-18.**
11. The Applicant submits that, as per statements of Respondent No. 6 themselves as on Pg. 348, the brother of the present Applicant is an ex-workman of the erstwhile miner of Bicholim Mineral Block, and not of Respondent No. 6.

12. Furthermore, the Applicant submits that the same issues regarding apparent *mala fides* was raised by Respondent No. 6 in MCA 229 of 2025 (F) before the Hon'ble High Court. However, the Hon'ble High Court has refused to entertain such Application filed by Respondent No.6, and accordingly disposed the same.
13. The Applicant submits that the MCA No. 102 of 2025(F) was filed due to the issues seeking that transportation of mineral ore is ensured only during working hours, i.e., in the day-time hours, as well as to prohibit transportation of mineral ore on the non-EC Sanctioned Route.
14. That with regards to the issue of transportation of mineral ore during working hours, the learned Advocate General of the State of Goa has submitted that the State will ensure that Respondent No. 6 carries out mineral ore transportation strictly during the working hours, as is observed vide Order dated 13.02.2025 in MCA No. 102 of 2025(F), annexed at Pg. 190 of the present Application.
15. That such assurance on the part of the learned Advocate General is sufficient to establish the *bona fides* of the Applicant, as well as the deviation from sanctioned EC Route being accepted by the Joint Committee constituted by this Hon'ble Tribunal, prove that legitimate causes are being contested.

III. ALLEGED OBSTRUCTION BY LOCAL RESIDENTS IS NOT A CONTINUING OCCURENCE

16. Respondent No. 6 has sought to justify deviation from the EC-sanctioned transportation route by alleging obstruction by local residents; however, such a submission is wholly untenable in law and unsupported by any evidence. Mere assertions of obstruction, without particulars as to duration, continuity, or severity, cannot excuse non-compliance with binding EC conditions.

17. If Respondent No. 6 genuinely believed that any illegal obstruction amounting to wrongful restraint or unlawful assembly was being caused, it was fully open to them to institute appropriate legal proceedings, and lodge FIRs before the concerned police station under the relevant provisions of the BNS 2023.
18. Furthermore, as per Respondent No. 6's own admission as on Para 15, Pg. 367, a Writ Petition No. 3140 of 2024(F) has been filed seeking appropriate police protection from the concerned Police Station at Bicholim to secure the transportation route and enable Respondent No. 6 to transport mineral ore. However, no order having been passed to such effect by the Hon'ble High Court has been submitted on record by the Respondent no. 6, nor has any copy of a criminal complaint or FIR been placed on record against the alleged obstructors.
19. The Applicant submits that there is no on-going and continuous blockade or obstruction that is caused by the local residents. In fact, such continuous blockade is unfathomable in the context of the present circumstances, as any continuous blockade can be easily prevented by the Police Department, especially since the apparent obstructors are known to Respondent No. 6.
20. The Applicant clarifies that, at best, a temporary and peaceful protest was carried out by local residents during the period of December 2024 to January 2025, which was dispersed shortly thereafter and does not constitute any permanent or continuing obstruction.
21. It is submitted that such temporary public protest cannot be elevated into a perpetual justification for abandoning EC-sanctioned infrastructure or permanently diverting heavy vehicular traffic onto public roads. In any case, no blockade or obstruction by any local residents exists at present.

IV. HIGH COURT WRIT PETITION FILED BY THE APPLICANT IS ON ENTIRELY DIFFERENT GROUNDS AND EMANATING FROM DISTINCT STATUTORY PROVISIONS

22. Respondent No. 6 has alleged that the Applicant has filed a Writ Petition before the Hon'ble High Court of Bombay at Goa on a similar subject matter and seeking virtually identical reliefs.

23. However, such statement is denied as being misleading and untenable in law. The Applicant submits that the said Writ Petition of 2025 has been preferred by the Applicant on entirely different grounds viz., the illegal and unauthorized commercial/industrial exploitation and environmental degradation of the tenanted agricultural lands by Respondent No. 6, coupled with the deliberate inaction of the State authorities despite complaints from the villagers, as evidenced on from a copy of the said Writ Petition annexed at Pg. 832.

24. The said Writ Petition of 2025 raises issues pertaining to the absence of approvals obtained under the Town and Country Planning Act, Village Panchayat Act, Goa Land Revenue Code, 1968, and related land revenue legislations.

25. Furthermore, the Applicant has clearly informed the Hon'ble High Court of the existence of the present Application before this Hon'ble Tribunal, and highlighted the distinction of issues raised in the Writ Petition and the present Application, as is evidenced on Pg. 841. Therefore, since issues raised before both judicial fora are substantially distinct and emanating from separate statutes, the question of 'forum shopping' does not arise.

26. Accordingly, such submissions of Respondent No. 6 are liable to be rejected.

V. APPROVAL OF DEVIATED ROUTE BY STATE GOVERNMENT CANNOT BE SUSTAINED DUE TO ABSENCE OF JURISDICTION

27. The contention of Respondent No. 6 that the deviated transportation route has been approved by the State Government is legally misconceived and without jurisdiction.

28. The Environmental Clearance in the present case has been granted by the Ministry of Environment, Forest and Climate Change (MoEFCC), and accordingly it is submitted that any modification, relaxation, or deviation from EC conditions can only be considered and approved by the same authority that granted the EC, following due appraisal under the EIA Notification, 2006.

29. As per the provisions of the EIA Notification, 2006, as well as per EC Condition No. 12.7, the MoEFCC or any other competent authority may alter/modify the EC Conditions. It is respectfully submitted that the State Government has not been conferred any authority to alter, dilute, or sanction deviations from an EC issued by MoEFCC, and any such purported approval, even if assumed to exist, is *non est* in the eyes of law and cannot legitimise a breach of EC conditions.

VI. FALSE ASSERTION BY RESPONDENT NO. 6 THAT ROUTE DEVIATION HAS BEEN APPROVED BY THE HIGH COURT

30. The assertion of Respondent No. 6 that the deviation of the EC-sanctioned route has "effectively been approved by the High Court" is false, misleading, and contrary to the record. By order dated 13.02.2025 passed in MCA No. 102/2025(F) and MCA No. 229/2025(F), the Hon'ble Bombay High Court has expressly refrained from adjudicating upon the issues raised by Respondent No. 6 and has directed that the same be agitated before the appropriate forum.

31. At no point has the Hon'ble High Court approved the deviation, validated the altered transportation route, or granted any exemption from EC conditions.

32. It is submitted that judicial restraint or relegation of parties to the appropriate forum cannot be misrepresented as judicial approval, and such a submission deserves outright rejection.

VII. EAC OBSERVATIONS AND IMPACT OF HEAVY TRAFFIC ON PUBLIC ROADS

33. The Applicant submits that the Expert Appraisal Committee (EAC) has observed during the site visit during 29-31 October 2023, that the Project Proponent is required to bypass the public road for transportation of mineral ore. That such observation must necessarily be because the said road is used by the public at large, and continual usage of the said public road by Respondent No. 6 would cause significant adverse impacts in terms of traffic congestion, dust generation, and likelihood of accidental deaths and injuries.

34. The Applicant submits that the deviation in the present case is substantial and not inconsequential, inasmuch as approximately 127 trucks are now plying per hour on the public road, translating to more than two heavy trucks per minute.

