BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH, PUNE
Original Application No. 89/2020(WZ)

IN THE MATTER OF:

Sama Siddiq Osman ....Applicant

VERSUS

Ministry of Environment, Forest and Climate Change and Ors ..Respondents

INDEX

Place: Pune
Date:04.12.2023 Filed By:-

(Shilpa Chohan, Shawahiq Siddiqui)
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REJOINDER AFFIDAVIT TO THE AFFIDAVIT-IN REPLY ON BEHALF OF RESPONDENT NO. 2-DISTRICT COLLECTOR, MORBI

I, Sama Siddiq Osman, Aged about 55 years, S/o Shri Usman Amad R/o R/o Village Cheravadi, Post Shikarpur, Taluka Bhachau, District Kachchh, Gujarat do hereby solemnly affirm and state as under: -

1. That I am the applicant in the above-mentioned matter and as such am competent to depose the present rejoinder affidavit.
2. That the contents of the affidavit in reply of R-2 is denied in totality, unless specifically accepted as true and correct.

REJOINDER TO PARAWISE REPLY

1. That the contents of para need no reply and the answering respondent is put to strict proof of the same.

2. That the contents of para need no reply as they are matter of record.

3 to 6. That the contents of para 3 to 6 to the extent that lease has been granted to R-4 and R-5 is admitted rest of the contents of the para are denied as wrong and incorrect. At the outset it is stated by the applicant that the land that has been leased by the answering respondent comes within CRZ1A area as per the approved CZMP Plan which has been annexed in the present reply and also as annexed by the applicant. It is contented that lease of government land cannot be granted for an area where the purported activity for which the lease is granted is a prohibited activity in that area. The land that has been leased comes within CRZ IA area and salt works and salt harvesting is not permissible activity as per combined reading of paragraph 3, 4,7,8 of CRZ, 2011. The activity of salt works is a regulated activity after seeking CRZ clearance in CRZ IB area.

7-8. That in reply to the contents of para 7-8, the applicant wishes to place reliance on the contention in para 3 to 6. It is contented that lease of government land cannot be granted for an area where the purported activity for which the lease is granted is a prohibited activity in that area. The land that has been leased comes within CRZ IA area and salt works and salt harvesting is not permissible activity as per combined reading of paragraph 3, 4,7,8 of CRZ, 2011.

9-11. That the contents of para 9-11 is denied as incorrect and wrong. It is contented that lease of government land cannot be granted for an area where the purported activity for which the lease is

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granted is a prohibited activity in that area. The land that has been leased comes within CRZ IA area and salt works and salt harvesting is not permissible activity as per combined reading of paragraph 3, 4,7,8 of CRZ, 2011.

12-15. That the contents of para 12-15 is denied as incorrect and wrong. The jurisdiction of the Ld. NGT to pass orders has been laid out in various judgments and the applicant wishes to place reliance on the same at the time of hearing. The true copy of the judgment in The Kerala State Coastal Zone Management Authority Vs. The State of Kerala Maradu Municipality and Ors.(MANU/SC/0808/2019, (2019)7SCC248) is annexed herewith and marked as **Annexure A/1**. The true copy of the judgment in Municipal Corporation of Gr. Mumbai Vs. Ankita Sinha, MANU/SC/1076/2021 is annexhed herewith and marked as **Annexure A/2.** The true copy of the judgment in The Director General (Road Development) National Highways Authority of India Vs. Aam Aadmi Lokmanch and Ors. is annexed herewith and marked as **Annexure A/3.**

16-17. That the contents of para 16-17 is denied as incorrect and wrong. The communication mentioned in the para under reply has been relied upon and mentioned in the action taken report and the reference to the same is at Page 117. The relevant portion is extracted as :-

"Meanwhile Additional Chief Secretary, Forests & Environment Department, GoG issued Directions under Section 5 of the Environment (Protection) Act, 1986 to Chairman, Deendayal Port

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Trust (DPT) vide Reference No. ENV-10-2018-20-NGT-27 dated 12/06/2019 and similar Directions under Section 5 of the Environment (Protection) Act, 1986 to M/s. Real Salt & Industries Ltd, Vill. Bagasar, Ta. Maliya, Dist. Morbi and M/s. Sea Side Salt Pvt. Ltd, Vill. Bagasar, Ta. Maliya, Dist. Morbi and vide Reference No. ENV-10-2019-122-E(T cell)/431688 dated 16/08/2019."

18-23 That in reply to the contents of the para under reply it is submitted that the issue as regards to the overlapping of the land between R-2 and Deendaya Port Authority came up for consideration before this Hon'ble Tribunal in OA of Kachchh Camel Breeders Association Union of India and vide judgment 11th September, 2019, the Ld. NGT had directed that the survey of the land would be conducted to stop activity of grant of land to salt companies resulting in construction of bunds and destruction of mangroves. The demarcation was to be conducted for the entire area and not just of the area which has been leased out to the private respondents. The tenor of the reply shows that the respondent no.2 even being Chairman of the District CRZ committee has not taken any steps towards the direction of preventing coastal land coming within CRZ IA from the destructive activities having impact upon coastal area.

24-26. That the contents of the para under reply are denied as wrong and incorrect. The land leased comes within CRZ IA area and the same is evident from the approved CZMP Plan. The answering respondent has made vague submission as regards to

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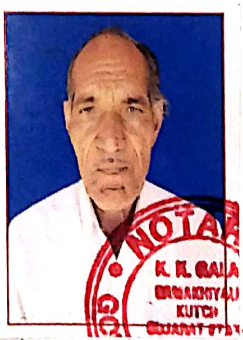
the area which as per them comes within CRZ -1(A) area and CRZ-1 (B) area. The applicant denies that any part of the leased land comes within CRZ 1B area. So the earthen bunds need to be removed and the leases are to be cancelled as the same are in CRZ IA area as per the approved CZMP Map. The activity of construction of earthen bund over the leased-out area, being the basic activity required for salt manufacturing which is preparation of salt pans, and the same has obstructed the flow of tidal water and affected the mangroves in the area.

DEPONENT

VERIFICATION:

Verified at Bhilad Valsad on _____day of December, 2023 that the contents of above affidavit is true and correct to the best of my knowledge and understanding and nothing material has been concealed there from.



DEPONENT

Witness:

1) [illegible]
MO- 9725357025

2) [illegible]
MO- 98700 68100

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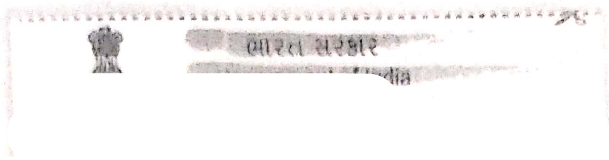
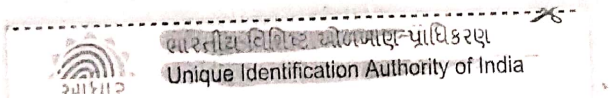
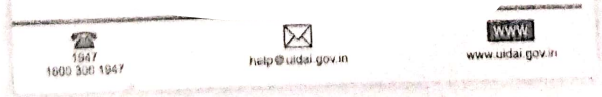
SOLEMNLY AFFIRMED
BEFORE ME

K. K. GALA
NOTARY
GOVT. OF INDIA
Sr. No. 3723/23
Date:- 04/12/2023.



આધાર – સામાન્ય માણસનો અધિકાર





MANU/SC/0808/2019**Equivalent Citation:** (2019)7SCC248

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 4784-4785 of 2019 (Arising out of SLP (C) Nos. 4227-4228 of 2016), Civil Appeal Nos. 4790-4793 of 2019 (Arising out of SLP (C) Nos. 4231-4234 of 2016) and Civil Appeal Nos. 4786-4789 of 2019 (Arising out of SLP (C) Nos. 4238-4241 of 2016)

Decided On: 08.05.2019

Appellants: **The Kerala State Coastal Zone Management Authority**
Vs.
Respondent: **The State of Kerala Maradu Municipality and Ors.**

Hon'ble Judges/Coram:
Arun Mishra and Navin Sinha, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Romy Chacko, Shakti Chand J. and Vishant Singh, Advs.

For Respondents/Defendant: V. Giri, Jayanth Muth Raj, Sr. Advs., Ranjan Kumar, Mohammed Sadique T.A., Anu K. Joy, Amith Krishnan, Alim Anvar, G. Prakash, Jishnu M.L., Priyanka Prakash, Beena Prakash, M.T. George, Avishkar Singhvi and Nipun Katyal, Advs.

Case Note:
Environment - Construction activities - Building permits - Statutory provisions - Compliance - Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (Rules of 1999) and Rule 26(4) of the Kerala Panchayat Building Rules, 2011 - Appeals had been filed by Kerala State Coastal Zone Management Authority aggrieved by judgment passed by High Court observing that, permit holders could not be taken to task for failure of local authorities in complying with statutory provisions and notifications - Whether development activity could have taken place in prohibited zone.

Facts:

The Appellant authority has been constituted by the Government of India and is empowered to deal with the environmental issues relating to the notified Coastal Regulations Zones ('CRZ'). Construction activities in the notified CRZ areas can be permitted only in consultation with and prior concurrence of the Appellant authority. It is the binding duty of the local self-Government, the competent authority before issuing building permits to forward an application for building permission to the Appellant authority along with the relevant record. The Appellant authority has issued circulars to all Gram Panchayats, Municipalities, and Municipal Corporations directing them to follow the provisions of CRZ notifications and to act in accordance with the procedures provided in the notifications. The construction activities of the Respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala. The area in which the Respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ

Notifications. The Coastal Zone Management Plan ('CZMP') has been prepared to check these types of activities and construction activities of all types in the notified areas. As per the Appellant, these constructions activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self Government Department, detected these violations and anomalies in the issue of building permits and hence directed the concerned bodies to revoke all the flawed building permits. A show cause notice was issued under Rule 16 of the Rules of 1999, asking the builders to show cause why the building permit issued to them be not cancelled. Writ Petitions were filed questioning the same. The learned Single Judge allowed the writ petitions. The High Court has observed that, the permit holders cannot be taken to task for the failure of local authorities in complying with the statutory provisions and notifications. Review petitions were also dismissed.

Held, while allowing the appeal

1. It is apparent that, at the relevant time when the construction has been raised by the Respondents in the matters, the area was within CRZ-III. With respect to CRZ-III, the relevant notification dated 19th February, 1991 indicates that the area of 200 meters from the High Tide Line is no development zone. No construction shall be permitted within this zone except for repairs of the authorized structures not exceeding existing FSI. [12]

2. According to Rule 23(4) of the Rules of 1999, any land development or redevelopment or building construction or reconstruction in any area notified by the Government of India as a coastal Regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and Rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time. [13]

3. It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority, i.e., Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. Present Court has also taken judicial notice of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity. [14]

4. Further, reference has also been made to a decision of the Kerala High Court in Ratheesh v. State of Kerala. It is observed that, By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. Court has already noticed Rule 23(4) of the Kerala Municipality

Building Rules, 1999 and Rule 26(4) of the Kerala Panchayat Building Rules, 2011. In this case, there is no permission sought from the authority. [17]

5. The view taken by the Kerala High Court in the aforesaid decision is appropriate. [18]

6. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court. [19]

7. Appeals allowed. [20]

ORDER

1. Leave granted.

2. Applications for intervention are allowed.

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

4 . The Appellant authority has been constituted by the Government of India in compliance with the directions issued by this Court in *Indian Council for Enviro-Legal Action* v. *Union of India* [MANU/SC/1189/1996 : (1996) 5 SCC 281] as well as in the exercise of the powers conferred Under Section 3 of the Environment Protection Act, 1986. The Appellant authority is empowered to deal with the environmental issues relating to the notified Coastal Regulations Zones (in short, 'CRZ'). Construction activities in the notified CRZ areas can be permitted only in consultation with and prior concurrence of the Appellant authority. It is the binding duty of the local self-Government, the competent authority before issuing building permits to forward an application for building permission to the Appellant authority along with the relevant record. The Appellant authority has issued circulars to all Gram Panchayats, Municipalities, and Municipal Corporations directing them to follow the provisions of CRZ notifications and to act in accordance with the procedures provided in the notifications.

