

BEFORE THE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 206 OF 2023 (WZ)

IN THE MATTER OF:

Yogesh Pratap Singh

... APPLICANT

VERSUS

Member Secretary, NCZMA

& Ors...

...RESPONDENT

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... RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.

4

I, D. B. Patil, aged about 56 years, Executive Officer, of the Slum Rehabilitation Authority, having office at New Administrative Building, Anant Kanekar Marg Bandra East, Mumbai- 400051, do hereby solemnly affirm and state as under:

PRELIMINARY SUBMISSIONS

1) I am the Executive Officer of the Slum Rehabilitation Authority (hereinafter referred to as "SRA") and am well-conversant with the facts of the present case. I have perused the copy of Original Application filed by the Applicant and in reply thereto, I am filing this Affidavit in Reply. I am authorized to file this affidavit in reply on behalf of Respondent No. 4. Hereto annexed and marked as **Annexure 1** is the copy of

Application on the following grounds:

- 6.1) The National Green Tribunal Act, 2010, under Section 14(1) provides: *"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."*

It is respectfully submitted that the present matter primarily concerns urban planning decisions under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter "MRTP Act") rather than raising any substantial question relating to environment within the meaning of Section 14(1) of the National Green Tribunal Act, 2010. Hereto annexed and marked in (**Annexure 2**) is a copy of the National Green Tribunals Act, 2010;

- 6.2) Section 2(m) of the National Green Tribunal Act, 2010 defines a **"substantial question relating to environment"** as follows:

"'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.”

The Applicant has failed to demonstrate how the alleged relaxations in open space requirements constitute a "substantial question relating to environment" as defined under Section 2(m) of the NGT Act.

6.3) Furthermore, Section 14 of the National Green Tribunal Act, 2010 confines the Tribunal's jurisdiction to civil cases involving substantial questions relating to the environment arising from the implementation of enactments specifically listed in Schedule I of the Act. It is pertinent to note that neither the Maharashtra Regional and Town Planning Act, 1966 nor the Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act, 1971 is included in Schedule I. Accordingly, any grievance arising solely under these statutes falls outside the scope of the Tribunal's jurisdiction.

6.4) The Hon'ble Supreme Court in Tamilnadu Pollution Control





Board vs. Sterlite Industries (India) Ltd. [(2019) 19 SCC 479] has categorically held that "the NGT does not enjoy the power of judicial review to examine the validity or vires of any enactment in Schedule I or of subordinate legislation framed under such enactment." Hereto annexed and marked in (Annexure 3) is a copy of Tamilnadu Pollution Control Board vs. Sterlite Industries. Thus, the Tribunal's jurisdiction to examine urban planning regulations under the MRTP Act is clearly barred.

LIMITATION AND STANDING OBJECTIONS

7) Without prejudice to the jurisdictional objections raised herein, and while expressly reserving all rights to raise additional grounds and arguments as may be necessary during the proceedings, the Respondent No. 4 submits that this Original Application suffers from fatal defects of limitation and standing that independently warrant its dismissal. This submission is made with the clear understanding that nothing contained herein shall be construed as a waiver of any objection, argument, or defense available to the Respondent, particularly regarding the jurisdictional challenge:

7.1) Statutory Limitation Period:

a) Section 14(3) of the National Green Tribunal Act, 2010 states: "*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."



- b) Section 14(3) of the National Green Tribunal Act, 2010 explicitly imposes a stringent limitation period of six months from when the cause of action first arose, with a maximum discretionary extension of only 60 days upon showing sufficient cause. This strict statutory provision reflects the legislative intent to ensure timely adjudication of environmental disputes and provide certainty in administrative decisions. The slum rehabilitation schemes referenced in the Application received approvals years ago, making this challenge grossly delayed without any explanation demonstrating sufficient cause for condonation of delay. This statutory limitation cannot be circumvented through creative legal arguments.
- c) In **M. Ramasamy Versus K. Ponnusamy**, the Madras High Court explained in paragraph 8 (1) (11) the rationale behind limitation periods: "**Rules of limitation are not meant to destroy the rights of the parties. They**



are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time... So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation)."

Hereto annexed and marked as **Annexure 4** is a copy of M. Ramasamy v. K. Ponnusamy.

7.2) Misapplication of "Continuing Wrong" Doctrine:

- a) For projects approved prior to the current regulations, the Development Control and Promotion Regulations (DCPR) for Greater Mumbai, 2034 provide specific protection through Regulation 33(10) (11.2), which states that slum rehabilitation schemes where Letter of Intent has been issued by SRA prior to these Regulations may continue to be governed by previous regulations. The limitation period for challenging such approvals must be calculated from the date of those original approvals, not from an arbitrary later date;

- b) The Original Application incorrectly claims that "if there is a violation of any Notification or any

Permission given under a Notification, then it would remain a continuing wrong". This interpretation is contrary to established legal principles and represents a transparent attempt to circumvent the statutory limitation period prescribed under Section 14(3) of the NGT Act;



7.3) Regulation 33(10) (11.2) of The Development Control and Promotion Regulations for Greater Mumbai, 2034 (DCPR 2034) explicitly provides: "The slum rehab schemes where LOI has been issued by SRA prior to the date of coming into force of these Regulations and which is valid may continue to be governed by the regulation applicable prior to these Regulations.". This "grandfathering" provision establishes the continuing validity of approvals granted under previous regulations, thereby protecting the legal rights of all stakeholders involved in such projects.

7.4) **Absence of Locus Standi:**

a) The Applicant lacks the requisite standing to challenge projects that have received all necessary statutory approvals. In technical planning matters, an applicant must demonstrate a direct and substantial interest beyond general environmental concerns.

b) Out of ten examples cited by the Applicant, only one

involves an SRA project (Example #7), undermining the Applicant's standing to bring comprehensive claims against Respondent No.4.

- c) The Applicant's own admission that "he is not seeking a specific relief only against the said parties" confirms the generalized nature of this challenge, lacking the specificity required for proper adjudication.

7.5) Vested Third-Party Rights:

- a) SRA schemes involve significant third-party rights, particularly those of slum dwellers awaiting rehabilitation. The National Green Tribunal has consistently recognized the importance of balancing environmental concerns with the rights of vulnerable populations.
- b) As recognized in judicial precedents, delayed challenges threaten to disrupt legitimate expectations and potentially harm the very populations that environmental legislation aims to protect.

EVIDENTIARY CHALLENGE

8) Evidentiary Challenge:

- 8.1) The National Green Tribunal's adjudicatory function requires a foundation of reliable, authenticated evidence to



effectively implement environmental protection within its statutory mandate. While the NGT operates with procedural flexibility, this does not diminish the fundamental requirement for properly verified documentation, particularly in technical matters involving coastal regulation compliance. The Original Application suffers from significant evidentiary shortcomings that impede proper adjudication of the complex environmental issues raised therein. The Applicant's approach in this matter raises significant concerns regarding evidentiary standards. While the NGT Act provides for procedural flexibility, it does not dispense with the need for reliable evidence. The letter submitted to the Registrar by the Applicant acknowledges that "the projects mentioned in the Original Application are only illustrative examples," demonstrating the generalized nature of the allegations rather than specific, authenticated violations.

8.2) The Applicant's approach in this matter raises significant concerns regarding evidentiary standards. While the NGT Act provides for procedural flexibility, it does not dispense with the need for reliable evidence. The letter submitted to the Registrar by the Applicant acknowledges that "the projects mentioned in the Original Application are only illustrative examples," demonstrating the generalized nature of the allegations rather than specific, authenticated violations.

8.3) This approach is particularly problematic in the context of





complex environmental regulations like the Coastal Regulation Zone Notification, 2019. The Supreme Court has emphasized in environmental cases that decision-making requires proper verification and documentation. Hence, environmental adjudication must be based on properly substantiated evidence rather than generalized allegations.

8.4) The Applicant has also admitted to deliberately omitting certain notifications from the filing to avoid "increasing the bulk of the Original Application". This selective presentation of evidence undermines comprehensive adjudication. Section 19 of the NGT Act empowers the Tribunal to require "any public record or document", highlighting the importance of complete documentation in environmental proceedings.

8.5) The absence of specific project proponents as parties further complicates proper evidentiary assessment. The Applicant has focused on planning authorities rather than the developers directly responsible for the alleged violations. This approach prevents the Tribunal from obtaining specific responses from those actually implementing the projects in question.

8.6) For the NGT to properly exercise its powers under Section 20 of the Act and apply "the principles of sustainable development, the precautionary principle and the polluter pays principle", it requires concrete evidence rather than

illustrative examples. The Supreme Court has directed that the NGT must conduct a "merits review" rather than a " cursory examination" of environmental matters, which is impossible without reliable, authenticated evidence regarding specific violations.