35. Such intensive vehicular movement has severe implications for road safety, air pollution, noise pollution, and the quality of life of local residents, and was consciously sought to be avoided through the provision of a dedicated transportation route during the EC appraisal process.

36. The present deviation therefore resurrects precisely those impacts which were assessed, mitigated, and sought to be excluded at the stage of grant of environmental clearance.

37. The Applicant further submits that the EC Compliance Report dated 30.05.2024 categorically records the commitment of Respondent No. 6 to provide a bypass route of 0.94 km on MDR-20 within a period of two years.
38. This commitment formed part of the compliance assurance given to regulatory authorities and the public. No steps have been taken thereafter to ensure compliance with this commitment by Respondent No. 6.
39. Instead, Respondent No. 6 has increased reliance on public road access and now seeks to normalise such increased usage *post facto*. This conduct amounts to a clear breach of EC conditions and compliance undertakings and cannot be condoned by this Hon'ble Tribunal.

VIII. VIOLATION OF TOR 14.1 – MANDATORY REQUIREMENT

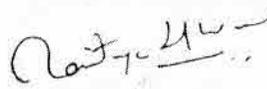
40. The Applicant submits that ToR 14.1 unequivocally mandates that any post-public hearing change in the structure or content of the draft EIA/EMP shall require the conduct of a fresh public hearing with revised documentation.
41. The EIA Report itself, as annexed at Annexure A-2, Page 72, explicitly records that a dedicated transportation route would be provided and that public road access would be limited to only 0.94 km.
42. The present deviation fundamentally alters traffic volume, impact zones, and the environmental and social footprint of the project, and therefore constitutes a material change that could not have been implemented without conducting a fresh public hearing. The deviation is thus procedurally illegal and vitiates the sanctity of the environmental clearance process.

Accordingly, the Applicant humbly prays that the submissions of Respondent No.6 are liable to be rejected, in light of the facts and circumstances of the present case.

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

ADVOCATE

COUNSELS FOR THE APPLICANT

Mobile: 7024102546

Email: maitreya.ghorpade@gmail.com



VERIFICATION

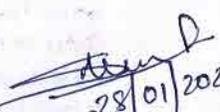
I, Sandeep Salelkar, R/o #02 Bag Wada Pilgaon, Bicholim, North Goa, Goa – 403504, do hereby verify that the contents of the present Rejoinder abovementioned are true to my personal knowledge and nothing material has been concealed therefrom.

Date: 28/01/2026

Place: Bicholim Goa.

BEFORE ME


APPLICANT


28/01/2026.
SMITA N. SAWANT
Advocate & Notary Public
Reg. No. 396/2024
1014, Nagzarwada, Bicholim Goa
Mob: 7387521419

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 65 OF 2025

IN THE MATTER OF:

Sandeep Salelkar

...APPLICANT

VERSUS

State of Goa & Ors.

...RESPONDENTS

AFFIDAVIT

I, Sandeep Salelkar, R/o #02 Bag Wada Pilgaon, Bicholim, North Goa, Goa – 403504, do hereby solemnly affirm and state as under:

1. That I am 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.


DEPONENT

VERIFICATION

Verified on this 28th of January, 2026 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom.

**SOLEMNLY AFFIRMED AND SIGNED
BEFORE ME**

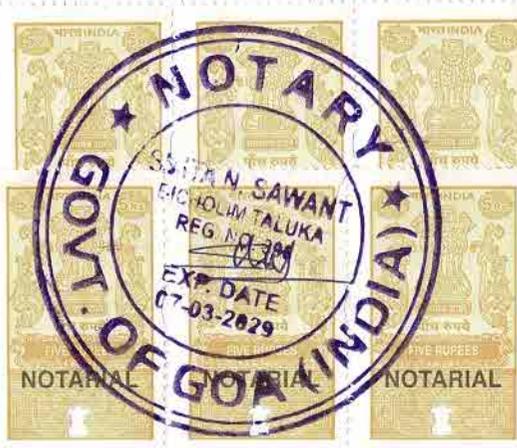
By the above named Executant Deponent
Shri/Smt. Sandeep Datta
Salelkar

he/she is identified before me by
Radhaanand - 779021074662
whom I personally know

Office of the Notary at Bicholim Goa.

on this 28th day of January 2026
Notarial Stamp Rs. 30/- Reg. No. 613 2026


DEPONENT




SMITA N. SAWANT
Advocate & Notary Public
Reg. No. 396/2024
1014, Nagzarwada, Bicholim Goa
Mob: 7387521419

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

.....

ORIGINAL APPLICATION NO. 12 OF 2014

In the matter of :

M.C. Mehta
3 A, Ring Road, Lajpat Nagar – IV,
New Delhi – 110 024

.....Applicant

Versus

1. University Grants Commission (UGC)
(Through its Chairman)
Bahadur Shah Zafar Marg,
New Delhi-110 002
2. All India Council for Technical Education
(Through its Chairman)
7th Floor, Chanderlok Building, Janpath,
New Delhi -110 001
3. Ministry of Human Resource Development
(Through its Secretary)
Government of India
Department of Higher Education,
Shastri Bhawan, New Delhi – 110 001.
4. Principal Secretary to Govt. of Haryana,
Department of Higher Education,
New Haryana Civil Secretariat Sector 17-C,
Chandigarh – 160017
5. Principal Secretary to Govt. of Punjab,
Department of Education, Mini Secretariat,
Room NO. 314, 3rd Floor, Sector-9,
New Haryana Civil Secretariat Sector 17-C,
Chandigarh – 160009.
6. Secretary (Education) to Govt. of Chandigarh,
Department of Education, Chandigarh Administration,
UT Secretariat, Sector 9, 4th Floor,
Chandigarh- 160009.
7. Principal Secretary to Govt. of National Capital Territory of Delhi,
Department of Education, Muni Maya Ram Marg, Pitam Pura,
Near Pitam Pura T.V. Tower, Delhi 110 088.

8. Principal Secretary to Govt. of Goa,
Department of Education,
New Secretariat Complex, R.No. 207, 3rd Floor,
Porvorim, Goa – 403521.
9. Principal Secretary to Govt. of Mizoram,
Department of Education, New Capital Complex,
Mizorark Aizawl – 796001.
10. Ministry of Environment and Forests,
Paryavaran Bhawan,
CGO Complex, New Delhi.

.....Respondents

Applicant in person:

Mr. M.C. Mehta and Mr. Rahul Shukla, Advocates.

Counsel for Respondents:

- Mr. Amitesh Kumar, Advocate for Respondent No.1 & 2.
Mr. B.V. Niren, CGSC, for Respondent No. 3.
Mr. Mohit Bhardwaj and Ms. Anubha Agarwal, Advocates for Respondent No.4.
Mr. Vivek Kumar Tandon, Advocate for Respondent No. 7.
Mr. Gaurav Liberhan, Advocate for Respondent No. 6.
Mr. Snigdha Pandey and Mr. Bansuri Swaraj, Advocates for Respondent No.8.
Mr. Pragyan Sharma and Mr. Heshu Kayina, Advocate for Respondent No. 9.
Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for Respondent No. 10

ORDER

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Mr. A.R. Yousuf (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : July 17, 2014

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The applicant states that he is a citizen of India and is concerned about the alarming rate at which environmental degradation is taking place in the country. It is the case of the applicant that in the past he had filed various cases in respect of air

and water pollution in the Supreme Court of India for the protection of cultural heritage of the country. The Supreme Court of India, in those cases, has delivered landmark judgments/orders for the protection of environment, people's lives, health and cultural heritage of India.