5 . The decision of this Court in *Piedade Filomena Gonsalves* v. *State of Goa* [MANU/SC/0239/2004 : (2004) 3 SCC 445] has also been relied upon which explains the significance of CRZ notifications in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of the Regulations cannot be lightly condoned. The construction activities of the Respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India.

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

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

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

8. A show cause notice was issued Under Rule 16 of the Rules of 1999, asking the builders to show cause why the building permit issued to them be not cancelled. Writ Petitions were filed questioning the same. The learned Single Judge allowed the writ petitions. The Division Bench dismissed the appeals. The High Court has observed that the permit holders cannot be taken to task for the failure of local authorities in complying with the statutory provisions and notifications. Review petitions were also dismissed. Hence, the appeals by special leave have been preferred.

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

> **1.** The writ petitions filed questioning the show cause notice dated 4.6.2007 issued for the removal of the buildings, which according to show cause notice were falling within the prohibited area of CRZ Category. Various violations were mentioned in the show cause notice. Without availing the remedy of filing reply to the show cause notice, writ petitions were filed directly in the High Court. The Single Bench of the High Court vide its judgment and order dated 10.09.2012, allowed the writ petition. Aggrieved thereby, the Municipality preferred writ appeals before the Division Bench, which were dismissed by the impugned judgment and order dated 02.06.2015.
>
> **2.** Considering the peculiar facts and circumstances of the case, as there is no categorical finding recorded either by the Single Bench or by the Division Bench that whether the area in question is in CRZ Category-III, Category-I or Category-II. It was claimed by the Petitioner before the Single Bench that they fell within the CRZ Category-II, whereas the case set up by Coastal Zone Management Authority in this Court is that area is of CRZ Category-III. We deem it appropriate to call for the findings on the aforesaid aspect.
>
> **3.** We constitute a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the concerned Municipality and the Collector of the District, to hear the objections and to give a finding in terms of Notification dated 19th February 1991.
>
> **4.** Let the Committee hear the affected parties as well as Kerala State Coastal Zone Management Authority and State Government and consider the matter as submitted by the parties and send a report to this Court as to legality of construction and precisely in which category the area in question is to be

categorized and whether building is in prohibited zone. Let the exercise be done within a period of two months and a report be submitted to this Court.

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

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

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

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

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

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

The Committee evaluated all arguments raised by the parties and KCZMA, existing Rules and Statutes and examined the Google map produced at the time of the meeting.

The findings of the committee are as follows:

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

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

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

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

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

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

CONCLUSION

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

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

iii. The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

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

ii. Development of vacant plots between 200 and 500 meters of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors

subject to the conditions as stipulated in the guidelines at Annexure-II.

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

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

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

> 23(4) Any land development or redevelopment or building construction or reconstruction in any area notified by the Government of India as a coastal Regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and Rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time.

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

15. This Court in *Vaamika Island (Green Lagoon Resort)* v. *Union of India and Ors.* [MANU/SC/0836/2013 : (2013) 8 SCC 760], has observed:

> **26.** The Petitioner had affected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No. 32-A, so found by the High Court. The factual details of the same and where actually the portion of some of the properties of the Petitioner in Vettila Thuruthu will fall has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. We notice that

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

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

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decisions of this Court in *Piedade Filomena Gonsalves* v. *State of Goa* [MANU/SC/0239/2004 : (2004) 3 SCC 445], wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such Regulations cannot be lightly condoned.

16. In *Piedade Filomena Gonsalves* v. *State of Goa and Ors.* [MANU/SC/0239/2004 : (2004) 3 SCC 445], this Court has observed:

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

of 1996.

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

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

17. Further, reference has also been made to a decision of the Kerala High Court in *Ratheesh* v. *State of Kerala* [MANU/KE/0772/2013 : 2013 (3) KLT 840]. The same is extracted below:

98. However, we would rather rest our decision without pronouncing on the validity of the permits as such. We have found that the Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. We have already noticed Rule 23(4) of the Kerala Municipality Building Rules, 1999 and Rule 26(4) of the Kerala Panchayat Building Rules, 2011. In this case, we may also note that there is no permission sought from the authority. It is apposite to note that paragraph 3 (v) clearly mandates that for investment of Rs. 5 crores and above, permission must be obtained from the Ministry of Environment WP(C). No. 19564/11 & CON. CASES 21 and Forest. In this case, the investment of the company is far above Rs. 5 crores. In respect of investments below Rs. 5 crores, for activities which are not prohibited, permission must be obtained from the concerned authority in the State. The company has not made any such attempt at getting permission. That apart, this is a case where, even if permission had been applied for, the terms of the Notification would stand in the way of any such permission being granted in so far as the island is treated as falling in CRZ-I. Construction of buildings as has been done by the company was absolutely impermissible. The fact that in a situation where the construction activity was permissible under the Notification and if the company had obtained permit from the local body, would have made its activities legal, cannot avail the company for the reason that under the terms of the Notification, such permit obtained from the panchayat will be of little avail to it in the light of the nature of the restrictions brought about by the Regulations in respect of CRZ-I in which zone the island falls. According to the WP(C). No. 19564/11 & CON. CASES 22 panchayat, no doubt, the conditions have been imposed also as recommended by the Assistant Engineer who is alleged to have even visited the island. Whatever that be, as observed by us, in the light of the view we have taken, namely that the 1991 Notification applies to the island, it is squarely covered by the same being included in CRZ-I and

the constructions were begun even during the currency of the 1991 Notification. The conclusion is inescapable that it is in the teeth of the prohibition contained in the 1991 Notification and, therefore, it is palpably illegal.

XXX XXX XXX

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

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its WP(C). No. 19564/11 & CON. CASES 24 terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument.

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

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

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

MANU/SC/0815/2021**Equivalent Citation:** AIR2021SC5147

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal Nos. 86/2019, 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP (C) No. 6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP (C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP (C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP (C) No. 16448 of 2021 (Diary No. 11655/2021)), Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP (C) No. 16449-16450 of 2021 (Diary No. 13789/2021)), Civil Appeal No. 6279 of 2021 (Arising out of SLP (C) No. 16451 of 2021 (Diary No. 13811/2021)), Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP (C) No. 16452-16453 of 2021 (Diary No. 13890/2021)), Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP (C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP (C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021 (Diary No. 16948 of 2021), Civil Appeal No. 6284 of 2021 (Arising out of SLP (C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP (C) No. 12669 of 2021) and Civil Appeal No. 6286 of 2021 (Arising out of SLP (C) No. 16454 of 2021 (Diary No. 19534/2021))

Decided On: 07.10.2021

Appellants: **Municipal Corporation of Greater Mumbai**
Vs.
Respondent: **Ankita Sinha and Ors.**

Hon'ble Judges/Coram:
A.M. Khanwilkar, Hrishikesh Roy and C.T. Ravikumar, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: E.M.S. Anam, AOR, V. Giri, Sr. Adv., Abhilash M.R., Sayooj Mohandas M., Amith Krishnan, M. Thangathuraj, Advs., Sandeep Singh, AOR, Ashish Wad, Tamali Wad, Pimple Sharad, Sukriti Jaggi, Sidharth Mahajan, Advs., J.S. Wad and Co., AOR, A. Karthik, AOR, Enoch David, Simon Joel, Smrithi Suresh, Saaketh Kasibhatla, Arsh Khan, Advs., Krishnan Venugopal, Sr. Adv., Mahesh Agarwal, Rohan Talwar, Shivendra Singh, Advs., E.C. Agrawala, AOR, Usha Nandini V., AOR, S. Thananjayan, AOR, K. Sakthivel, Promila, Aaina Verma, Jaswanti, Advs., Rashi Bansal, AOR, Seshatalpa Sai Bandaru, AOR, Sajan Poovayya, Sr. Adv., A.K. Shrivastava, Shivam Sinha, Priyansha Indra Sharma, Chetan Saxena, Sharan Balakrishnan, Pratibhanu Singh, Rahul Jajoo, Advs. and Arpit Shukla, AOR

For Respondents/Defendant: Gurmeet Singh Makker, AOR Md. Shahid Anwar, AOR, C.K. Sasi, AOR, Mukesh Verma, Adv., Yash Pal Dhingra, AOR, S.J. Amith, Adv., Purushottam Sharma Tripathi, AOR, Mukesh Kumar Singh, Adv., Tahir Ashraf Siddiqui, AOR, Jogy Scaria, AOR, Beena Victor, M. Priya, Ravi Lomod, Advs., K. Parameshwar, AOR, Jobi Jose Kondody, Aex M. Scaria, Advs., Usha Nandini V., AOR, Biju P. Raman, Saritha Thomas, Advs., James P. Thomas, AOR, Boby Thomas, Adv., Sanjay Parikh, Sr. Adv., Abhimanue Shrestha, AOR, Satwik Parikh, Divyansh Khurana, Advs., Zulfiker Ali P.S., AOR, Faisal M. Aboobaker, Lakshmi Sree P., Sadiya Shakeel, Advs., Nidhesh Gupta, Sr. Adv., Vanshdeep Dalmia, Adv., Nishtha Kumar, AOR, Harish Vasudevan, Japneet Kaur, Vriti Gujral, Pallavi Singh, Advs., Anand Grover, Sr. Adv., Astha Sharma, AOR, Mantika Haryani, Simranjeet Singh Rekhi, Advs., Suvidutt M.S., AOR, Anu B., Dhanya C. and Vijayalakshmi Raju, Advs.

Case Category:

APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

Case Note:
Environment - Scope of Suo Moto Jurisdiction - National Green Tribunal (NGT) - Discharge of functions under the National Green Tribunal Act, 2010 (NGT Act) - Deonar Dumping site - Non-compliance of provisions of the Solid Waste Management Rules, 2016 - Whether the National Green Tribunal (NGT) has the power to exercise SuoMotu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (NGT Act)

Facts:

In the Suo Moto action by NGT pursuant to published article about damage to the environment and public health being cause by dumping site in non-compliance of solid waste rules. Steps were taken for inspection of the concerned site. Municipal Corporation of Greater Mumbai (MCGM) was asked to compensate to the tune of Rs. 5 crores. Power of NGT being Tribunal was questioned as to whether in such capacity NGT can take action SuoMotu or has the power of judicial review.

Held, while dismissing the Appeal:

i. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric.[30]

ii. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord.[34]

iii. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. [35]

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

v. The NGT is vested with suomotu power in discharge of its functions under the NGT Act.[40]

JUDGMENT

Hrishikesh Roy, J.

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

1. Leave granted in the Special Leave Petitions.

2. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise Suo Motu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

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

4. The NGT took suo motu cognizance of the above Article vide order dated 07.08.2018 and directed that the Article writer Ankita Sinha be the Applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that 'damage to the environment and public health is self-evident' and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

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

6. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act suo motu, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as Under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned Counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting suo motu cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away suo motu power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

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

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

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

10.1. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away suo motu power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon Standard Chartered v. Dharminder Bhohi MANU/SC/1004/2013 : (2013) 15 SCC 341 wherein, provisions of the Recovery of the Debts Due to Banks and Financial Institutions Act, 1993 were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal wasrequired to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2. Similarly, Justice S.H. Kapadia (as his Lordship then was) in Transcore v. Union of India MANU/SC/5319/2006 : (2008) 1 SCC 125, opined on behalf of a Division Bench that,

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

10.3. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in Rajeev Hitendra Pathak v. Achyut Kashinath MANU/SC/0969/2011 : (2011) 9 SCC 541, observed as under:

> **34.** On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of reviewand the powers which have not been expressly given by the statute cannot be exercised.