LIMITED SRA INVOLVMENT IN CITED EXAMPLES

9) The Slum Rehabilitation Authority's role in the Original Application is highly circumscribed, with only one of the ten cited examples (Example #7) specifically involving an SRA project - "the Proposed Slum rehabilitation Scheme on plot of land bearing C.S. No. 876 (pt), 877 to 880 and 894 (pt) to 897(pt) of Worli Division, Mumbai, G/S Ward". This singular example fails to demonstrate how SRA's actions specifically violated Coastal Regulation Zone provisions, as distinguished from other planning authorities. Moreover, a critical examination reveals that this specific project has obtained all necessary clearances and complies with applicable special provisions under the comprehensive statutory framework governing slum rehabilitation.

10) HARMONIOUS CONSTRUCTION OF REGULATIONS:

10.1) The NGT has recognized in previous cases that it lacks jurisdiction to quash Development Control Regulations as these constitute delegated legislation. The Supreme Court in Pune Municipal Corporation's case has clearly established that "the DCR or amendment thereof are legislative



functions." This principle is critical when considering the interrelationship between CRZ Notification and Development Control Regulations.

10.2) The CRZ Notification's reference to "local town and country planning regulations" must be construed to include all provisions of those regulations, including specialized provisions for slum rehabilitation. This harmonious reading is essential because:

- a) The Slum Rehabilitation Scheme is explicitly deemed to be Development Control Regulations under Section 3B(4) of the Maharashtra Regional and Town Planning Act.
- b) The Supreme Court has emphasized that "A statute is to be read as a whole" and "Subordinate legislation indisputably has to be read in the light of the provisions of the Act whereunder it has been made"
- c) The Court has further noted that development control regulations must be read "having regard to the purpose and object for which the statute is made"

10.3) The National Green Tribunal, in addressing environmental matters, must apply "the principles of sustainable development, the precautionary principle and the polluter pays principle". However, this must be balanced against the statutory mandate to rehabilitate slum dwellers, a critical social

objective recognized in multiple legislations.

11) ENVIRONMENTAL BENEFITS OF SRA PROJECTS:

- 11.1) Contrary to the Applicant's allegations, SRA projects actually improve environmental conditions compared to the existing slums they replace, as they replace unplanned, unsanitary settlements with properly designed structures having adequate infrastructure. These environmental benefits include improved sanitation and waste management systems through proper sewage disposal facilities, preventing untreated sewage from directly entering water bodies; reduced encroachment on sensitive environmental areas by providing formal housing in legally designated zones; proper infrastructure for sewage treatment and drainage as required by DCPR for Greater Mumbai, 2034 Regulation 33(10); reduced open dumping of waste through organized waste collection systems, improving coastal environmental quality; better structural safety through engineered constructions, reducing vulnerability to environmental hazards; and better compliance with coastal zone regulations through planned development supervised by appropriate authorities.
- 11.2) The Original Application lacks specific scientific evidence linking SRA projects to environmental degradation. While the CRZ Notification, 2019 aims to protect coastal environments, the Original Application doesn't provide scientific evidence linking specific open space reductions to





quantifiable environmental harm, particularly in the context of Mumbai's unique urban challenges specifically acknowledged in Para 3.3 of the Notification which designates CRZ falling within municipal limits of Greater Mumbai as an area requiring special consideration for protecting critical coastal environment and addressing difficulties faced by local communities.

12) ENFORCEMENT HIERARCHY

12.1) The Respondent No.4 is an implementing agency rather than an enforcement authority, as clearly established in the regulatory framework of CRZ Notification, 2019 and affirmed by the NGT in its recent orders. The National Coastal Zone Management Authority (NCZMA) has clearly stated in its reply that State Coastal Zone Management Authorities (SCZMAs) are primarily responsible for enforcement. The enforcement responsibilities are clearly delineated in the CRZ Notification, 2019: Para 6(a) establishes National Coastal Zone Management Authority (NCZMA) for coordination and implementation; Para 6(c) establishes State/Union Territory Coastal Zone Management Authorities for enforcement and monitoring; and Para 6(d) designates authorities at district level for implementation.

13) COMPLIANCE WITH PROCEDURAL REQUIREMENTS:

SRA has ensured compliance with all procedural

requirements including the 51% consent requirement in Regulation 33(10) (1.14) of DCPR for Greater Mumbai, 2034, which states: "where 51% percent or more of the eligible hutment-dwellers in a slum and stretch of road or pavement contiguous to it at one place agree to join a rehabilitation scheme, it may be considered for approval." This democratic process ensures that rehabilitation projects reflect the wishes of the majority of affected slum dwellers and provides legitimacy to the rehabilitation process, balancing the need for urban renewal with the rights and preferences of the residents themselves.



14) SOCIOECONOMIC IMPLICATIONS

- 14.1) The Original Application, if granted, would have severe socioeconomic consequences: housing crisis through potential mass displacement of residents without adequate relocation plans, contrary to the humanitarian objectives.
- 14.2) The slum rehabilitation program serves crucial social welfare objectives recognized by both state and central governments. The right to housing is a fundamental aspect of Article 21's right to life, as recognized by the Supreme Court, and slum rehabilitation schemes implement this constitutional right in a practical manner by providing dignified housing to marginalized communities who would otherwise continue to live in precarious conditions in

environmentally vulnerable areas.

★ 5) **REPLY ON MERIT:**

15.1) **Response to Substantial Question 1: Construction Requirements in CRZ Areas:**

a) Respondent No. 4 (SRA) submits that construction within CRZ areas must follow the comprehensive local town planning regulations, which necessarily include specific provisions for slum rehabilitation schemes. The CRZ Notification, 2019 states that buildings in CRZ-II areas "shall be subject to the local town and country planning regulations", which must be interpreted to encompass the entire regulatory framework.

b) The Development Control and Promotion Regulations (DCPR) for Greater Mumbai, 2034 contains specific provisions under Regulation 33(10) that authorize relaxations in open space requirements for slum rehabilitation projects. These are not "violations" but legitimate provisions that form an integral part of Mumbai's planning regulations. Regulation 33(10) (6.15) explicitly provides for relaxations without premium charges, and Regulation 33(10) (6.17) empowers the CEO of SRA to grant necessary relaxations with recorded reasons .

c) The Maharashtra Regional and Town Planning Act, 1966 clearly establishes that "provisions of the general Slum



Rehabilitation Scheme shall prevail over the Development Control Regulations". This statutory mandate confirms that slum rehabilitation provisions have specific legal authority that cannot be subordinated to general development regulations.



d) The Applicant's selective focus on Regulation 41 while ignoring the specialized slum rehabilitation provisions contradicts the established principle that planning regulations must be interpreted harmoniously and in their entirety. The Supreme Court has recognized that Development Control Regulations must be interpreted considering their purpose to "revive and resurrect neighbourhoods" and address social welfare needs.

e) Respondent No. 4 therefore submits that it fully complies with the CRZ Notification by following the complete town planning regulations, which explicitly authorize necessary relaxations for slum rehabilitation schemes.

15.2) **Response to Substantial Question 2: Application of Strict Interpretation and Precautionary Principle**

a) The CRZ Notification, 2019 explicitly provides that "CRZ falling within municipal limits of Greater Mumbai" shall be accorded special consideration for the dual purpose of "protecting the critical coastal environment and difficulties faced by local communities". This language directly establishes that both environmental protection and

community needs must be considered together.

- 
- b) The NGT in the Hubtown Limited case examined a similar situation involving slum-occupied land in Mumbai's CRZ area. Here to annexed and marked in **Annexure 5** is a copy of Hubtown Limited case. The Tribunal concluded that "no deeming effect can be given to assume non existence of thing to be an existing thing with retrospective effect". The NGT specifically held that environmental regulations cannot be interpreted to "make disappear such slums which already existed" before the notification. The Tribunal directed authorities to take "a fresh decision" emphasizing "harmonious interpretation" of CRZ regulations.
- c) This approach aligns with Section 20 of the National Green Tribunal Act, which requires the Tribunal to apply "sustainable development, the precautionary principle and the polluter pays principle" together. The Precautionary Principle requires evidence of "identifiable risk of environmental degradation," which the Applicant has not established regarding SRA projects.
- d) Environmental aspects must be balanced with social needs, as recognized by the Supreme Court: "ecological factors indisputably are very relevant considerations in construing a town planning statute" but "there exists a stark distinction" between environmental regulations concerning industrial pollution and those addressing rehabilitation efforts. The Court further noted that "a

holistic approach to a large number of problems" is required.

- e) Slum rehabilitation projects often enhance environmental conditions by replacing unplanned settlements with properly designed developments including sanitation and waste management systems. Therefore, the balanced application of environmental principles, considering both ecological protection and community needs, represents the correct approach to interpreting Mumbai's special status in the CRZ Notification.