2. The applicant had instituted a writ petition being Civil Writ Petition No. 860/1991 titled *M.C. Mehta v. Union of India* before the Supreme Court of India which came to be disposed off by the judgment of the Supreme Court of India dated 22nd November, 1991 whereby the Hon'ble Supreme Court gave various directions to the Central and the State Governments for providing compulsory environmental education to the students of schools and colleges throughout the country. *Inter-alia*, but importantly, the Hon'ble Supreme Court of India had issued Direction No. IV in the said judgment. Direction IV of the judgment dated 22nd November, 1991 reads as under:

Direction IV. "We accept on principle that through the medium of education awareness of the environment and its problems related to pollution should be taught as a compulsory subject. Learned Attorney General pointed out to us that the Central Government is associated with education at the higher levels and the University Grant Commission can monitor only the under graduate and the post graduate studies. The rest of it, according to him, is a State Subject. He has agreed that University Grant Commission will take appropriate steps immediately to give effect to what we have said, i.e. requiring the Universities to prescribe a course on environment. They would consider the feasibility of making this a compulsory subject at every level in college education. So far as the education up to the college level is concerned we would require every State Government and every Education Board connected with education up to the matriculation stage or even

intermediate college to immediately take steps to enforce compulsory education on environment in a graded way. This should be so done that in the next academic year there would be compliance of this requirement. We have not considered it necessary to hear the State Government and the other interest groups as by now there is a general acceptance throughout the world as also in our country that protection of environment and keeping it free of pollution is an indispensable necessity for life to survive on this earth. If that be the situation, everyone must turn immediate attention to the proper care to sustain environment in a decent way.”

3. As the above direction had not been complied with, the applicant again filed an IA in the above writ petition upon which the Hon’ble Supreme Court vide its order dated 18th December, 2003 reiterated the direction requiring the authorities to comply with the same. The relevant extract of the order dated 18th December, 2003 reads as under: -

“.....we direct all the respondents- States and other authorities concerned to take steps to see that all educational institutions under their control implement respective steps taken by them and as reflected in their affidavits fully, starting from the next academic year, viz. 2004-05 at least, if not already implemented. The authorities so concerned shall duly supervise such implementation in every educational institution and non-compliance of the same by any of the institutions should be treated as a disobedience calling for instituting disciplinary action against such institutions.”

4. The University Grants Commission (for short ‘UGC’) on 13th July, 2004 submitted before the Hon’ble Supreme Court that they have prepared a common syllabus and the same is being implemented by various educational institutions. The All India Council of Technical Education on 6th August, 2004 informed the

Supreme Court that it had already prepared a syllabus which includes 'environmental science' and which is being updated and would be introduced from the next academic year. The syllabus pertaining to environmental education has been prescribed and the guidelines have been framed but according to the applicant, the subject is being taught by teachers who are not qualified in terms of the UGC Guidelines. The teachers who have specialized in Sanskrit, Hindi, English, Electronics, Political Science, Sociology, Mathematics, Physical Education, Home Science, Computer Science etc. have been assigned the task of teaching the subject of environmental science; in the most cosmetic way, which is against the letter and spirit of the judgment/orders passed by the Hon'ble Supreme Court of India. It is also averred by the applicant that a number of States like the State of Haryana, Punjab, Goa, Mizoram, Delhi and the Union Territory of Chandigarh amongst others have not complied with the directions of the Supreme Court of India, as afore-noticed. None of these States have taken any steps to appoint qualified teachers who are competent to teach environmental science. The eligible teachers are the ones who have qualified the National Eligibility Test (NET) in Environment Science or Ph.D. in terms of UGC guidelines. The whole purpose of making 'Environment' as a compulsory subject, hence, stands defeated. While referring to some of the States, the applicant makes a particular reference to the States of Haryana and Jammu and Kashmir. The applicant stated that except for holding the meetings, the State Governments have not taken any concrete steps for

compliance or for implementation of the above directions. In fact, they have been exchanging letters on what should or should not be the qualifications of the teachers who would teach the subject of Environment Science.

5. A number of States have been impleaded as respondents in the present application along with the Ministry of Environment and Forests. The applicant submits that the action of the respondent, in not providing environment education properly in the Colleges, Institutes and Universities is against the spirit of the order passed by the Hon'ble Supreme Court of India as well as the affidavit given by the State Governments before the Apex Court. Article 48A of the Constitution provides that the States should endure to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution imposes as one of the fundamental duties on every citizen to protect and improve the natural environment, including forests, rivers, lakes and wildlife and to have compassion for the living creatures. While referring to these provisions the applicant submits that lack of education in environment science would prejudicially affect the spirit of these Articles and thus, the applicant has been compelled to approach this Tribunal for redressal of his grievances. In this application, the applicant has made the following prayers in paragraph 20 of the application: -

“Under the facts and circumstances, it is respectfully prayed that the Hon'ble Green Tribunal may be pleased to:-

I. issue direction/directions to the Respondents to ensure that compulsory subject of Environment studies

is taught by the qualified/eligible teachers/Astt professors having specialization in post graduate degree i.e. M.Sc Environmental Science with NET qualified or Ph.D. in terms of UGC guidelines in the State of Haryana and other States and union Territories for providing proper environmental education to the students at Under Graduate and Post Graduate level from Academic Session 2014 in both Government and Private Universities/ colleges in India.

II. take appropriate Action against the Respondents for not implementing the judgments/ orders of the Hon'ble Supreme Court given vide Direction Number IV passed on 22.11.1991 in W.P.(C) No. 860 of 1991 and subsequent orders; and

III. pass such other order/ orders as may be deemed necessary on the facts and circumstances of the case.

And for this, the Applicant as duty bound shall ever pray.”

6. Different respondent States, besides taking up the plea of substantial compliance of directions of the judgment of the Hon'ble Supreme Court dated 22nd November, 1991 have primarily taken the preliminary objection with regard to maintainability of this application before the Tribunal. It is contended that on true construction of the provisions of Section 14 read with Section 18 and Schedule I of the National Green Tribunal Act, 2010 (for short 'NGT Act'), this Tribunal has no jurisdiction to entertain and adjudicate the matters raised in the present application. According to the learned counsel, it is a matter which relates to imparting of education and does not raise any substantial question relating to environment and in any case such question does not arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Furthermore, it is also contended that the entire basis of the application is alleged violation of the Order of the Supreme Court dated 22nd November, 1991. The Tribunal can neither initiate

contempt proceedings against violator nor it can be an executing court for the orders passed by the Supreme Court of India.

7. In view of the above, the issue of the maintainability was treated as a 'preliminary issue' by us and arguments were heard on the maintainability of the petition without going into the merits of the writ petition.