11.1. The second limb of contention is that the Act is applicable to 'disputes' as, necessarily referring to a lis between two parties. The counsel has relied upon Techi Tagi Tara v. Rajendra Singh Bhandari and Ors. MANU/SC/1217/2017 : (2018) 11 SCC 734 wherein the term 'substantial question relating to environment' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> **19.** On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute--it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged orrestitution of the environment and any other incidental or ancillary relief connected therewith.
>
> **20.** ...In Prabhakar v. Deptt. of Sericulture [Prabhakar v. Deptt. of Sericulture, MANU/SC/1041/2015 : (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)
>
> > **34.** To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
> >
> > > "Dispute".--to argue about, to contend for, to oppose by argument, to call in question--to argue or debate (with, about or over)--a contest with words; an argument; a debate; a quarrel;
> >
> > **35.** Black's Law Dictionary, 5th Edn., p. 424 defines "dispute" as under:
> >
> > > Dispute.--A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.

11.2. The amicus curiae has also addressed this issue, by defining a dispute as

necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

12.1. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb suo motu powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as Under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd., MANU/SC/0223/2019 : (2019) 19 SCC 479 Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> **41.** ...Suffice it to say that the NGT is not a tribunal set up either Under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....
>
> **43.** ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down Rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers Under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in Powers, Privileges and Immunities of State Legislatures, In re [Powers, Privileges and Immunities of State Legislatures, In re, MANU/SC/0048/1964 : (1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words: (SCR p. 499: AIR p. 789, para 138)
>
> > **138.** We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > 'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [Halsbury's Laws of England, Vol. 9, p. 349]'.
> >
> > For this reason also, we are of the view that the State Government order made Under Section 18 of the Water Act, not being the subject-

> matter of any appeal Under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in BSNL [BSNL v. TRAI, MANU/SC/1264/2013 : (2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested Under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in Wilfred J. v. Ministry of Environment & Forests [Wilfred J. v. Ministry of Environment & Forests,] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

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

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

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

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

> It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.
>
> These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached Under Article 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions Under Article 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to

> entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.
>
> It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts.

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

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

> Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court Under Article 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as Under Article 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in L. Chandra Kumar v. Union of India, MANU/SC/0261/1997 : 1997 (3) SCC 261.
>
> No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter.[2]

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

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

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life Under Article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

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

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

14.4. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a sui generis forum.

14.5. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

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

III. THE NEED FOR PURPOSIVE INTERPRETATION

15.1. While adequate clarity is discernible in the phraseology that is employed Under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgment, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise Interpretation of Statutes, authored by Justice G.P. Singh who explained thus,

> When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the Rule was later fully adopted by the Supreme Court.
>
> It is a Rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The Rule is referred to as an

'elementary rule' by Viscount Simonds: a compelling Rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it.

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

15.3. The application of the Heydon's Rule could adequately aid us here as the Rule directs adoption of that construction which "shall suppress the mischief and advance the remedy" as was pertinently observed by Justice S.R. Das, for a seven judge bench in Bengal Immunity Co. v. State of Bihar MANU/SC/0083/1955 : 1955 (2) SCR 603 : AIR 1955 SC 661,

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

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

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

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

> The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> **...**
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'.[11]

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

> the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view.[3]

15.6. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[4] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights Under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT-

16.1. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisionswill require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "as the Tribunal may think fit". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "any person aggrieved including any representative body/organization" and the locus standi is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the Code of Civil Procedure and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the Rules of evidence contained in the Evidence Act, 1872. While discharging functions Under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

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

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

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

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

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

16.6. Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

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

V. NON-ADJUDICATORY ROLES OF NGT

17.1. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts Under Article 226 of the Constitution or by the Supreme Court Under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See Vellore Citizens' Welfare Forum v. UOI MANU/SC/0686/1996 : (1996) 5 SCC 647; M.C. Mehta v. UOI MANU/SC/0175/1997 : (1997) 2 SCC 353 etc.]

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

17.3. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases wherethere is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

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

> The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time.

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

19.1. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India MANU/SC/0642/2012 : (2012) 8 SCC 326, highlighted the NGT's role in the context, in the following words:

> **40.** Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.
>
> **41.** We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct

transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice.

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

VI EXERCISE OF SUO MOTU POWER BY NGT

20. Let us now explore whether the NGT in discharge of its functions, should also have suo motu power. The specialized tribunal's exercise of suo motu powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

21.1. Explaining the purpose for constituting the special court to deal with environmental issues, in Mantri Techzone (P) Ltd. v. Forward Foundation MANU/SC/0315/2019 : (2019) 18 SCC 494, Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:

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

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

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

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

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

v. DDA was not to constrict the suo motu powers of the NGT. To appreciate the implication of the ratio in Rajeev Suri, it must be noticed that it was in the specific context of 'Merits Review' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

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

21.5. Thus, the ratio in Rajeev Suri to the quoted extent will not clash with the view propounded here asthe exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystallized by the statute, the role of the NGT is clearly discernible.

21.6. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in Andhra Pradesh Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors. MANU/SC/0032/1999 : (1999) 2 SCC 718 where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

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

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial innature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT vis-à-vis OTHER TRIBUNALS

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

22.2. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in State of Meghalaya v. All Dimasa Students Union MANU/SC/0877/2019 : (2019) 8 SCC 177, fittingly observed thus:

> **163.** The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for

clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, MANU/SC/0268/1970 : (1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)

> **14.** The High Court observed that Under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf andcircumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right--public or private--of a citizen.

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

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

> The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the Rule of law and promoting good governance.[5]

VIII. THE SUI GENERIS ROLE OF NGT

24.1. The NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution. The structure of Sui generis institutions was explained in Paramjit Kaur v. State of Punjab MANU/SC/0596/1998 : (1999) 2 SCC 131, wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

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

24.2. In DG NHAI v. Aam Aadmi Lokmanch, Justice S. Ravindra Bhat commenting on the sui generis role of the NGT, so appropriately stated as follows:

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

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

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

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

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

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

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

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

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

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

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

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

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

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

25.5. The other pertinent provisions relating to, inter-alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the

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

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

25.7. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in State of Punjab and Anr. v. Shamlal Murari and Anr. MANU/SC/0494/1975 : (1976) 1 SCC 719 has so correctly prioritized the substantive rights and observed succinctly,

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

25.8. While discussing the NGT's power and responsibility, it is essential to keep in mind the Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

26.1. Tracing the origin of the Precautionary Principle, Scott Lafranchi in his treatise[6] has expounded on the proactive role of the authorities in the following passage:

> Many consider the German development of Vorsorgeprinzip to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm. The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.

26.2. The origin of the Precautionary Principle itself is rooted as an institutional

obligation, by holding them primarily responsible for the environmental concerns and remedies.

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

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

26.4. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation"[7]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

26.5. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arriveat a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, 'The Nature of the Judicial Process', stated thus,

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

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

XI. ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL EQUITY

27.1. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[8] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

27.2. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in

their Reflections on the Role of the Courts in Environmental Law, wrote the following evocative passage on the concept of environmental justice,

> Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity," which is understood to mean the fair distribution of environmental risks and protection from environmental harms.[9]

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

> Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school," whereas the people who reside there do little or nothing to harm their community.[10]

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

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

> The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities.[9]

27.5. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the 'Blindfold of Lady Justice', which symbolizes "the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."[12] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

28.1. Proceeding with the above understating, we can comfortably place the NGT within the rubric of thelarger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing-Environmental Law And Policy In India, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[13], liberalizing the concept of locus standi in environmental matters, exercising suo motu powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[14]

28.2. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to apollution free environment for a holistic existence.[15] Most crucially, the expansion of Right to Life Under Article 21 by this Court has become a touchstone to determine many environmental concerns. In Subhash Kumar v. State of Bihar, this Court explicitly held the following,

> Right to life is a fundamental right Under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.[16]

28.3. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the 'Absolute Liability Principle'[17] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

> The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. . . .The right was recognized as part of the right to life in 1991. . . . The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law.[18]

28.4. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a sui generis environmental discourse.[19] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the 'at risk' nature of somepopulations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[20]

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

> The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental

jurisprudence in India, while also strengthening human rights jurisprudence.

...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned.[21]

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

28.7. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental Rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in H.P. Bus Stand Management & Development Authority v. Central Empowered Committee MANU/SC/0015/2021 : (2021) 4 SCC 309 so succinctly said that,

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

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

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

last decade.[22]

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

X. CONCLUSION:

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

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

31. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[23] with many countries declaring climate emergencies and many others being urged to follow suit[24].

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

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

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "global impacts of climate change will fall disproportionately on minority and low-income communities".[25] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly

required for serving the ends of environmental justice, as the statute itselfrequires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

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

36. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

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

38. One could admit to the argument of danger of suo motu jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a 'suo motu' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

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

40. Let us now hark back to the dialogues of the two protagonists, in Waiting for Godot, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical Godot to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with suo motu power in discharge of its functions under the NGT Act.

41. Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on

25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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

[2]Chapter II, 186th Law Commission Report

[3]MANU/USSC/0240/1935 : 293 U.S. 388 (1935) (dissenting)

[4]Sarah Mathew v. Institute of Cardio Vascular Diseases MANU/SC/1210/2013 : (2014) 2 SCC 62, New India Assurance Co. Ltd. v. Nusli Neville Wadia MANU/SC/0166/2008 : (2008) 3 SCC 279

[5]GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall? Asian Journal of Law and Society, 7(1), 85-126

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

[7]Vellore Citizens (supra), S. Jagannathan v. Union of India MANU/SC/0188/1997 : (1997) 2 SCC 87, Karnataka Industrial Areas Development Board v. C. Kenchappa and Ors. MANU/SC/8159/2006 : (2006) 6 SCC 371

[8]Schlosberg D., Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press 2009)

[9]Schiffer, L.J., & Dowling, T.J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327-342

[10]Jeff Todd, A "Sense of Equity" in Environmental Justice Litigation, 44 HARV. ENVTL. L. REV. 169, 193 (2020)

[11]47 Columbia Law Review 527

[12]Ibid

[13]Rural Litigation And Entitlement Kendra and Ors. v. State Of U.P. and Ors. MANU/SC/0043/1985 : AIR 1985 SC 652, Charan Lal Sahu v. Union of India MANU/SC/0285/1990 : (1990) 1 SCC 613, Virender Gaur v. State of Haryana MANU/SC/0629/1995 : (1995) 2 SCC 577

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

[15]Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed. 5

[16](1991) 1 SCC 74

[17]M.C. Mehta v. Union of India, MANU/SC/0092/1986 : 1987 SCC (1) 395

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

[19]Supra, Note 5

[20]M.C. Mehta v. Union of India MANU/SC/0291/1986 : (1986) 2 SCC 176, Indian Council for Environmental-Legal Action v. Union of India MANU/SC/1112/1996 : (1996) 3 SCC 212, A.P. Pollution Control Board v. M.V. Nayudu MANU/SC/0032/1999 : (1999) 2 SCC 718, A.P. Pollution Control Board II v. M.V. Nayudu MANU/SC/2953/2000 :

(2001) 2 SCC 62

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

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

[23]Indian Network for Climate Change Assessment, Climate Change and India: A 4X4 Assessment-A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010

[24]Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020

[25]Supra Note 6

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IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 6932 of 2015, 5971 of 2019, 4379 of 2018, C.A. No. 2741 of 2020 (Arising out of Diary No. 19018 of 2018), C.A. No. 6862 of 2018, C.A. No. 2742 of 2020 (Arising out of SLP (C) No. 28178 of 2018), C.A. No. 11803 of 2018, C.A. No. 2743 of 2020 (Arising out of SLP (C) No. 1706 of 2019) and C.A. No. 2744 of 2020 (Arising out of Diary No. 1632 of 2019)

Decided On: 14.07.2020

Appellants: **The Director General (Road Development) National Highways Authority of India**
Vs.
Respondent: **Aam Aadmi Lokmanch and Ors.**

Hon'ble Judges/Coram:
Rohinton Fali Nariman, S. Ravindra Bhat and V. Ramasubramanian, JJ.