15.3) Question 3: Application of the 'Precautionary Principle' Under Section 20 of the NGT Act to Open Space Requirements in CRZ Areas

- a) Section 20 of the National Green Tribunal Act, 2010 mandates application of "the principles of sustainable development, the precautionary principle and the polluter pays principle". The precautionary principle requires anticipating environmental degradation and places the burden of proof on developers. In evaluating open space requirements for SRA projects in CRZ areas, this principle must be interpreted in conjunction with the previously addressed questions regarding construction requirements and strict interpretation of CRZ provisions for Mumbai's special status.
- b) The Supreme Court has established that environmental principles must be applied with nuance rather than as rigid

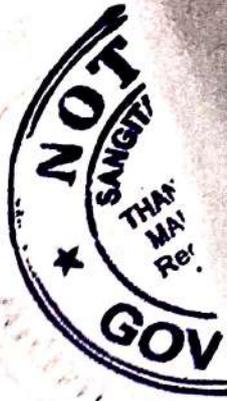


absolutes. When development proceeds with proper environmental clearance "not vitiated by illegality, it would be a case of proper adherence with the precautionary principle". In environmental cases, the Court distinguishes "between the interpretation of planning and zoning statutes enforcing ecology vis-à-vis industrial effluents and hazardous industries and those relating to concerted efforts at rehabilitating the industry". This distinction is particularly relevant to slum rehabilitation projects, which serve both social welfare and environmental improvement purposes.

c) The NGT's approach in similar cases demonstrates that evidence-based assessment is required rather than blanket application of environmental principles. The Tribunal has struck down sweeping directions issued "without any rationale and based on no scientific or technical evidence". In the Hubtown Limited case, the NGT directed authorities to take "a fresh decision" emphasizing "harmonious interpretation" of CRZ regulations when dealing with pre-existing slums. The Tribunal recognized that environmental regulations cannot artificially "make disappear such slums which already existed" before the notification.

d) The application of the precautionary principle to open space requirements in SRA projects within CRZ areas must therefore consider: (i) the explicit statutory mandate in the Maharashtra Regional and Town Planning Act that "provisions of the general Slum Rehabilitation Scheme shall

prevail over the Development Control Regulations"; (ii) the balancing of environmental protection with community needs as required by the CRZ Notification's provision for "difficulties faced by local communities" ; (iii) the environmental improvements achieved by replacing unregulated slums with planned developments featuring proper sanitation and waste management systems; and (iv) the need for evidence of "identifiable risk of environmental degradation" rather than mere technical deviations from general regulations. This balanced approach aligns with the NGT Act's mandate to apply sustainable development alongside the precautionary principle.



16) TECHNICAL NECESSITY FOR RELAXATIONS

- 16.1) Slum rehabilitation in Mumbai necessitates specialized provisions that recognize the technical challenges of implementing redevelopment in a space-constrained urban environment, as comprehensively addressed in Regulation 33(10) of DCPR-2034.
- 16.2) The physical impossibility of applying general open space requirements to slum rehabilitation projects would effectively nullify the legislative intent behind the Maharashtra Slum Areas Act, which prioritizes the transformation of informal settlements into properly planned developments.
- 16.3) Alternative technical solutions incorporated in SRA projects fulfill the underlying objectives of open space requirements



through different means, as contemplated by the specialized provisions in DCPR-2034 .

- 16.4) Mumbai's designation for "special consideration" in Para 3.3 of the CRZ Notification, 2019 explicitly acknowledges both "protecting the critical coastal environment" and addressing "difficulties faced by local communities," requiring a balanced approach that Respondent No. 4 implements through its regulatory framework.

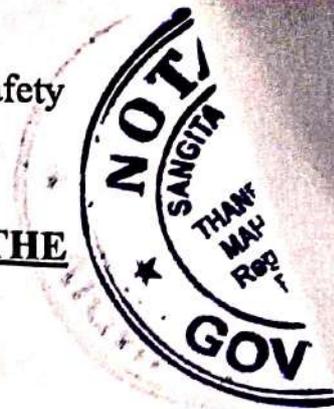
17) FIRE SAFETY AND OTHER TECHNICAL COMPLIANCE

Regarding fire safety concerns:

- 17.1) SRA projects include documented fire safety compliance with evidence of alternative measures that compensate for reduced open spaces, as provided for in DCPR-2034 Regulation 33(10)(6.15).
- 17.2) Regulation 33(10)(6.15) specifically addresses this by providing that "if any further relaxation in open spaces is granted by Chief Executive Officer then the same shall be subject to compliance of CFO requirement".
- 17.3) The SRA is empowered under Regulation 33(10)(6.17) to "make any relaxation wherever necessary for reasons to be recorded in writing" while ensuring safety requirements are met.
- 17.4) The DCPR-2034 provides a comprehensive framework for

ensuring that even with ⁴⁷⁹ relaxations, essential safety requirements are maintained.

18) **SPECIFIC RESPONSE TO THE PRAYERS IN THE ORIGINAL APPLICATION:**



18.1) Respondent No. 4 submits that **Prayer A** seeking declaration of constructions as violative and ordering demolition is legally untenable as SRA operates under Regulation 33(10) of DCPR for Greater Mumbai, 2034, which explicitly authorizes necessary relaxations in open space requirements for slum rehabilitation projects. These are not "violations" but lawful modifications authorized by statute, and granting this prayer would cause immense social hardship to vulnerable communities without corresponding environmental benefits. The CRZ Notification, 2019 specifically designates Mumbai as an area requiring special consideration for both environmental protection and addressing difficulties faced by local communities, necessitating a balanced approach.

18.2) **Regarding Prayer B** seeking constitution of an expert committee, Respondent No. 4 contends this prayer is premature and procedurally problematic as it presupposes violations without establishing a prima facie case based on credible evidence. The evidentiary basis for the Application is deficient, relying on uncertified plans and selective presentation of documents, with the Applicant admitting that projects mentioned are merely "illustrative examples"



18.3) Similarly, Prayers C & D seeking to halt ongoing and future constructions incorrectly assume that all modifications to open space requirements constitute violations, ignoring the specific regulatory framework for slum rehabilitation and would effectively halt legitimate projects that actually improve environmental conditions compared to existing slums through better sanitation, waste management, and sewage treatment.

18.4) The Original Application should be dismissed as it raises issues beyond this Hon'ble Tribunal's jurisdiction, relies on inadmissible evidence, fails to establish substantial environmental harm, and ignores the comprehensive statutory framework explicitly authorizing necessary modifications for slum rehabilitation projects. The "local town planning regulations" referenced in the CRZ Notification include specialized provisions for slum rehabilitation that must be interpreted harmoniously to serve both environmental and social welfare objectives. Respondent No. 4 operates within a clear legal mandate to implement slum rehabilitation schemes that improve both housing and environmental conditions for Mumbai's vulnerable communities, and Section 20 of the National Green Tribunal Act requires application of sustainable development principles alongside the Precautionary Principle, considering Mumbai's unique challenges.



19) PRAYERS:-

In view of the above facts, circumstances, and legal submissions, and without prejudice to the Respondent's right to raise additional pleas, grounds, or objections, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- a) Dismiss the Original Application as not maintainable either in law or on facts, being barred by jurisdiction, limitation, and devoid of any substantial question relating to environment under the National Green Tribunal Act, 2010;
- b) Award costs in favour of Respondent No. 4; and
- c) Pass such other and further orders as this Hon'ble Tribunal may deem fit, just, and proper in the facts and circumstances of the case.

The Respondent No. 4 further requests liberty to file additional submissions if required.

AND FOR THIS ACT OF KINDNESS, THE RESPONDENT SHALL AS IN DUTY BOUND EVER PRAY.

Place: Mumbai

Date: 30th June, 2025

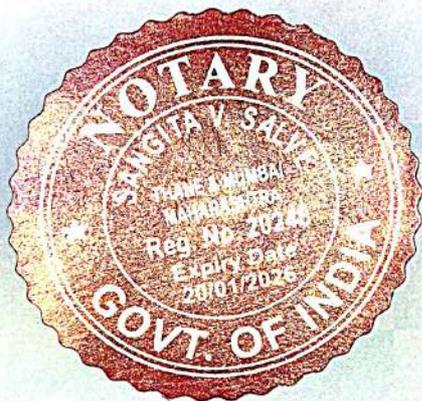

DEPONENT

VERIFICATION



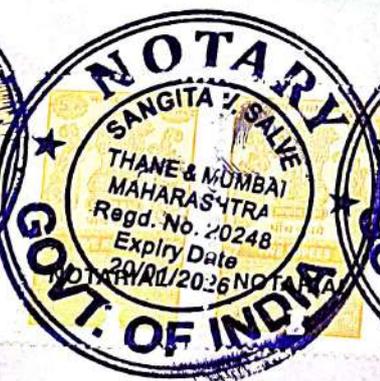
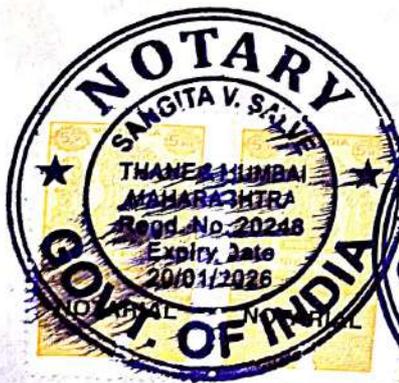
I, **D. B. Patil**, aged about 56 years, **Executive Officer**, of the Slum Rehabilitation Authority, having office at New Administrative Building, Anant Kanckar Marg Bandra East, Mumbai- 400051, the Respondent No. 4 herein, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at Mumbai on this 30th day of June, 2025.