8. The applicant responded to this objection by raising a contention that the provisions of Section 14 read with Section 18 of the NGT Act are wide enough to give cause of action to 'any person aggrieved' to file any petition before this Tribunal, in relation to any environmental issue. Education in environmental science, thus, would be within the ambit of these provisions and hence the present petition would be maintainable. Furthermore, according to the applicant Sections 16(2)(e) and 17(1)(e) of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') as well as under Section 16(2)(f) of the Air Act, 1981 (for short 'the Air Act', lays down a statutory function for the Central or the State Board, as the case may be, to organize through mass media, a comprehensive programme regarding the prevention and control of water pollution, organizing the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution and to organize mass education programmes relating thereto. Thus, the Subject of environmental education, would fall within the compass of these provisions and hence it would be an 'implementation' of the Acts mentioned in Schedule I of the NGT Act. Being a 'person aggrieved' in its wider sense, the

applicant is entitled to maintain the present application. He questions the averment that there is substantial compliance of the directions, as even noticed in the application. He has also contended that in terms of Articles 141 and 142 of the Constitution of India, the orders passed by the Hon'ble Supreme Court of India are law of the land and are to be executed by all Courts and Tribunals. The purpose and object of the provision in question relates to the functions of the respective Boards and for ensuring prevention and control of water pollution. The comprehensive programme through mass media, even if it is deemed to include education as a part of the programme, still the prescription and enforcement of educational qualifications of the teachers who are expected to teach environmental science, cannot be an area that would squarely fall within the dimensions of Section 16 2(e) of the Water Act. The Section elaborately states the functions of the Board, which it is expected to perform in order to promote cleanliness of the wells in the different areas of the State and subject to the provisions of the Act. In the garb of invoking the provisions of the Section 16(2)(e) of the Water Act and Section 16(2)(f) of the Air Act, the applicant cannot require this Tribunal to issue directions to the Board to perform functions or duties or issue directions which, *ex facie*, are beyond the scope of the Section 16 of the respective Acts. Thus, we must dissipate the contention of the Applicant.

9. We have already noticed that we would not be examining any other question of law or even merits of the application and would

confine our discussion to the maintainability of the present application.

10. It is the contention before us that the application squarely touches and falls within the ambit of the expression 'implementation' of the Scheduled Acts as mentioned in Section 14 of the NGT Act. Further, that it relates to the subject of environmental sciences, raising substantial environmental issues and therefore, such an application can be entertained and decided by the Tribunal in accordance with law.

11. This Tribunal is a creation of a statute and has to work within the confines of that statute. If we treat the application as a petition, requiring the Tribunal to enforce, execute or take any other appropriate action for non-compliance or violation of the Direction IV issued by the Hon'ble Supreme Court of India in its judgment dated 22nd November, 1991, then there is no provision in the statute, i.e., the NGT Act, by invocation of which such cognizance could be taken by this Tribunal. It will not be appropriate for the Tribunal either to invoke contempt jurisdiction for violation of the orders passed by the Supreme Court of India or to issue appropriate directions with regard to those orders, as it is for that Court alone to deal with the matters of this kind. This Tribunal, thus, cannot entertain such an application as it would squarely fall beyond the provisions of Section 14 read with Section 18 and Schedule I of the NGT Act.

12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the

NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders/directions/decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Admittedly, the present application has been filed under Section 14 of the NGT Act. Thus, it must plead and raise the following:

- a) It should be a civil case.
- b) Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.
- c) Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.

13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant.

Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In terms of Section 16, it includes various other persons as described under clauses (a) to (d) and (f) of sub-Section 2 of Section 18. The locus and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section.

14. It is a settled position of law that the Tribunal must keep in its mind and be guided by the statutory provisions of the Act and it may not be appropriate for the Tribunal to take up the subjects which do not squarely fall within the ambit and scope of its jurisdictional provisions. We may refer to a judgment of the Tribunal in the case of *Goa Foundation v. Union of India* 2013(1) All India NGT Reporter, New Delhi, 234, where the Court while dealing with some facets of Tribunal's jurisdiction and the manner in which they should be construed, explained the expression 'substantial

question relating to environment’, ‘any person aggrieved’ and ‘dispute.’ The following paragraphs can be usefully reproduced at this stage:

“23. Similarly, ‘substantial question relating to environment’ also is an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made, large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the *de minimis* principle. In *In re Net Books Agreement* [1962] 1 WLR 1347, it was explained that, the term ‘substantial’ is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.

24. Section 2(m) of the NGT Act classifies ‘substantial question relating to environment’ under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must

relate to implementation of the enactments specified in Schedule I to the NGT Act.

25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's *The Law Lexicon* supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' [*Ebrahim Aboodbakar v. Custodian General of Evacue Property*, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of *Bar Council of Maharashtra v. M.V. Dabholkar and Others* AIR 1976 SC 242 held as under:-

"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of

private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections [37](#) and [38](#) of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section [38](#) so that it has locus standi to

appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

27. In the case of *Maharaj Singh v. State of Uttar Pradesh* (1977)1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the *lis* and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others* (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Roshan Kumar*, AIR 1976 SC 578 the Court held that the expression

‘aggrieved person’ denotes an elastic, and to an extent, an elusive concept. It stated as follows:

“It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner’s interest, and the nature and extent of the prejudice or injury suffered by him.”

35. The expression ‘disputes’ arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression ‘question’ used in sub-section (1) in comparison to the expression ‘dispute’ used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will obviously include the disputes referred to in Section 14(2). It is those disputes which would then be settled and decided by the Tribunal. These expressions are inter-connected and dependent upon each other. They cannot be given meaning in isolation or *de hors* to each other. The meaning of the word ‘dispute’, as stated by the Supreme Court in *Canara Bank v. National Thermal Power Corporation* (2001)1 SCC 43 is “a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other”. The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term ‘dispute’.

15. The above paragraphs are the precepts to the exercise of proper jurisdiction by the Tribunal. The provisions relating to jurisdiction could be construed liberally so as to achieve the object and purpose of the Act, where a narrower construction is likely to defeat the same. According to the learned counsel appearing for the

applicant, it is the implementation of the statutes stated in Schedule I of the NGT Act that would fully justify entertainment of this application by the Tribunal. It is contended that the word 'implementation' would have to be construed very widely so as to include in its ambit even education in environmental sciences (as a subject), thus, enabling the Tribunal to issue the prayed directions. In his submission, it would be a dispute relatable to environment. We are not able to find any merit in this submission.

16. The expression 'substantial question relating to environment' or 'enforcement of any legal right relating to environment' cannot be interpreted so generically that it would even include the education relating to environment. Furthermore, the expression 'implementation' understood in its correct perspective cannot be extended, so as to empower the Tribunal to issue directions in relation to service matters involving environmental sciences.

17. A phrase of significant importance appearing in Section 14 of the NGT Act is 'arises out of the implementation of enactment specified in Schedule I'. Even in this phrase, the word 'implementation' is of essence. 'Implementation' in common parlance means to take forward a decision or to take steps in furtherance to a decision or a provision of law. It sets into motion, the actions which are contemplated within the provisions of the Act to which reference is made. It is not synonymous to 'execution'. 'Execution' in law, particularly under the Code of Civil Procedure, 1908 is a known and well-defined concept. 'Implementation' in contradistinction thereto is a milder expression but again operates

within the limitations prescribed by the law or the provision in which such expression appears. Concept of 'implementation' cannot travel beyond the framework of law and in that sense it is even similar to 'execution' as it must be executed in conformity to the provisions of the Code of Civil Procedure, 1908. There are some basic similarities between 'implementation' and 'execution' but they differ in scope and enforcement.

18. We may now examine some of the definitions of the word 'implementation': -

Oxford Dictionary, 3rd ed., 2010, "implementation"- the process of putting a decision or plan into effect; execution.

Black's Law Dictionary, 9th ed., 2009, "implementation plan" in relation to environmental law means 'a detailed outline of steps needed to meet environmental quality standards by an established time.'