Counsels:
For Appearing Parties: P.S. Narasimha, Shyam Divan, Siddharth Dave, Sr. Advs., Neetica Sharma, Dhruv Nayar, Aadti Tirpedi, Advs. M.V. Kini & Associates, Kunal Cheema, Vilas Giri, Aditi Parkhi, Abhimanyu Bhandari, Roohina Dua, Cheitanya Madan, Naveen Kumar, Saurav Kirpal, Ankur Saigal, Mahesh Agarwal, Anshuman Srivastava, Anirudh Bhatia, Rishi Agrawala, Ayushi Amodh, Shaishin S. Divatia, Aashna Agarwal, E.C. Agrawala, Vijay Kumar Verma, Mata D. Sagar, Tarun Verma, Amol Chitale, Pragya Baghel, Shilpa Chauhan, Jitender Chaudhary, Shawahiq Siddiqui, Rajesh Singh, Rahul Chitnis, Aaditya A. Pande, Sachin Patil, Bhakti Vardhan Singh, Nishant Ramakantrao Katneshwarkar, Bharti Tyagi, Arvind S. Avhad, Karri Venkata Reddy, Aparna Jha, V.N. Raghupathy, Manendra Pal Gupta, V.K. Verma, Rajesh Kumar, Advs. and Party-in-Person

Case Note:
Environment - Damages - Degradation of environment - Illegal hill cutting - Restitution charges and penalty for causing damage to the environment - Liability - Determination thereof

Facts:

On 06 June, 2013, when Ms.VishakhaWadekar, was driving her car with her young daughter, when over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms.Vishakha and her daughter. NGT, in its impugned order held that the hills in the concerned land were illegally cut without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. This made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. The Respondent Nos. 5, 6 and 9 were directed to pay amount of Rs. 50 Lakhs as joint penalty

imposed on them for causing environmental damage due to the hill-cutting. They were further held as jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased and her daughter and further payment of Rs. 10 Lakhs for plantation of trees in order to restore damage caused to environment. The Respondent Nos. 1, 2, 3, 4, 7 and 8 were directed to give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune.

In the present appeals four issues arose for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with respect to the ban on construction in and around foothills and lastly, the vires of the directions/notifications issued Under Section 154, MRTP Act.

Held, while disposing of the appeal: Jurisdiction of the NGT

(i) Tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction Under Sections 14-15, and appellate jurisdiction under Section 16. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. [33], [36]

(ii) The expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed

jurisdiction, having regard to the nature of the accident in the facts of this case.[51]

Was the direction to pay compensation towards death, and damages towards restitution justified?

(i) Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly showed that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, *prima facie*, disclose their liability.[65]

(ii) The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. [66]

(iii)Application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs had instituted a suit. The ends of justice would be served if that suit is directed to revive and continue it; a direction is issued to the concerned court. The directions in this regard by the NGT, towards payment of compensation regarded as indicative of a prima facie determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs was justified. It was clarified that the civil suit would now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). [67]

Correctness of NGT's directions contained in Para 17 (e) of its impugned order, and the legality of the order/notification of the state of Maharashtra, issued Under Section 154, MRTP Act

(i) The power and jurisdiction of the NGT Under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.[71]

(ii) As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original

jurisdiction Under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.[72]

(iii) The impugned judgment of the Bombay High Court was set aside. Consequently, the directions in the notification under Section 154 (dated 14.11.2017) were quashed.CA 6932/2015 and CA 5971/2019 were disposed of in terms of the directions in judgment. The other appeals by special leave by third parties, against the NGT's order, and the order of the NGT, were partly allowed in the above terms. [92], [91]

JUDGMENT

S. Ravindra Bhat, J.

1. Leave granted in SLP (C) Nos. 28178/2018, 1706/2019, Diary No. 19018 of 2018 and 1632 of 2019. With consent of counsel for the parties, they were tagged with the companion civil appeals and heard finally.

2. On 06 June, 2013, when Ms. Vishakha Wadekar, was driving her car with her young daughter, Sanskruti Wadekar she had no inkling that danger lurked round the corner of the highway; over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the Respondent in the appeal, the Aam Aadmi Lokmanch, hereafter "Lokmanch") are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this Court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negatived the challenge to those regulations in the writ petitions presented before it.

3. The facts in brief are that the National Highways Authority of India (hereafter "NHAI") had entered into an agreement with M/s. P.S. Toll Road (Pvt.) Ltd., a unit/undertaking of Reliance Infrastructure Ltd. (which is arrayed as the ninth Respondent; PS Toll Road (Pvt.) Ltd. hereafter referred to as "the concessionaire") on 10.03.2010 for the maintenance and operation of the Pune-Satara Section of National Highway No. 4, to an extent of 140 kms. The scope of the agreement included construction of the project (i.e. the highway stretch) as well as its operation and maintenance for a period of 24 years. The agreement included stipulations mandating safety to the highway users (clause 18.1.1). The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways (clause 18.1.2), the expenditure for which was to be borne by the concessionaire (clause 18.1.3). An elaborate highway monitoring mechanism was also contemplated by the agreement (clause 19.1) through which by the seventh of each month, an independent engineer was to furnish a report after due inspection (of the operation and maintenance arrangements), containing defects or deficiencies (clauses 19.2). Additionally, the

independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards (clause 19.3). Other stipulations included, *inter alia*, requirements that the concessionaire had to carry out remedial measures (Clause 19.4.1) within a period of 15 days after receipt of the report of the independent engineer. The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages in terms of Clause 17.8.[1] Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including *"unusual occurrences on the Project Highway"* such as death or injury to any person (clause 19.6), any obstruction, or *"flooding of Project Highway"*.

4. In the meanwhile, the fifth Respondent (who has filed CA 5971/2019 against the NGT's order, hereafter referred to as "Rathod") on 03.01.2011 applied to the Government of Maharashtra for a license to extract minor minerals. This license was sought in respect of land bearing survey number 112A to look more to an extent of 5 acres and 93 cents. The license was granted by the appropriate authority of the government. By Clause 1 of the terms of this license, the period of the license was two months; Clause 5 stated that for extraction and minor minerals digging, work could not exceed more than 20 feet down side of the land surface.

5. Apparently soon after the license was taken over, certain demands were made regarding construction of a connecting road to the village. The materials on record by way of letters written to the local panchayat are to the effect that as a result of construction of the highway and due to the passage of time the existing road had been washed away. Consequently, the 2 km stretch from the left side of the new tunnel going up to the village was virtually non-existent. The panchayat requested that the road should be strengthened and widened.

6. On 31.01.2011, the local authorities of the State government issued a show cause notice to Rathod alleging that debris were stored illegally on the site. It was alleged that this was contrary to Section 48 of the Maharashtra Land Revenue Code, 1966 (hereafter "land revenue code"). Again, on 16.06.2011, the local panchayat issued a notice (which is on the record) stating that as a result of mineral extraction, the natural flow of rainwater was being obstructed. The notice also added that two heavy machines in non-performing condition were lying idle on the land and two JCB machines were also stationed there. Rathore evidently received these notices; this is attested by his replies to the Tehsildar and other local authorities. After obtaining a report from the local officials, the Tehsildar, Bhor issued an order directing payment of ' 12,71,200 by Rathod for violation of the land revenue code on account of illegal extraction and use of minor minerals.

7. This activity of excavation and piling of debris, did not go unnoticed on the part of NHAI; it wrote to the Collector of Pune, pointing out that:

> *...large scale and indiscriminate excavation in the upper side hills of New Katraj Tunnel at both ends is in progress. Due to this excavation, drainage system above and near tunnel has been affected. This may lead to seepage of water inside tunnel roof thereby collapse of walls and ceiling of tunnel resulting in collapse of tunnel and may lead to major mishap. The collapse in tunnel will block the entire traffic of NH4 from Mumbai/Pune to Bangalore and vice versa leading to chaotic situation.*

The letter also mentioned specifically that Rathod had been notified; it sought action

from the state government.

8. In the early hours of the morning of 6th June, 2013, due to the monsoon, there was heavy rainfall at Mauje Shindewadi Tehsil, Bhor and the surrounding areas. Water flowing through the hills at Mauje Shindewadi entered the road near the octroi post of the Pune Municipal Corporation, at Mauje Shindewadi Tehsil Bhor, District Pune, on NH-4, with great force. This created an obstacle in the form of a large sheet of water. Under these conditions, when the Alto car driven by Vishakha Wadekar and her daughter Sanskruti, was obstructed, they alighted to wade across to safety; however, the water gushed with great intensity and swept them away, resulting in their death. The resulting magisterial inquiry Under Section 176, Code of Criminal Procedure resulted in a report dated 04.10.2013. The Sub-Divisional Magistrate who inquired into the incident appointed an expert, whose report was considered; he also visited the site and held several hearings. During the hearings, pursuant to notices issued to various parties, the statements of Rathod, the local police authorities, eyewitnesses (Abhay Arvind Ranade, Vineet Vasant George and relatives of the deceased), the Project Director (General Manager) of NHAI, the team leader of the independent engineering firm associated with checking quality of maintenance of the highway, etc. were recorded.

9. Soon after the incident, the Lokmanch, through its president, filed an application Under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by Rathod. Besides, general relief by way of directions to other Respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

10. The material produced before the NGT by the State of Maharashtra in the form of an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred. According to the affidavit, there were 62 cases, and in many cases "hill-cutting" was resorted to by developers. The state had apparently imposed fines and penalties for these illegal activities.

11. The NGT, in its impugned order, commenting on the role of Rathod, held as follows, while justifying the imposition of liability upon that Respondent:

> *It appears from the record that land Survey No. 112, is owned by the Respondent Nos. 5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos. 5 and 6 made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials.*

12. Thereafter, the NGT based on its reasoning that the Regulation of some activities, especially involving anything affecting hills has to be strictly regulated, directed as follows:

> *12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area,*

which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:

> *Hill-noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.*

The wordbook has given meaning of expression 'Hill' as follows:

> *231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than 305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.*
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> *Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock.*

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos. 5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHAI (Respondent No. 9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill top. However, a Notice dated 25th April, 2011, was issued to the Respondent No. 5 and copy of the same was marked to the Tehsildar, Bhor before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No. 9 (NHAI) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHAI to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHAI to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No. 9, appears to have kept silence for about two (2) years, inspite of knowledge that the work of hill cutting was going on. In our opinion, NHAI (Respondent No. 9) perhaps was likely to be impliedly benefited due to the illegal act of hill cutting due to availability of murrum,

stones and soil for the work for its project. The contractor of NHAI was, therefore, interested in keeping the fingers crossed.

15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5, 6 and with or due to act of omission of the Respondent No. 9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos. 5, 6 and 9 shall pay amount of Rs. 50 Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos. 5, 6 and 9 shall jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased Mrs. Vishakha Vadekar, and her daughter if identity of legal representatives is proved before the Collector. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos. 5, 6 and 9 shall also deposit amount of Rs. 10 Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos. 1, 2, 3, 4, 7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder.

Rathod, the NHAI and three other Appellants (Patel India Pvt. Ltd., Fern Constructions (India) Ltd. and D.B. Realty Ltd.) have preferred appeals against the impugned order of the NGT; their grievance is from the general directions issued in the impugned order, implicating buildings near hills.