[Handwritten signature]

DEPONENT



BEFORE ME

[Signature]
SANGITA V. SALVE
B.Com., L.L.B
NOTARY- THANE & MUMBAI
MAHARASHTRA
(Govt of India)

Notarial Register of
SANGITA V. SALVE (Notary-Govt. of India)
Sr. No. 3094 | Page No. 094
Date:- 30 JUN 2025

30 JUN 2025

VAKALATNAMA**BEFORE THE NATIONAL GREEN TRIBUNAL
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Mr. Yogesh Pratap Singh

... Applicant

Versus

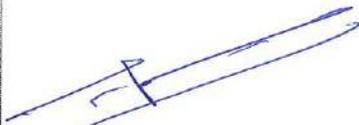
The Member Secretary, NCZMA & Ors.

... Respondents

I, Sandeep Deshmukh, Secretary, SRA, the authorized signatory of the Respondent no. 4, do hereby appoint and engage Adv. Rahul Hingmire as our duly appointed Advocate in the abovementioned matter and authorize him to represent, act, appear and plead on behalf of the Respondent no. 4 and to do all other acts and things which may be necessary or expedient in his opinion.

I, hereby set my hand to this writing on this 30th day of June, 2025

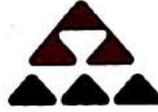
I Accept:



Adv. Rahul Hingmire
Having office address at:- F1 - 1103,
Ganga Carnation, Mundhwa Road, Fatima
Nagar, Koregoan Park Annex,
Near Westin Hotel, Mundhwa, Pune,
Maharashtra – 411036.
Mobile No.022- 2885551/2, 9405069374,
9833768107, 97678 02940
Email id: mumbai@vllp.co.in,
rahul@vllp.co.in,
shreyas.hingmire@vllp.co.in

( for
Respondent no. 4)

Secretary
Slum Rehabilitation Authority, Brihanmumbai

**SLUM REHABILITATION AUTHORITY, BRIHANMUMBAI****AUTHORITY LETTER**

Date : 30.06.2025

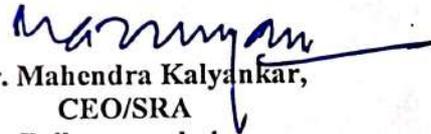
To Whomsoever It May Concern

This is to authorize **D.B. Patil, Executive Engineer/SRA, Brihanmumbai** holding the designation of **Executive Engineer**, to sign and affirm the **Affidavit in Reply** and any related documents on behalf of the undersigned, **Dr. Mahendra Kalyankar, Chief Executive Officer of Slum Rehabilitation Authority, Brihanmumbai** in connection with the matter titled.

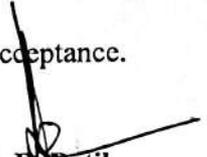
Original Application No.206 of 2023 (WZ)

The said authorization is granted specifically for the purpose of filing the Affidavit in Reply before the **National Green Tribunal** and to undertake all acts, deeds, and things as may be necessary in relation thereto, which shall be binding on the undersigned.

This letter is issued under my authority and with full knowledge of the facts.


Dr. Mahendra Kalyankar,
CEO/SRA
Brihanmumbai

Acceptance.


D. B. Patil
Executive Engineer/SRA,
Brihanmumbai



भारत का राजपत्र The Gazette of India

असाधारण—

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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नई दिल्ली, बुधवार, जून 2, 2010 / ज्यैष्ठ 12, 1932

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NEW DELHI, WEDNESDAY, JUNE 2, 2010 / JYAISTHA 12, 1932

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd June, 2010/Jyaistha 12, 1932 (Saka)

The following Act of Parliament received the assent of the President on the 2nd June, 2010, and is hereby published for general information:—

THE NATIONAL GREEN TRIBUNAL ACT, 2010

(No. 19 OF 2010)

[2nd June, 2010.]

An Act to provide for the establishment of a National Green Tribunal for the 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 environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

AND WHEREAS 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;

AND WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling 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;

AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;

AND WHEREAS it is considered expedient to implement the decisions taken at the aforesaid conferences and to have a National Green Tribunal in view of the involvement of multi-disciplinary issues relating to the environment.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the National Green Tribunal Act, 2010.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance or equipment, or plant, or vehicle resulting in continuous or intermittent or repeated exposure to death, of, or, injury to, any person or damage to any property or environment but does not include an accident by reason only of war or civil disturbance;

(b) "Chairperson" means the Chairperson of the National Green Tribunal;

(c) "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;

(d) "Expert Member" means a member of the Tribunal who, is appointed as such, and holds qualifications specified in sub-section (2) of section 5, and, is not a Judicial Member;

(e) "handling", in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

(f) "hazardous substance" means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991;

29 of 1986.

6 of 1991.

(g) "injury" includes permanent, partial or total disablement or sickness resulting out of an accident;

(h) "Judicial Member" means a member of the Tribunal who is qualified to be appointed as such under sub-section (1) of section 5 and includes the Chairperson;

(i) "notification" means a notification published in the Official Gazette;

(j) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) trustee of a trust,
- (vii) a local authority, and
- (viii) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (k) "prescribed" means prescribed by rules made under this Act;
- (l) "Schedule" means Schedules I, II and III appended to this Act;
- (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;
- (n) "Tribunal" means the National Green Tribunal established under section 3;
- (o) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923.

8 of 1923.

6 of 1974.
36 of 1977.
69 of 1980.
14 of 1981.
29 of 1986.
6 of 1991.
18 of 2003.

(2) The words and expressions used in this Act but not defined herein and defined in 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 and other Acts relating to environment shall have the meaning, respectively, assigned to them in those Acts.

CHAPTER II

ESTABLISHMENT OF THE TRIBUNAL

3. The Central Government shall, by notification, establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Establishment of Tribunal.

4. (1) The Tribunal shall consist of—

Composition of Tribunal.

(a) a full time Chairperson;

(b) not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify;

(c) not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify.

(2) The Chairperson of the Tribunal may, if considered necessary, invite any one or more person having specialised knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.

(3) The Central Government may, by notification, specify the ordinary place or places of sitting of the Tribunal, and the territorial jurisdiction falling under each such place of sitting.

(4) The Central Government may, in consultation with the Chairperson of the Tribunal, make rules regulating generally the practices and procedure of the Tribunal including—

(a) the rules as to the persons who shall be entitled to appear before the Tribunal;

(b) the rules as to the procedure for hearing applications and appeals and other matters [including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3)], pertaining to the applications and appeals;

(c) the minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:

Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal;

(d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.

5. (1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:

Provided that a person who is or has been a Judge of the High Court shall also be qualified to be appointed as a Judicial Member.

(2) A person shall not be qualified for appointment as an Expert Member, unless he,—

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

(b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

(3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.

(4) The Chairperson and other Judicial and Expert Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

1 of 1956.

6. (1) Subject to the provisions of section 5, the Chairperson, Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government.

(2) The Chairperson shall be appointed by the Central Government in consultation with the Chief Justice of India.

(3) The Judicial Members and Expert Members of the Tribunal shall be appointed on the recommendations of such Selection Committee and in such manner as may be prescribed.

Qualifications
for
appointment
of
Chairperson,
Judicial
Member and
Expert
Member.

Appointment
of
Chairperson,
Judicial
Member and
Expert
Member.

7. The Chairperson, Judicial Member and Expert Member of the Tribunal shall hold office as such for a term of five years from the date on which they enter upon their office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of the Supreme Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of seventy years:

Provided further that in case a person, who is or has been the Chief Justice of a High Court, has been appointed as Chairperson or Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided also that in case a person, who is or has been a Judge of a High Court, has been appointed as Judicial Member of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided also that no Expert Member shall hold office after he has attained the age of sixty-five years.

8. The Chairperson, Judicial Member and Expert Member of the Tribunal may, by notice in writing under their hand addressed to the Central Government, resign their office.

9. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson, Judicial Member and Expert Member shall be varied to their disadvantage after their appointment.

10. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairperson or Judicial Member of the Tribunal, who,—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the Supreme Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

(5) The Expert Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure as may be notified by the Central Government:

Provided that the Expert Member shall not be removed unless he has been given an opportunity of being heard in the matter.

11. In the event of the occurrence of any vacancy in the office of the Chairperson of the Tribunal, by reason of his death, resignation or otherwise, such Judicial Member of the Tribunal as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson is appointed in accordance with the provisions of this Act.

Term of office and other conditions of service of Chairperson, Judicial Member and Expert Member.