P. Ramanatha Aiyar's The Law Lexicon, 3rd ed., 2012, "implementation"- giving practical effect to.

Wharton's Law Lexicon, 15th ed., 2012, "implementing agency"- includes any department of the Central Government or a State Government, a Zilla Parishad, Panchayat at intermediate level, Gram Panchayat or any local authority or Government undertaking or non-governmental organization authorized by the Central Government or the State Government to undertake the implementation of any work taken up under the Scheme.

19. In the case of *Sanjay Gandhi Grih Nirman Sehkari Sansthan, Indore v. State of Madhya Pradesh*, AIR 1991 MP 72, where the High Court was concerned with the expression 'Implementation' appearing in Section 54 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short 'the Adhiniyam'), read in conjunction with Sections 4, 6 and 17(1) of the Land Acquisition Act, 1894. It was contended that the word 'implementation' means

commencement or completion of a decision taken under the Adhiniyam. The Court, after considering the meaning of the expression 'implementation' took the view that 'implementation' has to be construed liberally so as to ensure that the object is achieved and not frustrated. Therefore, the Court held that 'implementation' would mean that the steps under the Scheme have been taken and not that they ought to have been completed within the period of three years under Section 54 of the Adhiniyam so as to make the scheme lapse.

20. One also finds use of the expression 'implement' in the very Preamble of the Environment Protection Act, 1986 where it is stated that 'it is considered necessary further to implement the decisions afore-said' (the decision taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972). List I of the Seventh Schedule of the Constitution of India in terms of Article 246 also uses similar expression in Entry 13. Entry 13 reads as follows: -

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

21. The word 'implementing' as used above clearly indicates that it is a direct reference to the decision taken in the international conferences, etc. and which are sought to be implemented by taking further action thereof. Thus, when we have to construe the word 'implementation' appearing in Section 14 of the NGT Act, with reference to the Acts stated in Schedule I of the said Act, we must confine it to the 'implementation' of the provisions contained under

those Acts and that too with reference to a substantial question relating to environment and not beyond that.

22. We have already stated the ingredients which an applicant invoking the jurisdiction of the Tribunal under Section 14 must satisfy. The contention that the expression 'implementation' should receive narrower interpretation in terms of Section 14 of the NGT Act, would not be in consonance with the settled principles of interpretation. Hence, it is difficult for us to accept this contention advanced on behalf of the applicant.

23. Nexus between the dispute raised before the Tribunal for determination and the environment has to be direct. When the framers of law use the expression 'substantial question relating to environment', it clearly conveys the legislative intent of ensuring that the disputes determinable by the Tribunal have to relate to environment and not allied fields thereto. In the case of *Goa Foundation* (supra), the Tribunal clearly held that the disputes arising for decision or settlement before the Tribunal should arise out of substantial question relating to environment. The violation must be with regard to environment and it is not a generic term used by the Legislature enabling the Tribunal to expand its jurisdiction beyond the true construction of Section 14 of the NGT Act. The character of the proceeding is clearly not in reference to the relief that the Tribunal could grant, but upon the nature of the right violated and the appropriate relief which could be claimed.

24. In the case of *Kehar Singh v. State of Haryana*, 2013 (1) All India NGT Reporter, Delhi 556, the Tribunal held as under:

The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act.

25. Another way in which the present controversy could be viewed is by reading the prayer of the applicant along with contents of the application. The applicant has submitted that firstly in all colleges and institutions, environmental science is not a subject and wherever it has been introduced as a subject, it is not being taught by qualified teachers. This is the substance of the application. It clearly falls within the framework of the constitution and/or service jurisprudence. It does not raise any substantial question of environmental jurisprudence understood in its correct perspective within the provisions of the NGT Act and the Scheduled Acts thereto. The contention that 'mass education' in Section 16(e) of the Water Act and 16 (f) of the Air Act would come to the aid of the applicant for issuance of such a direction, is again misconceived. Organizing through mass media a comprehensive programme regarding the prevention and control of water and air pollution, would not take in its cover the education or service jurisprudence in

relation to environmental science as a subject of education. The programmes contemplated under these provisions must relate to prevention and control of pollution and not what should be the terms and conditions of appointment of teachers and how the environmental science should be taught in an educational institution. An activity for prevention and control of pollution must be discernibly distinguished and understood as such from education and conditions of service of teachers as enumerated under the constitutional provisions or the notifications issued by the UGC or the Universities. The applicant claims that a legal right as envisaged under Section 14 of the NGT Act has accrued in his favour as a result of the Order of the Supreme Court dated 22nd November, 1991 referred supra. There cannot be a dispute to the proposition that the orders and judgments declared by the Hon'ble Supreme Court would be the law of the land and are enforceable throughout the territory of India in accordance with law. However, the direction of the Supreme Court in the above case, clearly falls within the domain of constitutional or service law. It is for the applicant to approach the appropriate forum/court for enforcement of that direction. In our considered view it would not fall within the ambit of Section 14 of the NGT Act as neither does it raise any substantial question relating to environment nor does the implementation of the Scheduled Acts arise.

26. Ergo for the reasons afore-recorded, we are of the considered view that the present application filed by the applicant under Section 14 of the NGT Act is not maintainable and the Tribunal has

no jurisdiction to entertain and grant the reliefs prayed for by the applicant. The applicant is, however, at liberty to approach the court of competent jurisdiction. This order would in no way prejudice the rights and contentions of the applicant. We, further make it clear that we have neither examined the merits of the case nor any other contention raised by the parties except to the extent afore-stated.

27. This application is, therefore, dismissed as not maintainable. However, we leave the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Prof. A.R. Yousuf
Expert Member

Dr. R.C. Trivedi
Expert Member

New Delhi
July 17, 2014

TRUE COPY

[Handwritten signature]

ANNEXURE A-18 1420

UNION OF INDIA AND ORS.

v.

ASHOK KUMAR AND ORS.

OCTOBER 18, 2005

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Service Law:

Border Security Force Rules, 1969:

Rule 20—Misconduct—Termination of service of Officers—By Central Government—During raid in the hideout of militants two militants apprehended—Huge quantity of arms, ammunitions and explosives and household articles including gold ornaments were recovered—Delinquent Officer, though not present on the spot, had falsely shown his presence at the scene of operation and search—Recovery of arms, ammunition, gold ornaments etc. not reflected in seizure report sent to higher authorities—To cover up these lapses a fake encounter was staged and a report sent indicating recovery of some gold ornaments—A Staff Court of inquiry found delinquent Officer responsible for act of omission and commission—Director General BSF called upon delinquent Officer to resign on the ground that trial by Security Force Court was inexpedient and impracticable—Central Government removed delinquent Officer from service without pensionary benefits under S. 10 r/w R. 20(5)—High Court held that only Central Government could form the opinion that trial was inexpedient or impracticable and not the DG BSF and, therefore, removal of delinquent Officer from service was in violation of S. 10 r/w R. 20(5)—Correctness of—Held: Both the Central Government and DG BSF can act in terms of Rule 20(2)—Therefore, the High Court's conclusion that the Central Government is the only authority to decide whether trial is inexpedient or impracticable is clearly indefensible—High Court's judgment set aside—Border Security Force Act, 1968, S. 10—Army Act, 1950, S. 19—Army Rules, 1954, R. 14.