13. In the second set of matters, i.e. the appeals by special leave, the facts are that acting on the directions of the NGT, the State of Maharashtra invoked its powers Under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

14. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. It was also observed that:

> *In Regulation 2 we have the definitions and as far as Part II is concerned, that is general planning and building requirements. Regulation 11.1 says that no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, these stipulations are already in place. What the National Green Tribunal brought to the notice of the authorities is in-discriminable cutting of hills in the Katraj Ghat. This unauthorized construction by breaking of hills resulted in an accident. That is why the NGT directed that on hill tops and hill slopes and the portion at the foot of the hill and surrounding 100 feet, no construction activity should be permitted and no development permission be issued and such directions be issued to the Municipal Corporations and Municipal Councils. Bearing in mind that there are in place legal provisions restricting the development activity on hill top and hill slope zones, all that the NGT and this Government Resolution directs is that in cases where there has already been a permitted development activity within 100 feet of the hill, then, no permission for additional construction be granted nor any development be permitted by sanctioning additional Floor Space Index (FSI) or Transferable Development Rights (TDR). In the event in sanctioned development plans if area of the above nature is in buildable zone, then, for carrying out development in such zone and while granting individual development permissions, an area of 100 feet surrounding the hills should be demarcated as non-buildable. It can be used as open space, road etc. We are surprised that an order and direction of the NGT traceable to and in accordance with the planning law it challenged before us. Further, the directions of the State Government, which are but reiteration of the existing regulations, are under challenge. The impugned Government Resolution is in consonance with the provisions of the MRTP Act and the constitutional mandate enshrined in Article 21 and 48 thereof.*
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> *24. We are not in agreement with Dr. Sathe, Mr. Godbole and Dr. Saraf that merely because such directions are issued in exercise of the powers conferred by Sub-section (1) of Section 154, the development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai is altered or modified. We are also not impressed by their argument that by such a Government Resolution, a modification is brought about in the Development Control Regulations and all this is without recourse to the specific powers conferred by the MRTP Act. In other words, these are bypassed and by a Government Resolution, the above*

stand amended. In that regard our attention has been invited to the provisions in the MRTP Act enabling modifications or changes in the Development Plan and the procedure prescribed in that behalf.

25. We do not see any modification to the plan being brought about by the subject Government Resolution. If at all, the directions therein complement the provisions of the Development Control Regulations for the cities of the Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. As it is, there was no permission to construct buildings other than a electric sub-stations, water works etc. on hill tops. As far as these slopes are concerned, by their very nature, a hill slides down and if the slope is steep, then, no construction activity can be carried out. There is no guarantee or assurance that any construction activity in such areas would be able to withstand a landslide or accidents, resulting from erosion of the hills on account of natural reasons. It is experienced that human intervention is necessarily not responsible for a landslide, mudslide etc. On account of natural causes and calamities, such events can occur. Apart from that, the occurrence increases because of human intervention including a construction activity carried out at the foot of the hill or on top thereof. It is also possible if the hill is cut from its sides indiscriminately. It is also possible if there is damage to a hill while extracting minor minerals. The hill then becomes uneven. Then, it is not possible to prevent any calamity. Hence, in order to take care of the natural calamities and which have occurred in various places in the State of Maharashtra recently and also on account of unrestricted and unregulated breaking and cutting of the hills resulting in accidents endangering human life and safety that these supplemental directions have been issued. If they are for efficient administration of the Act and if they subserve larger public interest, then no fault can be found with the Government Resolution. Each of the operative directions, namely, serial Nos. 1, 2 and 3 of this Government Resolution subserve this object and purpose. If the Government Resolution has been issued after the attention of the Government has been invited to an accident in Katraj Ghat occurring due to unauthorized and illegal cutting of hills, then, it is not as if the State Government has construed it as a command or a binding order and issued the subject Government Resolution. The attention of the State Government being invited to such illegal and unauthorized so also uncontrolled, unregulated and unrestricted hill-cutting, that in order to prevent the same, the Government stepped in. It took recourse to its power conferred by Section 154 of the MRTP Act in order to prevent future occurrences of this nature. If accidents and calamities can be prevented by timely intervention of the State Government in this manner, then, we do not think that on the specious and unsubstantiated pleas of the Petitioners, we should strike down the Government Resolution.

15. The NHAI in its appeal contends that the NGT fell into error in issuing sweeping directions against it without considering that was no evidence to establish that it was in any way responsible for the degradation of the environment, which led to the tragedy. It is urged by Senior Counsel Mr. P.S. Narasimha that the NGT's findings are contrary to established facts and have also resulted in grave miscarriage of justice. He highlighted that there was no material on record to establish that the NHAI was in any way culpable or had failed to perform a public duty or neglected to avert a foreseeable calamity. Elaborating on this, it was urged that the illegal mining activity was not carried on within the right-of-way or the carriageway of the highway. What occurred was the result of an act of God, i.e. extremely heavy rains, which resulted in flooding on the highway caused entirely on account of the debris collected which acted to obstruct the smooth

flow of water.

16. It was highlighted that in any case, the NHAI could not be held responsible or made liable for the occurrence which led to the tragedy. Mr. Narasimha also argued that the NGT did not return any finding that the construction of the highway was in any way contrary to environmental clearances or permissions secured by the NHAI. Therefore, the findings of the Tribunal in so far as they pertained to the neglect or alleged omission of the NHAI, were contrary to law. He urged that the findings were illogical and irrational, and deserve to be set aside.

17. The NHAI also highlights that it wrote letters to the local administration on 24.04.2011 and 15.07.2011, seeking its intervention on account of the illegal mining and activities and hill destruction, for which Rathod was responsible. However, the State government did not take any action. Likewise, Rathod did not take any remedial steps or cease the activity. The resultant tragedy entirely on account of the omissions of the state's authorities to take action and the neglect and culpable negligence on the part of Rathod, was the cause of the tragedy and the events which led to the loss of two lives. It was also emphasized that the direction to pay compensation was contrary to legal principles and undermined the law. It was argued that neither the NHAI nor its concessionaire had any control over the activities of the state, which granted the mining licences. Rathod, the licensee, had continued illegal mining in the vicinity causing the accumulation of debris. This in turn, resulted in the obstruction of a culvert which resulted in collection of a large volume of water. A huge sheet of water gushed out into the highway, sweeping away the car, tragically resulting in the death of two individuals. It was argued that in these circumstances, the NHAI could not be saddled with the responsibility of either paying damages to the dependents and legal representatives of the deceased nor could it be made liable to restore the environment through the payment of ' 50 lakhs or any part of it.

18. Rathod urges that the NGT's findings against him are contrary to law. He argues that the NGT did not implead those who had standing, i.e. the legal representatives of the deceased; in fact, they had filed a civil suit, claiming compensation against him, as well as the NHAI and the state, for alleged negligence and tortious liability. In those proceedings, the court is bound to record evidence and render findings based on the facts. The NGT could not thus have unilaterally, based on a one-sided view of the materials, held that he was liable.

19. It was submitted that the allegation that Rathod was primarily responsible for degradation of the hill, which clogged the culverts and water channels, resulting in the tragedy, was contrary to the facts. Mr. Vijay Verma, counsel for Rathod, relied on some portions of the magisterial report to say that the NHAI had the report of an independent engineer, who had pointed to certain deficiencies on the part of the concessionaire. Therefore, to hold him responsible for the tragedy, and direct him to pay a huge sum of ' 15 lakh and further pay amounts towards environmental damage, was unwarranted.

20. It was argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased. It is further argued in Rathod's appeal that apart from issuing notice for recovery of amounts towards alleged illegal mining, neither the state authorities nor the NHAI took any positive remedial action for strengthening the culvert and the catch water drains which were in disrepair, and constructed on the hill above the tunnel for drainage of rainwater. The masonry on the culvert for draining water was choked due to lack of maintenance. Such maintenance was the sole responsibility of the concessionaire and

for that, the NHAI had to be held liable. It is also highlighted that Section 18 of the NGT Act mandates that the procedure established by the statute to exercise jurisdiction had to be followed. Since the legal heirs of the deceased had not applied to the NGT for any relief and had instead approached the civil court claiming compensation on account of wilful neglect and culpable inaction on the part of NHAI, the NGT ought to have left the matter for proper decision in accordance with the evidence led. Instead the NGT took upon itself the task of a judging the Appellant as one of those responsible for the incident. It is emphasised that the mining activity carried on was in accordance with the license and if there was any irregularity that was cured on payment of fine. So far as the collection of debris which ultimately led to the overflow of water and the deaths of two individuals goes, it is argued that the proper functioning of the drainage system would have ensured that such collection of vast quantities of water would not have occurred. Therefore, the inaction of the NHAI in taking timely action and intervening with the state authorities, led to the tragic incident. The responsibility for this incident could not have been placed at the doorstep of Rathod. The actions of Rathod, it is stated were too remote and could not have been the subject of damages at all.

21. In the appeals (by special leave as well as the statutory appeals by third parties), where the grievance is on account of the directions issued by the State of Maharashtra Under Section 154 of the MRTP Act, the third party Appellants challenge the order of the NGT arguing that the provisions of the NGT Act, especially Sections 14, and 19 do not authorise that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. It is highlighted that such sweeping directions are illogical and are not based on any scientific study or analysis. It is argued that the NGT has issued general directions couched in a vague manner in para 17 (e) of its order.

22. These Appellants argue that the Bombay High Court also fell into error and did not appreciate that the entire basis of the Directions/Resolution of 14.11.2017 by the State of Maharashtra were the directions issued by the NGT. Highlighting various provisions of the MRTP Act, learned Counsel argued that wherever development codes were formulated, they were in accordance with established principles, after following the prescribed procedure. Based upon these codes and the building regulations framed by various town planning departments, clearances and permissions/approval for development and construction were issued. It was argued that the mandatory and sweeping nature of the directions in para 17 (e) by the NGT has resulted in these directions being embodied in the impugned resolution, which has a catastrophic effect on those clearances.

23. Learned Senior Counsel, Mr. Shyam Divan, highlights that apart from the fact that the definition of 'hill' is vague, and even the regulations under the MRTP Act are silent in this regard, the NGT failed to consider that the impact of its directions and the impugned notification, in hilly terrains where the population is concentrated in particular areas, in small towns, semi urban and rural areas would be devastating inasmuch as all nature of buildings would be banned. It is pointed out that hill development is based upon consideration of individual local soil conditions, the stability of the surrounding terrain, etc. All these are taken into account by individual local town planning authorities when they permit or refuse permission to individual development or construction projects. The uniform adoption of the "no construction within the hundred feet area" rule, it is submitted, is completely contrary to well-established principles of town planning.

24. It is argued that the directions issued by the state government impugned in the writ

petitions before the Bombay High Court, are contrary to the provisions of the MRTP Act inasmuch as they amount to supplanting provisions of the existing master plan and other development codes, which have the force of law and were framed after widespread consultations. It is pointed out that the provisions of the MRTP Act require that any change in such codes or master plans would have to be made after mandatory due consideration of objections, which are to be preceded by publication of the proposals. By directing the state government to follow the order in paragraph 17(e), the NGT in fact made directions contrary to law. It is argued that the state also acted contrary to the express provisions of the MRTP Act inasmuch as it did not follow the procedure required by the Act to change the master plan and the development codes.

25. It is further submitted that the NGT's directions were the basis of the state government's notification. It was argued that the state government's blind adherence to these directions amounted to abdication of its duties, was in contravention of express provisions of the MRTP Act and also amounted to acting on the dictates of another authority. It was submitted that for these reasons, the impugned notification cannot be sustained. Counsel relied on the decision of this Court in *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd. and Ors.* to highlight that the NGT has a narrow and circumscribed jurisdiction in regard to issuing directions as well as ordering compensation.

26. The Lokmanch justified the order of the NGT and blamed the NHAI, the concessionaire, Rathod and the state government for not taking adequate and timely measures in public interest. It is alleged that proper channels were not created and maintained alongside the highway to avoid water clogging on the main carriageway. It is argued that existing water channels were extremely narrow and were incapable of handling significant volumes, and that even those channels were clogged due to construction debris which had fallen on the sides. It is pointed out that Under Section 4 of the National Highways Act, 1956 (hereafter "Highways Act") "highways" include lands appurtenant thereto, all bridges, culverts, tunnels, causeways and other structures constructed on or over the highway and all fences, trees, posts, etc. The duty of keeping them in good repair, clearly was that of the NHAI and the concessionaire.

27. So far as the Rathod's role is concerned, learned Counsel, Ms. Shilpa Chohan, submitted that the NGT acted well within its rights and acted within its jurisdiction in entertaining and proceeding with the application, Under Sections 14 read with 16 and 18 of the NGT Act. The Lokmanch sought mandatory injunction to restore the natural contour at the foot base of the hills, particularly the hill that was destroyed by the private Respondents. It was submitted that apart from the enquiry report of the magistrate/sub-divisional officer, a report was also commissioned by the NGT through the local *tehsildar;* that report dated 15.09.2014 disclosed that unauthorised hill destruction under the pretext of minor mineral extraction was widespread during 2011-2013. This report showed that as many as 62 cases of hill destruction (mostly indulged in by developers), came to light. Many of these occurred without obtaining any permit or authorisation and were plainly illegal.