Resignation.

Salaries, allowances and other terms and conditions of service.

Removal and suspension of Chairperson, Judicial Member and Expert Member.

To act as Chairperson of Tribunal or to discharge his functions in certain circumstances.

Staff of
Tribunal.

12. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions.

(2) The recruitment of the officers and other employees of the Tribunal shall be made by the Chairperson in such manner as may be prescribed.

(3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(4) The salaries and allowances and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

Financial and
administrative
powers of
Chairperson.

13. The Chairperson of the Tribunal shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government:

Provided that the Chairperson may delegate such of his financial and administrative powers, as he may think fit, to any Judicial Member or Expert Member or officer of the Tribunal subject to the condition that the Member or such officer, while exercising such delegated power, continues to act under the direction, control and supervision of the Chairperson.

CHAPTER III

JURISDICTION, POWERS AND PROCEEDINGS OF THE TRIBUNAL

Tribunal to
settle disputes.

14. (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.

Relief,
compensation
and
restitution.

15. (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.

(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. Any person aggrieved by,—

Tribunal to have appellate jurisdiction.

6 of 1974.

(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 33A of the Water (Prevention and Control of Pollution) Act, 1974;

36 of 1977.

(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;

69 of 1980.

(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;

14 of 1981.

(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;

29 of 1986.

(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;

18 of 2003.

(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,

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. (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.

Liability to pay relief or compensation in certain cases.

(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.

Application
or appeal to
Tribunal.

18. (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 or any other law for the time being in force;

29 of 1986.

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.

Procedure and
powers of
Tribunal.

19. (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.

5 of 1908.

(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.

1 of 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:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

1 of 1872.

- (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.

45 of 1860.
2 of 1974.

(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.

20. The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

Tribunal to apply certain principles.

21. The decision of the Tribunal by majority of Members shall be binding:

Provided that if there is a difference of opinion among the Members hearing an application or appeal, and the opinion is equally divided, the Chairperson shall hear (if he has not heard earlier such application or appeal) such application or appeal and decide:

Decision to be taken by majority.

Provided further that where the Chairperson himself has heard such application or appeal alongwith other Members of the Tribunal, and if there is a difference of opinion among the Members in such cases and the opinion is equally divided, he shall refer the matter to other Members of the Tribunal who shall hear such application or appeal and decide.

5 of 1908.

22. Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Appeal to Supreme Court.

Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

23. (1) While disposing of an application or an appeal under this Act, the Tribunal shall have power to make such order as to costs, as it may consider necessary.

Cost.

(2) Where the Tribunal holds that a claim is not maintainable, or is false or vexatious, and such claim is disallowed, in whole or in part, the Tribunal may, if it so thinks fit, after recording its reasons for holding such claim to be false or vexatious, make an order to award costs, including lost benefits due to any interim injunction.

6 of 1991.

24. (1) Where any amount by way of compensation or relief is ordered to be paid under any award or order made by the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under sub-section (3) of section 7A of the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Fund established under that section.

Deposit of amount payable for damage to environment.

(2) The amount of compensation or relief credited to the Environmental Relief Fund under sub-section (1), may, notwithstanding anything contained in the Public Liability Insurance Act, 1991, be utilised by such persons or authority, in such manner and for such purposes relating to environment, as may be prescribed. 6 of 1991.

Execution of award or order or decision of Tribunal.

25. (1) An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.

(3) Where the person responsible, for death of, or injury to any person or damage to any property and environment, against whom the award or order is made by the Tribunal, fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint for prosecution for an offence under this Act or any other law for the time being in force, shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.

CHAPTER IV

PENALTY

Penalty for failure to comply with orders of Tribunal.

26. (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention:

Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code. 2 of 1974.

Offences by companies.

27. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

28. (1) Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly:

Offences by
Government
Department.

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER V

MISCELLANEOUS

29. (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.

Bar of
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.

30. (1) No court shall take cognizance of any offence under this Act except on a complaint made by—

Cognizance of
offences.

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

(2) No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.

31. The Chairperson, the Judicial and Expert Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members and
staff of
Tribunal to be
public servants.

45 of 1860.

32. (1) No suit or other legal proceeding shall lie against the employees of the Central Government or a State Government or any statutory authority, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of
action taken in
good faith.

(2) No suit, prosecution or other legal proceeding shall lie against the Chairperson or, Judicial Member or Expert Member of the Tribunal or any other person authorised by the Chairperson or Judicial Member or the Expert Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

33. 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.

Act to have
overriding
effect.

34. (1) The Central Government may, by notification, amend the Schedule I by including therein any other Act, enacted by Parliament having regard to the objective of environmental protection and conservation of natural resources, or omitting therefrom any Act already specified therein and on the date of publication of such notification, such Act shall be deemed to be included in or, as the case may be, omitted from the Schedule I.

Power to
amend
Schedule I.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Power to
make rules.

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

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

(a) rules as to the persons who shall be entitled to appear before the Tribunal under clause (a) of sub-section (4) of section 4;

(b) the procedure for hearing applications and appeals and other matters pertaining to the applications and appeals under clause (b) of sub-section (4) of section 4;

(c) the minimum number of members who shall hear the applications and appeals in respect of any class or classes of applications and appeals under clause (c) of sub-section (4) of section 4;

(d) the transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting;

(e) the selection committee and the manner of appointment of the Judicial Member and Expert Member of the Tribunal under sub-section (3) of section 6;

(f) the salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Judicial Member and Expert Member of the Tribunal under section 9;

(g) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 10;

(h) the recruitment of officers and other employees of the Tribunal under sub-section (2) of section 12; and the salaries and allowances and other conditions of service of the officers and other employees of the Tribunal under sub-section (4) of that section;

(i) the financial and administrative powers to be exercised by the Chairperson of the Tribunal under section 13;

(j) the form of application or appeal, the particulars which it shall contain and the documents to be accompanied by and the fees payable under sub-section (1) of section 18;

(k) any such matter in respect of which the Tribunal shall have powers of a civil court under clause (k) of sub-section (4) of section 19;

(l) the manner and the purposes for which the amount of compensation or relief credited to the Environment Relief Fund shall be utilised under sub-section (2) of section 24;

(m) the manner of giving notice to make a complaint under clause (b) of sub-section (1) of section 30;

(n) any other matter which is required to be, or may be, specified by rules or in respect of which provision is to be made by rules.

(3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the

successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

36. The enactments specified in the Schedule III to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Tribunal. Amendment of certain enactments.

37. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty: Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

27 of 1995.
22 of 1997. 38. (1) The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 are hereby repealed (hereinafter referred to as the repealed Act). Repeal and savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

22 of 1997. (3) The National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, shall, on the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, stand dissolved.

22 of 1997. (4) On the dissolution of the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997, the persons appointed as the Chairperson, Vice-chairperson and every other person appointed as Member of the said National Environment Appellate Authority and holding office as such immediately before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall vacate their respective offices and no such Chairperson, Vice-chairperson and every other person appointed as Member shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

22 of 1997. (5) All cases pending before the National Environment Appellate Authority established under sub-section (1) of section 3 of the National Environment Appellate Authority Act, 1997 on or before the establishment of the National Green Tribunal under the National Green Tribunal Act, 2010, shall, on such establishment, stand transferred to the said National Green Tribunal and the National Green Tribunal shall dispose of such cases as if they were cases filed under that Act.

(6) The officers or other employees who have been, immediately before the dissolution of the National Environment Appellate Authority appointed on deputation basis to the National Environment Appellate Authority, shall, on such dissolution, stand reverted to their parent cadre, Ministry or Department, as the case may be.

(7) On the dissolution of the National Environment Appellate Authority, the officers and other employees appointed on contract basis under the National Environment Appellate Authority and holding office as such immediately before such dissolution, shall vacate their respective offices and such officers and other employees shall be entitled to claim compensation for three months' pay and allowances or pay and allowances for the

remaining period of service, whichever is less, for the premature termination of term of their office under their contract of service.

(8) The mention of the particular matters referred to in sub-sections (2) to (7) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

10 of 1897.

SCHEDULE I

[See sections 14(*l*), 15(*l*), 17(*l*)(*a*), 17(2), 19(4) (*f*) and 34(*l*)]

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.

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.

SCHEDULE III
(See section 36)

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974
(6 OF 1974)

After section 33A, the following section shall be inserted, namely:—

Insertion of
new section
33B.

“33B. Any person aggrieved by,—

(a) an order or decision of the appellate authority under section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or

(b) an order passed by the State Government under section 29, on or after the commencement of the National Green Tribunal Act, 2010; or

(c) directions issued under section 33A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

Appeal to
National Green
Tribunal.

PART II

AMENDMENTS TO THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977
(36 OF 1977)

1. In section 13, in sub-section (4), for the words “shall be final”, the words, figures and letters “shall, if no appeal has been filed under section 13A, be final” shall be substituted.

Amendment of
section 13.