Word and Phrases:

"As the case may be"—Meaning of—In the context of Rule 20(2) of the Border Force Rules, 1969.

A The respondent-delinquent Officer being the Deputy Inspector General Border Security Force (BSF) was having supervisory power over the Commandant who raided the hideout of militants. During the raid two militants were apprehended and huge quantity of arms, ammunitions and explosives and household articles including gold ornaments were recovered. The recovery of arms, ammunition and explosives and gold ornaments were not reflected in the seizure report sent to the higher authorities. The respondent, though not present at the spot, had falsely shown his presence at the scene of operation and search with a view to claiming undue credit of achievements of the operation. To cover up these lapses another encounter was shown to have taken place and a report regarding the fake encounter was sent, which indicated the recovery of some gold ornaments.

Thereafter, a Staff Court of Inquiry was held and the delinquent Officer was found responsible for various acts of omission and commission. The Director General BSF opined that it was neither expedient nor practicable to conduct the trial of the respondent-delinquent Officer by a Security Force Court and, therefore, under Rule 20(4) of the Border Security Force Rules, 1969 recommended to the Central Government that the respondent be called upon to resign from service.

E The Government of India in exercise of power conferred under Section 10 of the Border Force Security Act, 1968 read with Rule 20(5) of the Rules removed the delinquent Officer from services without pensionary benefits.

F However, the High Court held that the removal of the delinquent Officer from service was in violation of the provisions contained in Section 10 of the BSF Act read with Rule 20 of the BSF Rules. Hence the appeal.

Allowing the appeal, the Court

G HELD: 1. The High Court is plainly in error in holding that it is only the Central Government which is competent to act in terms of Rule 20(2) of the Border Security Force Rules, 1969. The expression "as the case may be" would otherwise be rendered superfluous. Both the Central Government and the Director General BSF can act in terms of Rule 20(2). The High Court overlooked the salient factor that any other interpretation would render reference to the Director General meaningless. [328-B]

H

2. A bare reading of Rule 20 makes the position clear that both the Director General and the Central Government can act in different situations and consideration by the Director General is not ruled out. Rule 20(3) makes the position clear that the explanation is to be considered by the Director General and only when it is directed by the Central Government, the matter shall be submitted to the Central Government with the officer's defence and the recommendations of the Director General. When the Director General finds the explanation unsatisfactory he recommends for action. There may be cases where the Central Government directs the Director General to submit the case. There can be a case where the Central Government finds that the explanation is unsatisfactory. In that case the Central Government may direct the case to be submitted to it. At the first stage the consideration is by the Director General. When he finds the explanation unsatisfactory, he recommends action by the Central Government. But even if he finds the explanation to be satisfactory, yet the Central Government can direct the case to be submitted to it. Recommendations in terms of Rule 20(4) are made by the Director General and the final order under Rule 20(5) is passed by the Central Government. The expression "as the case may be" is used in Rule 20(2) and (5). It obviously means either of the two. It is to be further noted that the order in terms of Rule 20(5) is passed by the Central Government. But the enquiry can be either by the Central Government or the Director General, as the case may be. Where the report of the officer's misconduct is made by the Director General, the matter is to be placed before the Central Government and in all other cases the consideration is by the Director General. [328-C, D, E, F, G]

3. Therefore, the High Court's conclusions that the Central Government is the only authority to consider the matter whether holding of trial is inexpedient or impracticable is clearly indefensible. [329-B]

Shri Balaganesan Metals v. M.N. Shanmugham Chetty, [1987] 2 SCC 707, relied on.

4.1. The plea of the delinquent Officer that the order suffers from the vice of non-application of mind is clearly untenable. Similarly, the plea of *mala fides* does not appear to have been pressed before the High Court, and the grievance related to other respondent and the personal allegations of *mala fides* do not appear to have been urged. [329-D]

4.2. It cannot be overlooked that the burden of establishing *mala fides*

A is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved and the very seriousness of such allegations demand proof of a high order of credibility. [329-H].

B *E.P. Royappa v. State of Tamil Nadu, AIR (1974) SC 555, Indian Railway Construction Co. Ltd. [2003] 4 SCC 579 and Gulam Mustafa v. State of Maharashtra, [1976] 1 SCC 800, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4792 of 1999.

C From the Judgment and Order dated 21.4.99 of the Jammu and Kashmir High Court in L.P.A.(SW) No. 631 of 1999.

WITH

C.A. No. 6389 of 2005.

D A. Sharan, Additional Solicitor General, Ms. Indra Sawhney, Amit Anand Tiwari, Ms. Salinee Ranjan, Ms. Sushma Suri and B.V. Balaram Das for the Appellant in C.A. No. 4792/99.

E L. Nageshwara Rao, Devendra Singh, Ms. Sangeeta Mandal, Atish Kumar Vatts, Jayanth Muthuraj and Pritam Baruah for the Appellant in C.A. No. 6389/2005 and Respondent in C.A. No. 4792/99.

The Judgment of the Court was delivered by

F **ARIJIT PASAYAT, J.** Leave granted in S.L.P. (C) 21363 of 2005 CC No. 6855 of 1999.

G Both these appeals have matrix in a judgment rendered by a Division Bench of the Jammu & Kashmir High Court in a Letters Patent Appeal filed by Ashok Kumar, the respondent in Civil Appeal No. 4792 of 1999 and the appellant in the connected appeal. For the sake of convenience said Ashok Kumar is described hereinafter as the 'delinquent officer'. By the impugned judgment the High Court held that the removal of the delinquent officer from service was in violation of the provisions contained in Section 10 of the Border Security Force Act, 1968 (in short 'the Act') read with Rule 20 of the Border Security Force Rules, 1969 (in short 'the Rules'). The appeal filed by the delinquent officer was allowed upsetting the judgment of the learned H Single Judge who had dismissed the writ petition filed by the delinquent officer.

Factual position, filtering out unnecessary details, is as follows:

There was a raid in the house of militants on 23rd and 24th March, 1992. The delinquent officer being Deputy Inspector General in Command was having Supervisory power over the Commandant who raided the hideout of militants. On the night intervening 23rd and 24th March 1992 house of one Mohd. Maqbool Dhar in Bemina Colony of Srinagar was raided by 23 men of the force. During the raid two militants described as 'dreaded militants' namely Javed Ahmed Shalla and Mohd. Siddiqui Soffi were apprehended. According to the authorities huge quantity of arms, ammunitions and explosives and household articles including gold ornaments were recovered. The recovery of arms, ammunition and explosives and gold ornaments were not reflected in the seizure report sent to higher authorities. Respondent was not present at the spot and he indicated his presence at the scene of operation with a view to claim undue credit of achievements of the operation. Full quantity of seized articles was not reflected in the report. 31 major weapons were recovered but only 22 were shown. Two pistols, five AK-56 rifles, one rocket launcher and one Telescopic Rifle were not shown in the list of ammunition. Out of 31 gold ornaments 25 pieces were not shown in the list of seized articles. Second situation Report was also sent, but the same also did not reflect recovery of complete articles. To cover up these lapses another encounter was shown to have taken place and a report regarding fake encounter was sent vide No.0-7209 which indicated the recovery of some gold ornaments. Another report was also sent from office of delinquent officer declaring goods which were not declared earlier. It was admitted that recovery of some weapons was not reflected in earlier report.