28. It is argued further that the private Respondents were permitted to extract minor minerals only for a short period. However, they exceeded not only the permit, but also went further and destroyed the hill for the purpose of mining minerals. This over-mining as well as hill destruction was not within the permission or the terms of the license. It is highlighted that "hill cutting" or hill destruction causes shortening of hills, poses a potential danger of soil erosion and reduces vegetation, forestry, flora and fauna, and deprives natural support to the earth, therefore ultimately posing an

environmental hazard to nearby areas, including residential areas. It is argued that the destruction of hills results in the distortion of the flow of streams and rivers, which change their courses resulting in heavy loss to human life and also to flora and fauna, besides at times, destruction of property. It is submitted that the NGT's decision requiring payment of compensation was within its jurisdiction; to support this, learned Counsel relied upon the provisions of Schedule II to the NGT Act, particularly referring to the heads of compensation relief for damages that can be claimed and granted, i.e. death, permanent, temporary, or total, or partial disability or other injury, damages to private property, expenses incurred by the government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of the environment. It was submitted that the statutory basis for calculating these damages under Schedule II to the NGT Act is provided by Section 15, which empowers the NGT to provide relief and compensation to victims of pollution in terms of Schedule I for restitution of property, restitution of environment, and also importantly Section 17, which empowers the NGT to direct the payment of compensation on account of death of or injury to any person or damage to property, under all any of the heads specified in Schedule II, which is the result of any accident or is an adverse impact of any activity or operational process. It is submitted that there is nothing in the enactment which confines the jurisdiction of the NGT to adjudicate complaints, especially those relating to fatalities caused by environmental damage, to applications initiated by legal representatives or persons directly affected. It is submitted that if a particular accident or incident is so widespread as to affect an entire area, it would be well within the jurisdiction of the NGT to entertain an application made by anyone. Learned Counsel highlighted the difference in phraseology between Sections 15 and 17 on the one hand, and Section 18 on the other. It is submitted that Section 18(2) clearly is without prejudice to the provisions contained in Section 16 and primary jurisdiction can be invoked by the Tribunal upon being moved by anyone in this regard.

29. Ms. Chohan cited the decision of this Court in *Mantri Techzone Pvt. Ltd. v. Forward Foundation* MANU/SC/0315/2019 : 2019 (18) SCC 494 to say that the NGT could legitimately issue directions which are binding on all other statutory authorities. She also relied on Section 33 of the NGT Act, emphasizing that the enactment overrides all other enactments. Reliance was also placed on the decision in *Hanuman Laxman Aroskar v. Union of India.* MANU/SC/0444/2019 : 2019 (15) SCC 401

30. The State of Maharashtra supported the arguments made on behalf of the Lokmanch. It was pointed out that the jurisdiction to issue general directions to preserve and protect the environment, through restitution orders is found in Section 15(1)(c) of the NGT Act. It is also submitted that the power and jurisdiction to order compensation in the case of death, is independent and can be invoked in case of fatal accidents, as is evident from the provisions of Schedule II. The state further argues that the judgment of the Bombay High Court too is unexceptionable, inasmuch as it correctly appreciated and upheld the exercise of regulatory power Under Section 154 of the MRTP Act. Counsel urged that the said provision was amended in 2015 and in the absence of any challenge to it, the exercise of power after due consideration of relevant factors, could not be countenanced.

The Issues

31. Four issues arise for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with

respect to the ban on construction in and around foothills and lastly, the vires of the directions/notifications issued Under Section 154, MRTP Act.

I. Jurisdiction of the NGT

32. The relevant provisions of the NGT Act are extracted below:

> ***2. Definitions***.--(1) In this Act, unless the context otherwise requires
>
> *XXXXXX XXXXXX XXXXXX*
>
> *(m) "substantial question relating to environment" shall include an instance where--*
>
> > *(i) there is a direct violation of a specific statutory environmental obligation by a person by which--*
> >
> > > *(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*
> > >
> > > *(B) the gravity of damage to the environment or property is substantial; or*
> > >
> > > *(C) the damage to public health is broadly measurable;*
> >
> > *(ii) the environmental consequences relate to a specific activity or a point source of pollution;*
>
> *XXXXXX XXXXXX XXXXXX*
>
> ***14. Tribunal to settle disputes.****--(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*
>
> *(2) The Tribunal shall hear the disputes arising from the questions referred to in Sub-section (1) and settle such disputes and pass order thereon.*
>
> *(3) No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*
>
> > *Provided that the Tribunal may, if it is satisfied that the Applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.*
>
> ***15. Relief, compensation and restitution****.--(1) The Tribunal may, by an order, provide,--*
>
> > *(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous*

substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of Sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this Section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the Applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

***"16. Tribunal to have appellate jurisdiction.**--Any person aggrieved by,*

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority Under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government Under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, Under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority Under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority Under Section 2 of the Forest (Conservation) Act, 1980 (69 of

1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority Under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, Under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this Section within a further period not exceeding sixty days.

17. Liability to pay relief or compensation in certain cases.

(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

(3) The Tribunal shall, in case of an accident, apply the principle of no fault

18. Application or appeal to Tribunal.

(1) Each application Under Sections 14 and 15 or an appeal Under Section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in Section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as Respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal Under Section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months

from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

XXXXXX XXXXXX XXXXXX

***29. Bar of jurisdiction.**--(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.*

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."

XXXXXX XXXXXX XXXXXX

"33. Act to have overriding effect.--The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

33. A plain reading of the above provisions of the NGT Act would reveal that the tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction Under Sections 14-15, and appellate jurisdiction Under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to "*civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved*" relating to the implementation of "*the enactments specified in Schedule I*" [Section 14 (1)]. The other provisions [Sections 14(2) and (3)] are incidental to the primary jurisdiction Under Section 14(1). Section 15, on the other hand, is couched in wide terms. Section 15(1) provides that compensation or damages can be given by the NGT to "*victims of pollution and other environmental damage arising under the enactments specified in the Schedule I*" [Section 15 (1)(a)]; for restitution of property damaged [Section 15(1)(b)] and for restitution of the environment for such area or areas [Section 15(1)(c)]. Section 15(2) is procedural; Section 15(3) prescribes the period of limitation for applications. Section 15(4) enables the NGT to, having regard to the damage to public health, property and environment,

divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

34. The enactments specified under Schedule I are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; and the Biological Diversity Act, 2002.

35. Schedule II reads as follows:

SCHEDULE II [See Sections 15(4) and 17(1)] HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED

(a) Death;

(b) Permanent, temporary, total or partial disability or other injury or sickness;

(c) Loss of wages due to total or partial disability or permanent or temporary disability;

(d) Medical expenses incurred for treatment of injuries or sickness;

(e) Damages to private property;

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;

(g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

(l) Loss and destruction of any property other than private property;

(m) Loss of business or employment or both;

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance.

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

37. The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, *inter alia*, payment of compensation, "*having regard to the damage to public health, property and environment*". This interpretation is borne out by a reading

of Section 17(2) regarding the *apportionment* of liability for payment of compensation.

38. In the decision of this Court reported as *Hinch Lal Tiwari v. Kamala Devi* MANU/SC/0410/2001 : 2001 (6) SCC 496, this Court held that ponds constituted public utility and were meant for common use. The court held that ponds could not be allotted or commercialised, and that filling up of ponds was illegal. Recently, in *Jitendra Singh v. Ministry of Environment and Ors.*, the Court quoted and applied the observations in *Hinch Lal* (supra), in the context of an appeal directed against an order of the NGT which had summarily dismissed an application Under Sections 14 and 15 of the NGT Act seeking directions to cease the filling up of ponds in the Greater Noida Industrial Development Area.

39. Long ago, in *State of Tamil Nadu v. M/s. Hind Stone and Ors.* MANU/SC/0394/1981 : 1981 (2) SCC 205, this Court made following observations:

> *6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957 ...*

40. Likewise, in *Lafarge Umiam Mining (Pvt.) Ltd. v. Union of India and Ors.* MANU/SC/0735/2011 : 2011(7) SCC 338 these pertinent observations were made:

> *75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan v. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts Rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply.*

41. Recently, in *State of Meghalaya and Ors. v. All Dimasa Students Union, Dima-Hasao District Committee and Ors.* MANU/SC/0877/2019 : 2019 (8) SCC 177 this Court had affirmed a part of the decision of the NGT issuing directions in respect of large-scale mining in the state of Meghalaya, on the ground that it had an adverse impact on the environment. This was despite the fact that mining and the subject of mines is not specified in the list of enactments under the first schedule. The court also approved the NGT's directions, appointing experts, to assess the impact of such mining on the environment.

42. The legal position and jurisdiction of NGT was considered by this Court in *Mantri Techzone* (supra) where it was held that the NGT has "*special jurisdiction*" for

"*enforcement of environmental rights*." It was held that:

> ***41.*** *The jurisdiction of the Tribunal is provided Under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.*
>
> ***42.*** *The Tribunal has also jurisdiction Under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, Under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.*
>
> ***43.*** *Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.*
>
> ***44.*** *The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn.* MANU/SC/2148/2007 : (2007) 4 SCC 579*, para 17). The existence of the Tribunal without its broad restorative powers Under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.*
>
> ***45.*** *Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.*
>
> ***46.*** *Further, Section 18 of the Act recognizes the right to file applications each Under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth*

of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

***47.** Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP.*

43. It is noteworthy that this Court clearly held that Under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "*restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act.*" Though a direction for compensation Under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power Under Section 17 appears to be cast in wider terms.

44. As noticed earlier, Section 17 (1) refers to first Schedule enactments; it talks of death of, or injury to, any person "*or damage to any property or environment*" which "*has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment*" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

45. The definition of "*environment*" under the EPA is wide and is an inclusive one: "*environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property*".[2] Similarly, "environmental pollutant" and "environmental pollution" are defined as follows:

environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;[3]

"environmental pollution" means the presence in the environment of any environmental pollutant;[4]

Section 3(1) of the EPA confers upon the Central Government, wide power in relation to protection of the environment:

3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.-(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental

pollution.

46. Long back, in *M.C. Mehta v. Union of India* MANU/SC/0247/2004 : (2004) 12 SCC 118 this Court recognized the potential harm to the environment caused by mining operations:

"*Legal parameters*

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right Under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [MANU/SC/0106/1991 : (1991) 1 SCC 598.)

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47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied.

47. Acting under the provisions of the EPA, the Central Government had issued a notification on 14.09.2006, mandating Environmental Impact Assessment (EIA) in exercise of its power Under Section 3(2) of the EPA read with Rule 5 of the Rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification; the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction.

48. Several irregularities were noticed over a period of time, with regard to minor mineral extraction, including sand, and there was need for introducing stringent regulations for those activities. A report of the then Ministry of Environment and Forests (MoEF, now MoEF&CC) submitted in 2010 was critical of the prevailing norms. As a result, this Court and the NGT issued orders and directives making ECs compulsory for projects less than five hectares. The Central Government too initiated measures.

49. The following observations of this Court were made in *Deepak Kumar v. State of Haryana* MANU/SC/0169/2012 : (2012) 4 SCC 629:

> ***18.*** *Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.*
>
> ***19.*** *For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:*
>
> > ***4.0. Issues and recommendations***
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> > *XXXXXX XXXXXX XXXXXX*
> >
> > *It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.*
> >
> > *Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.*
> >
> > *It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.*
> >
> > *XXXXXX XXXXXX XXXXXX*
> >
> > ***4.5.*** *Requirement of mine plan for minor minerals*
> >
> > *At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be*

deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the Rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

***4.6.** Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.*

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***4.8.** Uniform minor mineral concession rules*

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession Rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

***4.9.** Riverbed mining*

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

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***5.0.** Conclusion*

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of

major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States.