2. After section 13, the following section shall be inserted, namely:—

Insertion of
new section
13A.

“13A. Any person aggrieved, by an order or decision of the appellate authority made under section 13, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

Appeal to
National
Green
Tribunal.

PART III

AMENDMENT TO THE FOREST (CONSERVATION) ACT, 1980
(69 OF 1980)

After section 2, the following section shall be inserted, namely:—

Insertion of
new section
2A.

“2A. Any person aggrieved, by an order or decision of the State Government or other authority made under section 2, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

Appeal to
National
Green
Tribunal.

PART IV

AMENDMENT TO THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

Insertion of
new section
31B.

After section 31A, the following section shall be inserted, namely:—

Appeal to
National
Green
Tribunal.

“31B. Any person aggrieved by an order or decision of the Appellate Authority under section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”.

PART V

AMENDMENT TO THE ENVIRONMENT (PROTECTION) ACT, 1986

(29 OF 1986)

Insertion of
new section
5A.

After section 5, the following section shall be inserted, namely:—

Appeal to
National Green
Tribunal.

“5A. Any person aggrieved by any directions issued under section 5, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”.

PART VI

AMENDMENTS TO THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Amendment
of section 52.

1. In section 52, after the proviso, the following provisos shall be inserted, namely:—

“Provided further that nothing contained in this section shall apply on and from the commencement of the National Green Tribunal Act, 2010:

Provided also that any appeal pending before the High Court, before the commencement of the National Green Tribunal Act, 2010, shall continue to be heard and disposed of by the High Court as if the National Green Tribunal had not been established under section 3 of the National Green Tribunal Act, 2010.”.

Insertion of
new section
52A.

2. After section 52, the following section shall be inserted, namely:—

Appeal to
National Green
Tribunal.

“52A. Any person aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”.

V. K. BHASIN,
Secy. to the Govt. of India.

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2-Judge
Bench
2019
Feb. 18

a (BEFORE ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.)
TAMIL NADU POLLUTION CONTROL BOARD .. Appellant;
Versus
STERLITE INDUSTRIES (INDIA) LIMITED
AND OTHERS .. Respondents.

b Civil Appeals Nos. 4763-64 of 2013[†] with Nos. 8773-74
and 9542-43 of 2013, 5782 of 2014, 23 of 2019[‡], 1552-54
of 2019 and 1582 of 2019, decided on February 18, 2019

c **A. Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Original orders of TNPCB made under S. 27 of the Water Act and S. 21 of the Air Act — Appeal against, before NGT — Non-exhaustion of remedy of first appeal before appellate authority under S. 28 of Water Act or under S. 31 of the Air Act — Appeal before NGT, on facts, held, not maintainable — Since no decision has been made by appellate authority under the Water Act or Air Act, any direct appeal to NGT against the original order of TNPCB is not maintainable — Thus NGT's order in said appeal is without statutory powers and therefore, without jurisdiction — An appeal is a creation of statute and an Appellate Tribunal has to act strictly within domain prescribed by statute — Leapfrog appeals to the NGT not prescribed by statute would necessarily be without jurisdiction**

d Orders of NGT set aside on ground of maintainability — Relief Parties relegated to position that the six orders impugned before NGT are alive and operative — Respondents given liberty to file writ petition before High Court against said six orders — As respondent's plant had been shut down since 9-4-2018 and was involved in import/export of important product, respondents given liberty to approach High Court for expeditious disposal of their writ petition (Para 46)

e — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 27, 28 and 33-B — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21, 31 and 31-B — National Green Tribunal Act, 2010, Ss. 16(a) and (f) (Paras 22 to 33 and 46)

f **B. Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Original composite orders of TNPCB under S. 33-A of the Water Act and S. 31-A of the Air Act — Appeal against, before NGT — Directions under Water Act appealable to NGT but not those under Air Act — Composite appeal to NGT, held, not maintainable — Not possible to split aforesaid orders and say that so far as they affect water pollution, they**

h [†] Arising from the Judgment and Order in *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886 (National Green Tribunal, Principal Bench at New Delhi, Appeal No. 57 of 2013, dt. 31-5-2013); *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68 (National Green Tribunal, Appeal No. 57 of 2013, dt. 8-8-2013)

[‡] Arising from the Judgment and Order in *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239 (National Green Tribunal, Appeal No. 87 of 2018, dt. 15-12-2018)

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are appealable and not appealable so far as they relate to air pollution — Plea based on S. 14 of the NGT Act not tenable as S. 14 only refers to original jurisdiction of NGT and not appellate jurisdiction

— Water (Prevention and Control of Pollution) Act, 1974 — Ss. 33-B and 33-A — Air (Prevention and Control of Pollution) Act, 1981 Ss. 31-B and 31-A — National Green Tribunal Act, 2010, Ss. 16(c) and 14 (Paras 36 and 46)

C. Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Order of State Government under S. 18 of the Water Act, not appealable to NGT either under Water Act or under NGT Act, held, cannot be judicially reviewed by NGT — NGT has no general powers of judicial review as those vested in High Court under Art. 226 of the Constitution — NGT is not a tribunal set up either under Art. 323-A or Art. 323-B of the Constitution

An appeal being a creature of statute, an order passed under S. 18 of the Water Act is either appealable or not — If it is not, general argument as to NGT being an expert body set up to deal with environmental matters can be of no help — Argument that order under S. 18 of the Water Act can be traced to S. 29 of the Water Act, not tenable — S. 18 of the Water Act order does not purport to be an order which either affirms or sets aside any order made under Ss. 25, 26 or 27 of the Water Act — Order under S. 18 of the Water Act is, thus, not a quasi-judicial order and cannot be traced to revisional powers under S. 29 of the Water Act — Water (Prevention and Control of Pollution) Act, 1974 Ss. 18, 29 and 25 to 27 — Courts, Tribunals and Judiciary — Courts, Tribunals and Special Courts — Tribunals — Jurisdiction and powers of a tribunal — Strictly circumscribed by statute creating the tribunal — Constitution of India, Arts. 323-A and 323-B and Art. 226 (Paras 40 to 46)

The respondent industry allegedly violated provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) as well as the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) for which the local residents complained of several health problems. Though the Tamil Nadu Pollution Control Board (TNPCB) had initially granted permission to commence production, the respondent industry allegedly did not comply with the conditions imposed. The TNPCB therefore, directed the closure of respondent industry and refused to renew the consent for its operation. During pendency of appeal before the appellate authority against the orders of the TNPCB, the Tribunal took up the matter and finally disposed them of by its orders. The appeal before the appellate authority became infructuous. The main issue in present case is as to maintainability of the orders passed by the National Green Tribunal [NGT] dated 31-5-2013, 8-8-2013 and 15-12-2018.

Disposing of the appeals, the Supreme Court

Held:

(I) Re: Order dated 9-4-2018

The Order dated 9-4-2018 is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21

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a of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33-B(a) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31-B of the Air Act and Section 16(f) of the NGT Act. (Para 22)

b An appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeals Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22-6-2018 before the NGT inter alia against the order of refusal of consent to operate dated 9-4-2018. The respondents submitted that the appeals could not be heard since the State Government had passed an order dated 28-5-2018 directing the TNPCB to close down the plant permanently. What is missed by the respondents is the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10-7-2018. The said appeals on 10-7-2018 were further adjourned, and it is only on 18-12-2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15-12-2018 in which it had set aside the order dated 9-4-2018. (Para 23)

c An appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33-B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31-B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33-B of the Water Act, read with Section 31-B of the Air Act, read with Sections 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 9-4-2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction. (Para 32)

g *Manohar Lal v. Ugrasen.* (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 52A; *Kundur Rudruppa v. Mysore Revenue Appellate Tribunal.* (1975) 2 SCC 411; *Cellular Operators Assn. of India v. Union of India.* (2003) 3 SCC 186; *B. Himmatlal Agrawal v. Competition Commission of India.* (2018) 17 SCC 421; *Raja Soap Factory v. S.P. Shanthuraj.* (1965) 2 SCR 800 : AIR 1965 SC 1449; *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.* (1997) 4 SCC 452; *Arcof Textile Mills Ltd. v. Regl. Provident Fund Commr.* (2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358. *relied on.*

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Kundur Rudrappa v. Mysore Revenue Appellate Tribunal, 1973 SCC OnLine Kar 47 : 11.R 1973 Mys 281; *Cellular Operators Assn. of India v. Union of India*, 2002 SCC OnLine TDSAT 9, held, reversed

Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393; *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad*, (1999) 4 SCC 468 : 1994 SCC (L&S) 993; *State of Haryana v. Maruti Udyog Ltd.*, (2000) 7 SCC 348; *Super Cassettes Industries Ltd. v. State of U.P.*, (2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280; *Raj Kumar Shivhare v. Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712; *Competition Commission of India v. SAH.*, (2010) 10 SCC 744; *Edukanti Kistamma v. S. Venkatarreddy*, (2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244, cited