Therefore, a Staff Court of Inquiry was ordered to be held on 16th May, 1992 and the delinquent officer was found responsible for following act of omission and commission:

- (a) Falsely showing his presence at the scene of operation and search.
- (b) Failure to make any observations regarding serious omissions and discrepancies in the unit site report and detailed report.
- (c) Suppression of information regarding seizure of six weapons out of nine which were not declared by the Commandant.
- (d) Suppression of information regarding seizure of household items.
- (e) Suppression of information regarding seizure of a substantial quantity of gold ornaments.

- A (f) Failure in supervisory duties by not giving expected directions to the Commandant in regard to accounting and disposal of seized items.

B On 18.9.1992 Director General recorded his satisfaction that the material witnesses connected with case will not be available and as such the trial of the delinquent officer before Security Force Court was inexpedient and impracticable and opined that further retention of the delinquent officer in service was undesirable.

C On 23/25.9.1992 show-cause notice was served upon the delinquent officer as to why his services be not terminated in accordance with Rule 20 of the Rules. On 31.10.1992 he sent reply to the show cause notice. On 13.1.1993 Inspector General found that there was adequate evidence both oral and documentary to prove the various charges against the delinquent officer and he had no satisfactory explanation to the various charges and recommended that the competent authority may call upon the delinquent officer to resign under Rule 20(4) or on his refusal to do so, compulsorily retire or remove him from service with pension and gratuity. On 6.2.1993 Director General after considering the show cause notice, reply to the show cause notice, report of the Enquiry Officer and view of Inspector General, BSF recorded his satisfaction that it was neither expedient nor practicable to conduct the trial and in exercise of his powers under Rule 20(4) of the Rules recommended to Central Government that delinquent officer be called upon to resign from service. The recommendation of the Director General, BSF that it was inexpedient or impracticable to hold inquiry and calling upon delinquent officer to resign was considered by the State Minister who expressed his view as under:-

F “It is a very serious case which has brought bad name to the BSF in the State. I agree that the penalty of removal from service without pensionary benefits should be imposed on Shri Ashok Kumar DIG, BSF as proposed above. DG, BSF should also expedite imposition of penalty against the other delinquent officers”.

G The Home Minister considered the entire record of the case including the recommendations of the desk officer, Director General, Minister of State’s opinion and thereafter, recorded his own opinion. Home Minister accorded his approval as under:-

H “We may first remove him from service and also not being eligible

for pension looking to the nature of the offence, I don't think this will be sufficient punishment. We may also prosecute him so that it may have deterrent effect."

By order dated 1.6.1993 Government of India in exercise of power conferred under Section 10 of the Act read with Rule 20(5) of Rules removed the delinquent officer from the services without pensionary benefits with immediate effect.

The delinquent officer filed a Writ Petition no.663 of 1993 in the High Court of Himachal Pradesh challenging the order dated 1.6.1993 whereby he was removed from service without pensionary benefits. The writ petition was dismissed by the Himachal Pradesh High Court by order dated 3.9.1997 on the ground that it had no jurisdiction to deal with the writ petition. Thereafter, the delinquent officer filed a Writ Petition no.1277/1997 in the Jammu and Kashmir High Court. An interim order was passed on 3.9.1997 directing the respondents in the writ petition to treat the writ petitioner to be in service with all service benefits as he was enjoying till 2.9.1997. By order dated 5.2.1999 the learned Single Judge dismissed the writ petition. The learned Single Judge's conclusions are essentially as follows:-

- (i) Plea of *res-judicata* cannot be accepted.
- (ii) Delinquent officer was given full and reasonable opportunity in the Court of Inquiry which was conducted in terms of Chapter XIV of the Rules, and he was found guilty of six lapses.
- (iii) The view formed by Competent Authority to dispense with holding of General Security Force Court was on the basis of material on record.
- (iv) The decision to remove delinquent officer from service was not actuated by *malafide* consideration.
- (v) Decision taken by Home Minister suffered from no infirmity, and against him no malice has been shown.
- (vi) Rules of business which required matter to be placed before President of India are not applicable to the delinquent officer."

Letters Patent Appeal was filed by delinquent officer against the order of learned Single Judge.

A In support of the appeal, following points were urged:

- (i) There is no independent or sufficient material for taking action under Rule 20 and the material relied upon is only that which has been collected by the Court of Inquiry, the use of which is not permissible.

B The respondent can be tried before the Security Force Court as the show cause notice has been served and the witnesses are also available.

- (ii) Learned Single Judge has misdirected himself in recording the finding and maintaining that it was not expedient and practicable to hold inquiry.

C (iii) He is a Class-1 Officer of the BSF under Ministry of Home Affairs and, therefore, as per Item No.13 of the First Schedule read with Rule 2 of the Govt. of India (Allocation of Business) Rules, 1961 he could only be removed by the Prime Minister and the President in terms of Serial No.39 of the Third Schedule read with Rule 8 of the Transaction of Business Rules, 1961.

D (iv) The authorities have removed him from service without following the provisions of law contained in Section 10 of the Act read with Rule 20 of Rules, as the Central Government has neither recorded the satisfaction to the effect that it is inexpedient and impracticable to hold inquiry nor formed any opinion that his further retention in service is undesirable, for terminating the services under Rule 20 of Rules.

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F The Division Bench by the impugned judgment concurred with the findings expressed by the learned Single Judge so far as first three points are concerned. So far as the fourth point is concerned it was held that the Central Government was required to record satisfaction that it was inexpedient and impracticable to hold inquiry, and to form opinion relating to delinquent officer for retention in service. According to the High Court the delinquent officer had been removed from the service without following the provisions of Section 10 of the Act and Rule 20 of the Rules. The High Court noticed that two authorities are authorized to act under Rule 20 of the Rules. The procedure to be followed to terminate the services of an officer is available under Section 10 of the Act by the Central Government on account of misconduct. The expression "as the case may be" relates to the action to be taken by the Central Government and the action to be taken by the Director

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General. It was held that both the authorities did not have concurrent jurisdiction; otherwise the expression "as the case may be" would be rendered surplus and meaningless. Reference was made to Section 19 of the Army Act, 1959 (in short 'Army Act') and Rule 14 of the Army Rules 1954 (in short 'Army Rules'). It was noted that the language was in *pari materia*, except the words "as the case may be" with corresponding Section and Rule of the Act and the Rules respectively. Therefore, it was held that use of expression "as the case may be" is significant and indicative of two different spheres of activity for two different authorities. The Director General was not the appointing authority of the delinquent officer and, therefore, it was held that only the Central Government could have taken action and not the Director General. It was incumbent upon the Central Government to record satisfaction that it was inexpedient and impracticable to hold trial, before the jurisdiction to take further action could be assumed.

In support of the appeal filed by the Union of India learned Additional Solicitor General submitted that the Division Bench of the High Court has failed to take into account the true scope and ambit of Rule 20. It was pointed out that Rule 14 of the Army Rules dealt with any category of employees, while Rule 20 of the Rules dealt with officers. It was pointed out that the Director General is given power to conduct inquiry and is also the appointing authority.