20. *The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.*

21. *Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.*

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28. *The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary Rules Under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.*

29. *We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly.*

50. By virtue of a notification,[5] environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the state had granted no less than 62 minor mineral permits in the vicinity; unauthorized activity (in the form inter alia, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because Rathod's mining lease covered an area in excess of 5 hectares; it fell within the regulatory notification of 2006. There is nothing on record to show that the relevant clearance was obtained by Rathod. Plainly, therefore, the facts of the present case disclosed violation of the EPA-an enactment listed in Schedule I of the NGT Act. This meant that the NGT's jurisdiction Under Section 15(1)(a) and Section 17 could not have been disputed.

51. This Court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

II. Was the direction to pay compensation towards death, and damages towards restitution justified?

52. In the present case, the deceased were concededly travelling on the highway. The incident of flooding occurred, and was caused due to clogging of the water channels. The report of the sub divisional magistrate indicated that the Inspecting Engineer (Arvi Associates, a firm) had given a report after inspection. On behalf of the independent engineering firm appointed by the NHAI, an oral deposition was given before the sub-divisional officer. It was stated that the roadside channel and culvert from where water is disposed of, had been rendered screen blinded and a pipeline of 1.2 m diameter existed there for disposal of water. The necessity of remedial action was communicated to the concessionaire, before the occurrence of the accident. It was also stated that in terms of the instructions of the NHAI, the concessionaire was informed about the deficiency on 15.05.2013 and by a further letter dated 04.06.2013. An action plan for completing pre-monsoon work was sought from the concessionaire. However, the

concessionaire did not submit an action plan despite lapse of one month.

53. The SDO's report noted that the culvert had been constructed from the new tunnel and was existing from 2004. Apparently a 1m diameter pipe was positioned in the culvert and had made a causeway. One hotel also had constructed an approach road and placed a 950 MM pipe. The existing drainage capacity of the octroi post and the hotel was insufficient due to heavy rains as a result of which rainwater was not totally drained. This water started accumulating on the road. Certain ramps were also constructed by Tata Motors for its convenience; they were removed by the concessionaire; nevertheless, the ramps were prepared again. The existing cross drainage provision was of a sub-culvert-type structure and the size at the time of the old highway was 1m x 1 m. The report further observed that the natural drainage and sides of hills of the highway was adversely affected and had been tampered with. The disposal of water on the right side overhead of the tunnel through the cross train on the old highway via the catch drain and subsequently the channels for the water flow were choked due to development work and adversely affected the clearance of rain water. The report indicates that after the accident on 06.06.2013, the local administration cleared the debris which had created obstacles, to facilitate the free flow of water into the catch drain culvert and further flow of water.

54. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 ("the Highways Act") and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:

> *4. **National highways to vest in the Union.** -- All national highways shall vest in the Union, and for the purposes of this Act "highways" include--*
>
> *(i) all lands appurtenant thereto, whether demarcated or not;*
>
> *(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and*
>
> *(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.*
>
> ***5. Responsibility for development and maintenance of national highways.--**It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.*
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> ***8A. Power of Central Government to enter into agreements for development and maintenance of national highways** -- (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.*
>
> *(2) Notwithstanding anything contained in Section 7, the person referred to in*

Sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in Sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

55. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:

***16. Functions of the Authority.**-- (1) Subject to the Rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. Rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government.*

56. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed, and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).

57. This issue had arisen in *Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum* MANU/SC/1413/1997 : (1997) 9 SCC 552 in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This Court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions[6] and stated that

***18.** The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the Plaintiff. The Plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the Defendant owes to the Plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of*

action unless it is breached and it has caused damage to the Plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the Plaintiff to prove on balance of probabilities that the Defendant owes that duty of care to the Plaintiff or class of persons to whom he belongs, that Defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the Defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the Plaintiff belongs, it prima facie creates at the same time correlative right vested in those citizens of which Plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. *Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a Section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-Ã -vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the correlative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit Under Section 192 of Code of Civil Procedure or with leave of court Under Order I, Rule 8 Code of Civil Procedure by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.*

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24. *Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of*

others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in Sheppard v. Borough of Glossop [(1921) 3 KB 132 : 1921 All ER Rep 61, CA]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action....

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***39.** It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. ...*

58. In the UK, the duty of a highway authority was described by Diplock L.J. in *Griffiths v. Liverpool* Corporation MANU/UKWA/0036/1966 : [1967] 1 Q.B. 374 as follows:

The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute.

Again, Diplock, LJ stated in Burnside v. Emerson MANU/UKWA/0074/1968 : [1968] 1 W.L.R. 1490 described the duty as follows:

in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition.

59. Later, in *Haydon* v. *Kent County Council* MANU/UKWA/0090/1977 : [1978] Q.B. 343 Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

If Section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence Under Section 58 has been made out. Parliament did not define those facts for the purpose of Section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea

of the amount and nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty.

60. In *Stovin* v. *Wise* MANU/UKWA/0037/1994 : 1996 (3) All ER 801, the Defendant emerged from a side road and ran down the Plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the Defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that "*Drivers of vehicles must take the highway network as they find it*". It was held that statutory power could not be converted into a common law duty. The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,

In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised.

61. *Stovin (supra)* and its enunciation that the existence of a public duty did not per se extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in *Gorringe v. Calderdale Metropolitan* Borough Council MANU/UKHL/0045/2004 : 2004 (1) WLR 1057. The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in *Robinson v. Chief Constable of West Yorkshire Police* MANU/UKSC/0009/2018 : 2019 (2) All ER 1041, which observed as follows:

32. *At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example, Entick v. Carrington (1765) 2 Wils KB 275 and Mersey Docks and Harbour Board v. Gibbs (1866) LR 1 HL 93. Dicey famously stated that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen": The Law of the Constitution, 3rd ed (1889), p. 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, Section 2.*

33. *Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example, Dorset Yacht Co. Ltd. v. Home Office* MANU/UKWA/0058/1969 :

[1970] AC 1004, *as explained in Gorringe's case* MANU/UKHL/0045/2004 : 2004 (1) WLR 1057, *para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question: Geddis v. Proprietors of Bann Reservoir (1878) 3 App Cas 430. It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.*

34. *On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in Michael's case [2015] AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police"* [2016] CLJ 128:

> *In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger.*

35. *As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example, Barrett v. Enfield London Borough Council* MANU/UKHL/0008/1999 : [2001] 2 AC 550 *and Phelps v. Hillingdon London Borough Council* [2001] 2 AC 619, *as explained in Gorringe's case* MANU/UKHL/0045/2004 : 2004 (1) WLR 1057 *paras 39-40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example, Smith v. Littlewoods Organisation Ltd.* MANU/UKHL/0006/1987 : [1987] AC 241, *concerning a private body, applied in Mitchell v. Glasgow City Council* MANU/UKHL/0040/2009 : [2009] AC 874, *concerning a public authority.*

36. That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question. A well known illustration of that principle is the decision of the House of Lords in East Suffolk Rivers Catchment Board v. Kent [1941] AC 74. *The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care": Gorringe's case* MANU/UKHL/0045/2004 : 2004 (1) WLR 1057, para 23.

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40. *However, until the reasoning in the Anns case was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose*

at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including Hill's case [1989] AC 53. *The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in Gorringe's case. Since that case, a public authority's non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.*

***41**. Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see Gorringe's case MANU/UKHL/0045/2004 : 2004 (1) WLR 1057, para 38, per Lord Hoffmann.*

***42.** That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."*

62. In *Yetkin v. Mahmood* 2011 QB 827, where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

...The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established.

63. A similar approach was indicated by this Court in *Municipal Corpn. of Delhi v. Sushila Devi* MANU/SC/0332/1999 : (1999) 4 SCC 317 at page 323 (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

***13.** By a catena of decisions, the law is well settled that if there is a tree standing on the Defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the Defendant, then the Defendant is liable for any injury caused by the fall of*

the tree (see Brown v. Harrison [1947 WN 191 : 63 TLR 484]*, Quinn v. Scott* [(1965) 1 WLR 1004 : (1965) 2 All ER 588] *and Mackie v. Dumbartonshire County Council* [1927 WN 247]*). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corpn. of Delhi v. Subhagwanti* [MANU/SC/0010/1966 : AIR 1966 SC 1750] *a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect," -- said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable.*

This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in *Vadodara Municipal Corporation v. Purshottam v. Muranji* MANU/SC/0792/2014 : 2014 (16) SCC 14.

64. The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it inter alia, states that:

During pre-monsoon rains all the excavated muck has been carried to NH4 alongwith rain water and block Satara bound traffic lane for quite some time. The problem will be severe during heavy rains of July and August.

As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end."

65. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to

human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, prima facie, disclose their liability.

66. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this Court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

> *Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as Respondents to the application.*

67. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a *prima facie* determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay ' 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This Court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of ' 10 lakhs too, in this Court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of ' 15 lakhs with the said court within four weeks, in equal proportion. The sum ' 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/planting of trees etc.

Point Nos. III and IV: Correctness of NGT's directions contained in Para 17 (e) of its impugned order, and the legality of the order/notification of the state of Maharashtra, issued Under Section 154, MRTP Act

68. As to the third point, two issues arise for consideration-firstly, the power of the NGT to issue directions banning development and building activities of the kind contained in Para 17(e) of its impugned order, and secondly, the correctness of the procedure adopted while issuing such directions, in this case.

69. In the All Dimasa Student Union case[7], this Court considered the nature of powers

and jurisdiction of NGT. The relevant discussion is as follows:

> ***156.*** *What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows[8]:*
>
> *XXXXXX XXXXXX XXXXXX*
>
> ***157.*** *Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What Sub-section (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by Code of Civil Procedure for conducting its proceedings. Sub-section (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by Code of Civil Procedure is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in Code of Civil Procedure. One provision of Code of Civil Procedure inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:*
>
> > ***10-A. Commission for scientific investigations.****--(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.*
> >
> > *(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed Under Rule 9.*
>
> ***158.*** *Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers Under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any*

dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10-A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above.

70. The court also took note of Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (framed Under Sections 4(4) and 35 of the NGT Act)[9]. This Court then held as follows:

160. *Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.*

163. *The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT,*MANU/SC/0268/1970 : (1970) 2 SCC 355], *wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)*

XXXXXX XXXXXX XXXXXX

164. *We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case.*

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

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

73. Courts in the US, notably the US Supreme Court, have been faced with problems arising from regulatory adjudication. The scope of such decision making which resembles an adjudicatory outcome by courts, was considered in *Securities Exchange Commission v. Chenery Corp.* 332 U.S. 194 (1947). This case arose from an order of

the Securities Exchange Commission (SEC) refusing to approve a utility company's bankruptcy reorganization plan, due to that plan's favourable treatment of management's stock purchases during the reorganization period. The SEC originally had based its disapproval on its understanding of general corporation law principles. The Supreme Court initially struck down that decision as a misreading of the principles. On remand, the SEC reaffirmed its rejection of the reorganization plan. But this time, the SEC relied on its interpretation of the standards of the Public Utility Holding Company Act of 1935. When the Supreme Court decided the appeal for the second time, it affirmed the SEC's order. The court clarified that SEC would be allowed to establish such an interpretation by means of a particularized order rather than a general Regulation and observed that:

> *Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general Rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case by case evolution of statutory standards. And the choice made between proceeding by general Rule or by individual, ad hoc litigation is one that lies primary in the informed discretion of the administrative agency.*

74. Similar observations were made by this Court in *PTC India* v. *Central Electricity Regulatory Commission* MANU/SC/0164/2010 : 2010 (4) SCC 603. The court stated as follows, after analysing the provisions of the Electricity Act 2003:

> *49. On the above analysis of various Sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by Regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a Rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law.*
>
> *50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation Under Section 62 made appealable Under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by*

the appropriate Commission Under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow.

75. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

76. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this Court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded-without any rationale and based on no scientific or technical evidence, or experts' opinion, that development and construction should not be carried out within 100 feet of a *lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops*". The decisions of this Court, including the *All Dimasa Students Union* case (f.n. 9); *Mantri Techzone Pvt. Ltd.* case (f.n. 3); the *Hanuman Laxman Aroskar* case (f.n. 4) and the *Tamil Nadu Pollution Control Board* case (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

77. To consider the last issue, i.e. validity of the notification/direction issued by the state government, it is necessary to briefly outline provisions of the MRTP Act. The MRTP Act was framed and enacted for the purpose of use, planning and development in the regions (of Maharashtra). This was through the establishment of Regional Planning Boards, New Town Development Authorities and Special Planning Authorities, as the case may be, for specified "notified areas". The Act provides for the preparation of development plans, appointment of Special Planning Authorities for notified areas, and creation of new towns for designated areas by means of development authorities. The MRTP Act also enables compulsory acquisition of land for public purposes in respect of the plans and for purposes connected therewith. The Act provides for an elaborate procedure for preparation of the regional plan by a Regional Planning Board ("the board") and development plan by any planning authority. The board has to follow the procedure contained in Chapter II(C). Section 16 provides the procedure-the regional boards have to (after necessary survey) prepare land-use maps for the region, and prepare a draft regional plan, after which they have to publish a notice about the plan in

the Official Gazette, inviting objections and suggestions from any person with respect to the draft plan. The board has to refer the objections, suggestions and representations received by it to the Regional Planning Committee ("the committee" hereafter) appointed Under Section 10 for consideration and report. The committee, after giving a reasonable opportunity of being heard to the affected persons has to submit its report to the board, after which the board has to prepare the regional plan after considering the suggestions, objections and representations and the report of the committee. This is to be submitted to the State Government for approval. On approval of the plan by the State Government Under Section 15, the final regional plan has to be published Under Section 17.

78. Chapter III deals with the procedure for preparation of development plans by a planning authority. Section 23 provides that the planning authority should make a declaration of its intent to prepare such a plan and publish the same in the Official Gazette, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette. Thereafter Under Section 26, the planning authority has to prepare a draft development plan, not later than two years from the date of notice published Under Section 23, and publish the notice in the Official Gazette stating that the development plan has been prepared, once again inviting objections or suggestions from any person with respect to the draft plan within a period of sixty days from the notice. Section 27 provides that the planning authority having regard to, and guided by the proposals made in the regional plan, shall not carry out any modification therein without prior concurrence of the Regional Planning Board. Section 28 mandates the planning authority to consider suggestions or objections received by it Under Section 26(1) and provide a reasonable opportunity of being heard to any person including the representatives of the Government who may have filed any objections or suggestions, and thereafter modify or change the plan in such manner, as provided Under Section 28(4). Section 29 further provides for modification of the draft development plan, which is of substantial nature. By this, a planning authority or the Town Planning Officer is required to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than sixty days from the date of such notice. The Section then requires the authority concerned to consider all objections and suggestions received by it and give a reasonable opportunity of being heard to any person including representatives of government departments who may have filed any objections or made any suggestions in respect of the draft development plan before making such modifications or changes in the draft development plan. Section 30 requires the planning authority to submit the draft plan to the State Government for approval, within twelve months from the date of publication of the notice Under Section 26 that the draft plan has been prepared. Section 31 provides that the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette, sanction the draft development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft development plan to the planning authority for modifying the plan as it may direct, or refuse to accord sanction. It further provides that where the modifications proposed to be made by the State Government are of a substantial nature, the State Government has to follow the procedure contemplated Under Section 28 to give a reasonable opportunity of hearing to the objectors before finalizing the modification.

79. Section 37 confers powers on a planning authority to carry out such modification in a final development plan as will not change its character. This power could be exercised by a planning authority after publishing a notice in the Official Gazette and in such

other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification, not later than one month from the date of such notice. This Section also enjoins the planning authority to serve notice on all persons affected by the proposed modification and, after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. Section 40 provides for appointment of a Special Planning Authority for developing certain notified areas, and Section 40(1)(c) provides that the State Government may, by notification in the Official Gazette appoint Bombay Metropolitan Region Development Authority (BMRDA) established under the Bombay Metropolitan Region Development Authority Act, 1974 to be the Special Planning Authority for developing any undeveloped area specified in the notification as a notified area. Section 116 then lays down that a Special Planning Authority shall have all the powers of a planning authority as provided in Chapter VII of the MRTP Act for the special purpose of acquisition of such land in the notified area either by agreement or under the Land Acquisition Act.

80. So far as plans and developments that were approved before the impugned notification was issued, this Court is of the opinion that they cannot be disturbed and the right of the applicants, be they developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. This is evident from a ruling of this Court in *T. Vijayalakshmi* v. *Town Planning Member* MANU/SC/8559/2006 : (2006) 8 SCC 502. This Court stated that town planning legislations (like the MRTP Act) are regulatory; and that when a development plan is in force during the proposal for its amendment, courts should not interfere with them on the assumption that the approved plan for building or development, would not be eventually permitted. It was held that:

> *Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.*

81. This Court has ruled, that even modification to an existing development plan, under the MRTP Act, Under Section 37, is in the nature of a legislative function. This Court had observed under *Pune Municipal Corpn. v. Promoters and Builders Assn.* MANU/SC/0487/2004 : (2004) 10 SCC 796 speaking of Section 37 (1) that:

> ***4.*** *Reading of this provision reveals that under Clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under Clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the*

Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of Clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under Clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the Respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.

5. *Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India v. Cynamide India Ltd.* [MANU/SC/0076/1987 : (1987) 2 SCC 720],*SCC paras 5 and 27. See generally H.S.S.K. Niyami v. Union of India* [MANU/SC/0370/1990 : (1990) 4 SCC 516] *and Canara Bank v. Debasis Das* [MANU/SC/0225/2003 : (2003) 4 SCC 557: 2003 SCC (L&S) 507].)*While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat* [MANU/SC/0324/1990 : 1990 Supp SCC 397].) *Therefore, the view adopted by the High Court does not appear to be correct.*

82. This issue was again underscored by this Court in *Machavarapu Srinivasa Rao v. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority,* MANU/SC/1095/2011 : (2011) 12 SCC 154 where it was held as follows, in respect of provisions of the Andhra Pradesh (Urban Areas) Development Act, 1975:

20. An analysis of the above-noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be

made only by the State Government and that too after following the procedure prescribed Under Section 12(3).

83. In a decision which concerned change in development plan under the MRTP Act, this Court observed that any changes in a development or master plan involve consultations and a high degree of expertise, in *MIG Cricket Club v. Abhinav Sahakar Education Society* MANU/SC/1023/2011 : (2011) 9 SCC 97:

> ***28.*** *It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same.*

84. Now, under the provisions of the MRTP Act[10], regional plans and development plans have to take into account features such as soil conservation, preservation of natural features, prevention of flooding etc. while factoring planning for each city or area concerned. In turn, such regional and development plans would constitute the blueprint for local town planning authorities to grant or refuse permission to individual applicants. In these circumstances, the use of Section 154 of the MRTP Act, in the present case, in fact amounted to a modification of all plans-regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in this background that one has to consider the argument of the state, which found favour with the High Court, that such notification was issued in public interest.

85. The unamended Section 154 of the MRTP Act read as follows:

> ***154 Control by the State Government***
>
> *(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.*
>
> *(2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final.*

86. Section 154(1) was amendment by a substitution (with effect from 22.04.2015). The new provision [Section 154(1)] reads as follows:

> *154. (1) Notwithstanding anything contained in this Act or the Rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or*

projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions.

87. Directions can be issued "notwithstanding" any other provisions of the Act, "*for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time.*" No doubt, the non-obstante Clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resorted to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT DEPARTMENT
Madam Cama Road
Hutatma Rajguru Chowk
Mantralaya, Mumbai 4000032
Government Resolution No. TPS-1817/ANS-90/97/UD-13
dated 14 November 2017

The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palika/Nagar Palika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers Under Section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

1. The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet should be shown as No development/Open space Reservation.

2. In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.

3. In the event the 100 feet area abutting hills is under No Development

Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for non-buildable purposes such as open space, road et cetera.

In the name of and by order of theHon'ble Governor State of Maharashtra

88. There are several authorities for the proposition that though an administrative order need not necessarily comply with principles of natural justice such as granting hearing, yet, administrative decisions or orders have to be based on some reasons. In *Shri. Sitaram Sugar Mills Company* v. *Union of India*, MANU/SC/0249/1990 : (1990) 3 SCC 223 (which concerned the zoning regulations for the purpose of levy sugar under the relevant statutory order, in terms of the Essential Commodities Act), the Supreme Court held as follows:

Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable ultra vires.

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness.

89. In *Cellular Operators Association* v. *Telecom Regulatory Authority of India*, MANU/SC/0551/2016 : (2016) 7 SCC 703 this Court held that subordinate regulatory legislation, can be set aside in judicial review, if they show no rationale or are arbitrary:

62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the Appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable.

63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional Regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer

who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the Appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the reason for a call drop can technologically be found out and whether it is a network-related reason or a user-related reason.

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66. The reason given in the Explanatory Memorandum for compensating the consumer is that the compensation given is only notional. The very notion that only notional compensation is awarded, is also entirely without basis. A consumer may well suffer a call drop after 3 or 4 seconds in a voice call. Whereas the consumer is charged only 4 or 5 paise for such dropped call, the service provider has to pay a sum of rupee one to the said consumer.

This cannot be called notional at all. It is also not clear as to why the Authority decided to limit compensation to three call drops per day or how it arrived at the figure of Re 1 to compensate inconvenience caused to the consumer. It is equally unclear as to why the calling party alone is provided compensation because, according to the Explanatory Memorandum, inconvenience is suffered due to the interruption of a call, and such inconvenience is suffered both by the calling party and the person who receives the call. The receiving party can legitimately claim that his inconvenience when a call drops, is as great as that of the calling party. And the receiving party may need to make the second call, in which case he receives nothing, and the calling party receives Re 1 for the additional expense made by the receiving party. All this betrays a complete lack of intelligent care and deliberation in framing such a Regulation by the Authority, rendering the impugned Regulation manifestly arbitrary and unreasonable.

90. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them.

91. For the above reasons, we hold that the impugned judgment of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification Under Section 154 (dated 14.11.2017) are hereby quashed.

92. In view of the above discussions, CA 6932/2015 and CA 5971/2019 are hereby disposed of in terms of the directions in this judgment. The other appeals by special leave by third parties, against the NGT's order, and the order of the NGT, are partly allowed in the above terms. There shall be no order on costs.

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[1]In terms of Clause 19.4.2, the measure of damages which NHAI could recover was calculable in terms of each days delay in complying with the remedial measures suggested by the engineer, based on the "*higher (a) 0.5% of the Average Daily Fee and (b) 0.1% of the cost of such repair or repair estimated by the Independent Engineer*" The same Clause (17.8.1) stated that:
"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this agreement and the Authority shall be entitled from such date to recover damages, to be calculated and paid for each day of the delay until the breach is cured, at the higher of (a) 5% (five percent) of Average daily fee and 1% (one percent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession. The recovery of such damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof.

[2]Section 2(a) EPA

[3]Section 2(b) EPA

[4]Section 2(c) EP

[5]No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette

[6]*Gorris v. Scott* [MANU/MT/0027/1874 : (1874) 9 Exch. 125] and Kilgollan v. William Cooke & Co. Ltd. (1956) 2 All ER 294, CA]

[7]See f.n. 9 (supra).

[8]***19. Procedure and powers of Tribunal****.--(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.*
(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.
(3) The Tribunal shall also not be bound by the Rules of evidence contained in the Indian Evidence Act, 1872.
(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely--
(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
(e) issuing commissions for the examination of witnesses or documents;
(f) reviewing its decision;
(g) dismissing an application for default or deciding it ex parte;
(h) setting aside any order of dismissal of any application for default or any order

passed by it ex parte;
(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;
(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;
(k) any other matter which may be prescribed.
(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

[9]The said Rule reads as follows:

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

[10]Section 14 and 22