In the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. No such provisions, as are contained in the UK Acts, being present in any of the Acts of present case, such leapfrog appeals to the NGT would necessarily be without jurisdiction. (Paras 33 to 35)

S. Franses Ltd. v. Cavendish Hotel (London) Ltd., (2018) 3 W.L.R. 1952 : 2018 UKSC 62, referred to

(II) Re: Orders passed under Section 33-A of the Water Act and Section 31-A of the Air Act

It is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. The argument that these orders being substantially relatable to the Water Act is not tenable. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject-matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. In the present case, all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and

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a are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. It is argued, with particular reference to the Explanation to Section 31-A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act.

b Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. (Para 36)

Garikapati Veeraya v. N. Subbiah Choudhry, 1957 SCR 488 : AIR 1957 SC 540. *relied on*
Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628; *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27;

c *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765; *Allokan Peddabbayya v. Allahabad Bank*, (2017) 8 SCC 272 : (2017) 4 SCC (Civ) 62. *distinguished*

Paritosh Bhupeshkumar Sheth v. Maharashtra State Board of Secondary and Higher Secondary Education, 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587. *held, reversed*
P. Ramanatha Aiyar's Law Lexicon and Black's Law Dictionary, referred to

d **(III) Re: Order passed under Section 18 of the Water Act**

So far as the order dated 28-5-2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, it was argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that this argument is correct, such order can only be set aside in a suit by a civil court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being non est.

f It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead. Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. It was then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected. (Para 40)

Smith v. East Elloe Rural District Council, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL); *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082; *Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 413;

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Pune Municipal Corpn. v. State of Maharashtra, (2007) 5 SCC 211; *Krishnadevi Mulchand Kamathia v. Bombay Environmental Action Group*, (2011) 3 SCC 363; *Port of Kandla v. Hargovind Jasraj*, (2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1, *relied on*

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. Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985. (Para 41)

L. Chandru Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L.&S) 577, *distinguished* *Union of India v. Madras Bar Assn.*, (2010) 11 SCC 1; *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*, (2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L.&S) 56, *cited*

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. There is a distinction between a superior court of record and courts of limited jurisdiction. The State Government's 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. The NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India. (Para 43)

BSNL v. TRAI, (2014) 3 SCC 222, *followed*

Powers, Privileges and Immunities of State Legislatures, In re. (1965) 1 SCR 413 : AIR 1965 SC 745, *relied on*

Wilfred J. v. Ministry of Environment & Forests, 2014 SCC OnLine NGT 6860, *partly overruled*

Halsbury's Laws of England, Vol. 9, p. 349, *referred to*

If as submitted, the order submitted by the State Government is a direction to the TNPCB and not to the respondent, there would have been no necessity to file an appeal before the NGT against such order. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before the Court. An appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help. (Para 44)

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a Equally, so far as the order dated 8-8-2013 is concerned, the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. The NGT is only conferred with appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction. (Para 45)

b In conclusion, the court is cognizant of the fact that the respondent's plant has been shut down since 9-4-2018. Since the impugned judgments of the NGT is set aside on the ground of maintainability, the order dated 22-1-2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15-12-2018, and the order dated 29-3-2013, dealt with by the final judgment dated 8-8-2013, are alive and operative. Thus, it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 9-4-2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent d may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to 9-4-2018 order of the TNPCB. The appeals are disposed of accordingly. (Para 46)

c *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*. 2013 SCC OnLine NGT 1886; *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*. 2013 SCC OnLine NGT 68; *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239, *reversed*
National Trust for Clean Environment v. Union of India, 2010 SCC OnLine Mad 6495; *Vedanta Ltd. v. Inspector General of Police*, 2018 SCC OnLine Mad 10223; *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3334; *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238; *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3335; *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3337. *referred to*

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f Advocates who appeared in this case :

g Balaji Srinivasan, Additional Advocate General, C.S. Vaidyanathan, K.V. Viswanathan, Guru Krishnakumar, C.A. Sundaram and R. Raizada, Senior Advocates (M. Yogesh Kanna, Siddhanth Kohli, Ms Vrinda Bhandari, Ravi Raghunath, Venkatraman, Akshay Nagarajan, G. Sivabalamurugan, G. Ananda Selvam, Vasantha Kumar, Karuppaiah, Vivek Bharathi, Vinodh Kanna B., R. Nedumaran, Beno Beneigar, Parijat Kishore, Santosh Kr. Tripathi, Ms Rohini Musa, Abhishek Gupta, Zaffar Inayat, Arjun Singh, Deepak Goel, Ashutosh Kr. Sharma, Rajeev Dubey, Kamalendra Mishra, Ms Rachna Gupta, Nikhil Nayyar and Ms K.V. Bharathi Upadhyaya, Advocates) for the appearing parties.

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6.	2018 SCC OnLine NGT 1238. <i>Vedanta Ltd. v. State of T.N.</i>	490e f, 491a, 494a b	
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8.	(2018) 3 W.L.R. 1952 : 2018 UKSC 62, <i>S. Franses Ltd. v. Cavendish Hotel (London) Ltd.</i>	515g-h	b
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12.	2014 SCC OnLine NGT 6860, <i>Wilfred J. v. Ministry of Environment & Forests (partly overruled)</i>	524d	c
13.	(2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358, <i>Arcot Textile Mills Ltd. v. Regl. Provident Fund Commr.</i>	513e-f	
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15.	2013 SCC OnLine NGT 1886, <i>Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board (reversed)</i>	487d-e, 488c-d	d
16.	2013 SCC OnLine NGT 68, <i>Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board (reversed)</i>	487d e, 488d, 488e, 493a b, 495b, 506a b, 506b, 506b c, 525a, 525c-d	
17.	(2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Civ) 35 : (2013) 1 SCC (L&S) 56, <i>State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.</i>	523d	
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23.	(2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244, <i>Edukanti Kistamma v. S. Venkatarreddy</i>	508b c	
24.	2010 SCC OnLine Mad 6495, <i>National Trust for Clean Environment v. Union of India</i>	488a b	
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29.	(2000) 7 SCC 348, <i>State of Haryana v. Maruti Udyog Ltd.</i>	514b-c	
30.	(1999) 4 SCC 468 : 1994 SCC (L&S) 993, <i>Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad</i>	514b-c	
31.	(1997) 4 SCC 452, <i>Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.</i>	512d-e	h

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b	37. 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587. <i>Paritosh Bhupeshkumar Sheth v. Maharashtra State Board of Secondary and Higher Secondary Education (held, reversed)</i>	517d
	38. (1975) 2 SCC 411, <i>Kundur Rudrappa v. Mysore Revenue Appellate Tribunal</i>	509f
	39. (1974) 2 SCC 393, <i>Ganga Bai v. Vijay Kumar</i>	514b
	40. 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281. <i>Kundur Rudrappa v. Mysore Revenue Appellate Tribunal (held, reversed)</i>	510e f
c	41. (1965) 2 SCR 800 : AIR 1965 SC 1449, <i>Raja Soap Factory v. S.P. Shantharaj</i>	514f-g
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	44. 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL). <i>Smith v. East Elloe Rural District Council</i>	519b

d The Judgment of the Court was delivered by

ROHINTON FAJI NARIMAN, J. The present appeals arise out of orders that have been passed by the National Green Tribunal ["NGT"] dated 31-5-2013¹, 8-8-2013² and 15-12-2018³. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

e 2. The respondent, Sterlite Industries (India) Ltd./Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 1-8-1994, the respondent received a No-Objection Certificate ["NOC"] from the Tamil Nadu Pollution Control Board ["TNPCB"] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change ["MoEF"] followed on 16-1-1995. On 17-5-1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 ["the Air Act"] and the Water (Prevention and Control of Pollution) Act, 1974 ["the Water Act"] on 22-5-1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14-10-1996 by the TNPCB. Production commenced on 1-1-1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petitions Nos. 15501-503 of 1996, 5769 of 1997 and 16961 of 1998. On 20-5-1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid

h ¹ *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886

² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

and hydrofluorosilicic acid. On 21-9-2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19-4-2005, the TNPCB issued consent to operate, subject to fulfilment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28-9-2010¹, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23-3-2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea, etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24-3-2013 and directed closure of the unit under Section 31-A of the Air Act on 29-3-2013. This order was stayed by the NGT on 31-5-2013¹, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeals Nos. 4763-64 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 8-8-2013², the NGT set aside the TNPCB order dated 29-3-2013, against which, Civil Appeals Nos. 8773-74 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act/the National Green Tribunal Act, 2010 [“the NGT Act”]. This ground of maintainability was decided against the appellants by the impugned order dated 8-8-2013².