In support of the other appeal filed by the delinquent officer, apart from the supporting judgment of the Division Bench it was submitted that the Division Bench of the High Court was not justified in its conclusions so far as the other three points are concerned. Specific allegations of *mala-fides* were not dealt with by the High Court. It was also submitted that in any event there was no application of mind by the concerned Minister, and merely on the opinion of the Desk Officer the order was passed. Considering the limited scope for judicial review it was submitted that the view of the Division Bench is irreversible. As the basic controversy revolves round the scope and ambit of Rule 20, it is necessary to quote the same. The said Rule reads as follows:

"20. Termination of service of officers by the Central Government on account of misconduct: (1) When it is proposed to terminate the service of an officer under Section 10 on account of mis-conduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action:-

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Provided that this sub-rule shall not apply:-

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or

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(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

C

(2) When after considering the reports of an Officer's misconduct, the Central Government or the Director-General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Director General shall so inform the officer together with particulars of allegation and report of investigation (including the statements of witnesses, if any, recorded and copies of documents if any, intended to be used against him) in cases where allegations have been investigated and he shall be called upon to submit, in writing, his explanation and defence;

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Provided that the Director-General may withhold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

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(3) In the event of explanation of the Officer being considered unsatisfactory by the Director-General, or when so directed by the Central Government, the case shall be submitted to the Central Government with the Officer's defence and the recommendations of the Director-General as to the termination of the Officer's service in the manner specified in sub-rule (4).

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(4) When submitting a case to the Central Government under the provision of sub-rule (2) or sub-rule (3), the Director-General shall make his recommendations whether the Officer's service should be terminated, and if so, whether the officer should be, -

(a) dismissed from the service; or

(b) removed from the service; or

(c) retired from the service; or

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(d) called upon to resign.

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(5) The Central Government, after considering the reports and the officer's defence, if any, or the judgment of the Criminal Court, as the case may be, and the recommendation of the Director-General, may remove or dismiss the officer with or without pension, or retire or get his resignation from service, and on his refusing to do so, the officer may be compulsorily retired or removed from the service with pension or gratuity, if any, admissible to him."

B

Sub-rule (1) deals with the proposal to terminate the service under Section 10 on account of mis-conduct and requires an opportunity to be given to show cause in the manner stated. Operation of sub-rule (1) is ruled out in the category of cases covered by the proviso to sub-rule (1). Sub-rule (2) deals with modalities to be followed when either the Central Government or the Director-General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is inexpedient or impracticable and yet either the Central Government or the Director-General, as the case may be, is of the opinion that further retention of the concerned officer in the service is undesirable. Thereafter, comes to the role of the Director-General. He is required to inform the officer together with particulars of allegation and report of the investigation, (including the statement of witnesses) if any, which is intended to be used against the delinquent officer in cases where allegations have been investigated. The concerned officer is given opportunity to submit his explanation and defence. Proviso to sub-rule (2) makes it clear that Director-General may withhold disclosure of such report or portion thereof if he is of the opinion that the disclosure is not in the interest of the security of the State. Sub-rule (3) relates to consideration of the explanation furnished by the concerned officer and the conclusions of the Director-General on consideration of the explanation. Either when the explanation is considered unsatisfactory by the Director-General or where it so directed by the Central Government, the case shall be submitted to the Central Government with the Officer's defence and the recommendation of the Director-General as to the termination of the officer's service in the manner provided in sub-rule (4). When a case is submitted to the Central Government under the proviso to sub-rule (2) or sub-rule (3), the Director-General is required to make recommendation whether the officer's service should be terminated and, if so, which of the four alternatives provided should be adopted. Sub-rule (5) deals with consideration of the reports and defence of the officer by the Central Government or judgment of the Criminal Court, as the case may be,

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A and the recommendation of the Director-General. The Central Government may pass the order in terms of any of the alternatives indicated in the sub-rule (5).

B The High Court is plainly in error in holding that it is only the Central Government which is competent to act in terms of sub-rule (2). Expression “as the case may be” is otherwise rendered superfluous. Both the authorities can act in terms of sub-rule (2). High Court overlooked the salient factor that any other interpretation would render reference to the Director-General meaningless.

C A bare reading of Rule 20 makes the position clear that both the Director-General and the Central Government can act in different situations and consideration by the Director-General is not ruled out. Sub-rule (3) makes the position clear that the explanation is to be considered by the Director-General and only when it is directed by the Central Government, the matter shall be submitted to the Central Government with the officer’s defence and the recommendations of the Director-General. When Director-General finds the explanation unsatisfactory he recommends for action. There may be cases where the Central Government directs the Director-General to submit the case. There can be a case where the Central Government finds that the explanation is unsatisfactory. In that case the Central Government may direct the case to be submitted to it. At the first stage the consideration is by the Director-General. When he finds the explanation unsatisfactory, he recommends action by the Central Government. But even if he finds explanation to be satisfactory, yet the Central Government can direct the case to be submitted to it. Recommendations in terms of sub-rule (4) are made by the Director-General and the final order under Rule 20(5) is passed by the Central Government. The expression “as the case may be” is used in sub-rule (2) and sub-rule (5). It obviously means either of the two. It is to be further noted that the order in terms of sub-rule (5) is passed by the Central Government. But the enquiry can be either by the Central Government or the Director-General, as the case may be. There is another way of looking at sub-rule (2). Where report of the officer’s misconduct is made by the Director-General, the matter is to be placed before the Central Government and in all other cases the consideration is by the Director-General.

H The words “as the case may be” means “whichever the case may be” or “as the situation may be”. (See *Shri Balaganesan Metals v. M.N. Shanmugham Chetty and Ors.*, [1987] 2 SCC 707. The expression means that

one out of the various alternatives would apply to one out of the various situations and not otherwise. A

Therefore, the High Court's conclusions that Central Government is the only authority to consider the matter whether holding of trial is inexpedient or impracticable is clearly indefensible. B

Coming to the conclusion whether there was application of mind, the High Court had perused the concerned file and come to the conclusion that there was independent application of mind in passing the order of removal. Though in the appeal filed by the delinquent officer the order of removal is assailed on the ground that only the Desk Officer's opinion was endorsed without application of mind, we do not find the situation to be so. Copies of the entire file were produced before us. It is clearly indicative of the fact that though the Desk Officer's opinion was noted, there was independent application of mind and, therefore, the plea of the delinquent officer that the order suffers from the vice of non-application of mind is clearly untenable. Similarly, we find the plea of *mala-fides* does not appear to have been pressed before the High Court, and grievance related to other respondents and the personal allegations of *mala-fides* do not appear to have been urged. C D

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting *mala fide* in the sense of pursuing an illegitimate aim. It is not the law that *mala fide* in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (*S. Pratap Singh v. State of Punjab*, AIR 1964 SC 72). It cannot be overlooked that burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in *E. P. Royappa v. State of Tamil Nadu and Anr.*, AIR (1974) SC E F G H

- A 555, Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See *Indian Railway Construction Co. Ltd. v. Ajay Kumar*, [2003] 4 SCC 579).
- B As observed by this Court in *Gulam Mustafa and Ors. v. The State of Maharashtra and Ors.*, [1976] 1 SCC 800 *mala fide* is the last refuge of a losing litigant.
- That being so, the delinquent officer's appeal is sans merit.
- C The inevitable conclusion is that the appeal filed by the Union of India deserves to be allowed. The judgment of the Division Bench taking the view contrary to that of learned Single Judge in its analysis of Rule 20 deserves to be set aside, which we direct. Similarly, the other appeal filed by the delinquent officer lacks merit and is dismissed. In the peculiar circumstances of the case, parties are directed to bear their respective costs.
- D

V.S.S.

Appeal allowed.

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