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13-4-2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14-3-2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 6-9-2017, an inspection report by the TNPCB was made, and an order passed on 7-9-2017, granting renewal of consent to operate only till 31-3-2018 subject to various conditions. Meanwhile, a protest had been organised in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No. 7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This writ petition was disposed of by an order dated 4-4-2018⁵ with a direction to consider the respondent's application. On 9-4-2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down

¹ *National Trust for Clean Environment v. Union of India*, 2010 SCC OnLine Mad 6495

¹ *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886

² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

⁵ *Vedanta Ltd. v. Inspector General of Police*, 2018 SCC OnLine Mad 10223

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a under the Air Act and the Water Act. On 12-4-2018, the respondent filed Appeals Nos. 36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 6-6-2018, the following order was passed:

“Applications Nos. 28 & 29 of 2018, Applications Nos. 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018:

Heard.

b In view of the government order passed by the Government of Tamil Nadu in GOMs No. 72, Environment & Forests (EC-3) Department dated: 28-5-2018, directing the Tamil Nadu Pollution Control Board to close the plant permanently, we feel it is not appropriate to hear the appeals and decide the issue at this juncture.

c Hence the appeals and applications are adjourned to 10-7-2018.”

On 10-7-2018, the matter was further adjourned as follows:

“Applications Nos. 28 & 29 of 2018, Applications Nos. 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018:

d In view of the remarks made in the adjudication proceedings on 6-6-2018 and as the position is same now, the appeals and applications are adjourned to 21-8-2018.”

5. Finally, on 18-12-2018 i.e. three days after the impugned order was passed by the NGT on 15-12-2018³, an order passed by the appellate authority was as follows:

e *“Applications Nos. 28, 29, 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018:*

Ms Janani, counsel for the appellant and Mr V. Vasanthakumar, counsel for the respondent Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.

f Counsel for the appellant seeks permission to withdraw the appeals. She has also filed a memo to that effect.

g In view of the order passed by the Hon’ble National Green Tribunal, Principal Bench, New Delhi on 15-12-2018 in *Vedanta Ltd. v. State of T.N.*³ setting aside the impugned order dated 9-4-2018 which is subject-matter of these appeals pending before this appellate authority, the appeals have become infructuous and hence they are closed.”

h 6. On 12-4-2018, an order was passed by the TNPCCB under Section 33-A of the Water Act and Section 31-A of the Air Act directing that the respondent’s unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCCB. This was followed by two orders, both dated 23-5-2018, again issued under the same sections, this time to close down the respondent’s unit and disconnect power supply to it. Finally, on 28-5-2018,

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

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an order was issued by the Government of Tamil Nadu under Section 18(1)(b) of the Water Act stating:

“It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s Vedanta Ltd., Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9-4-2018. Subsequently, on 23-5-2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24-5-2018.

2. Under Article 48-A of the Constitution,

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

3. Under Section 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently.”

7. On the same date, the TNPCB issued a letter to the District Collector, inter alia, directing him to seal the respondent’s unit. These six orders became the subject-matter of a composite Appeal No. 87 of 2018 under Section 16 of the NGT Act.

8. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18-6-2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 9-7-2018.

9. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17-8-2018⁶, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20-8-2018⁷, the NGT constituted a Committee to go into the material produced by the parties to the civil appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board [“CPCB”] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10-9-2018⁸, by stating: (*Vedanta Ltd. case*⁸, SCC OnLine SC paras 1-2)

“1. By our order dated 17-8-2018⁶, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

6 *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3334

7 *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238

8 *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3335

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a 2. Since our order is not referred to in the order dated 20-8-2018⁷ passed by the NGT, we need only to state that once the Committee's report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated 17-8-2018⁹."

A review petition that was filed against this order was dismissed⁹.

b 10. The Committee constituted by the NGT then inspected the site on various dates in September/October 2018, and heard all parties concerned as well as interveners. It then came out with a detailed Enquiry Report dated 20-11-2018, in which it concluded as follows:

c "On the basis of the site visit, public hearing and after hearing the appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the interveners and, upon consideration of the issues raised, the Committee is of the opinion:

1. The impugned orders cannot be sustained as it is against the principles of natural justice. No notice or opportunity of hearing was given to the appellant.

d 2. The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.

3. Other issues raised also do not justify the closure of the factory even if the appellant was found to be violating the conditions/norms/directions.

e 4. In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the Committee is of the opinion that the following directions may be issued:

f (a) As per Condition 44 of the Consent Order dated 19-4-2005, the appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCCB.

(b) The sampling of the above should be taken in the presence of an official from TNPCCB.

g (c) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCCB comprising a representative of the District Collector, an official of TNPCCB, NGOs and academicians as per Condition 43 of Consent Order dated 19-4-2005.

(d) Both the reports should be sent by TNPCCB to CPCB for analysis. Recommendations made by CPCB should be followed.

h ⁷ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238

⁸ *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3334

⁹ *State of T.N. v. Vedanta Ltd.*, 2018 SCC OnLine SC 3337

(e) Copper slag dumped at all the eleven sites including the Uppar River should be removed. If copper slag has been used for landfill purposes, then the excess amount of the slag over and above the level of ground would be removed and thereafter the landfill should be compacted with one feet of soil, so that the copper slag is not blown away by the strong winds.

a

(f) The dead stock of copper slag lying in the dump yard inside the factory premises which has solidified should be removed in a time-bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of copper slag is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days' generation of copper slag in its dump yard.

b

(g) The dead stock of gypsum lying in the dump yard inside the factory premises which has solidified should be removed in a time-bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of gypsum is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days' generation of gypsum in its dump yard.

c

(h) The Company before disposing copper slag, gypsum (or) any other waste product will seek previous permission from the TNPCB.

d

(i) Application of the Company for obtaining valid authorisation for disposal of hazardous waste under Hazardous & Other Wastes (Management, & Transboundary Movement) Rules, 2016 should be disposed of by the TNPCB in a time-bound manner.

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(j) Even though there is no requirement of analysing the air samples through an accredited laboratory nonetheless a direction should be issued to the appellant that they will conduct a periodical survey for ambient air quality/noise level/stack emission through accredited laboratories of MoEF&CC/NABL and furnish such report to the TNPCB.

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(k) The appellant Company should be directed that they shall develop a green belt of 25 metres' width around the battery limits of its factory by planting native and high foliage tree and also in and around the factory.

(l) The State of Tamil Nadu/TNPCB should collect data from their primary health centres and government hospitals to monitor the various ailments that are being complained of by the inhabitants living in and around the factory premises.

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(m) The State Government should specify the module to the appellant for conducting the proper and designed health monitoring study.

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a (n) Direction (iii) on “Source Apportionment Study” and Direction (ix) on “conducting a study on health hazards” passed by the NGT in its judgment dated 8-8-2013 in *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*² should be carried out by the Tamil Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.

b (o) The appellant should be directed to start the construction of gypsum pond immediately and complete the same in a time-bound manner as per the conditions laid down in the guidelines given by CPCB in October 2014.

c (p) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organisation approved by the TNPCB as per Condition 15 of the Consent Order dated 19-4-2005.

d (q) Direction should be given to the TNPCB as well as to the appellant to take independent ground water samples from the same points for the purpose of finding out groundwater pollution if any. Such reports should then be compared by the CPCB. Recommendations made by CPCB should be followed.

(r) Directions/regulation may be framed for import of high grade copper ore.

e (s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of Tuticorin with regard to emission of SO₂.

(t) Till such time, the stack height is not increased, the production of copper as well as sulphuric acid should be restricted/reduced to match the existing stack height.

f (u) The transportation of copper ore concentrate from the port to the factory premises should be done in a closed conveyance or through a pipe conveyor system.

g (v) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of ambient air quality/stack emissions/fugitive emissions/ground water quality/surface water quality/soil quality/slag analysis through third party and report shall be furnished to the regulatory agencies concerned.

(w) All the monitoring data, compliance reports of CTE/CTO/EC and environmental statement shall be uploaded on the website of the Company.

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(x) TNPCB should be directed to commission “Regional Environmental Impact Assessment Study” in and around Tuticorin District by engaging a reputed national agency.

(y) CPCB recommendations as contained in the order of NGT, dated 20-8-2018⁷ to be complied with.”

Both the respondent as well as the appellants made their detailed comments on the Committee’s report. The NGT then heard final arguments and dictated the impugned order on 15-12-2018³, in which it substantially accepted the Committee’s recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15-12-2018³ is without jurisdiction.

11. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22-1-2019, by which the respondent’s application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

12. We have heard wide-ranging arguments from the learned counsel appearing on behalf of all the parties as well as the interveners, on maintainability as well as on merits. Since we will be deciding this case on maintainability alone, we have not ventured to state anything on the merits of the case.

13. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, the Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 9-4-2018 was concerned, an appeal was pending before the appellate authority, as a result of which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12-4-2018, 23-5-2018 and 28-5-2018, made under Section 33-A of the Water Act and Section 31-A of the Air Act, were composite orders issued. As orders under Section 31-A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28-5-2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a civil court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some

⁷ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1238

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

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a of our judgments as well as statutes and judgments of the English courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme of the Water Act, the Air Act, and the NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCC, also went on to criticise the order passed by b the NGT dated 8-8-2013² on maintainability. According to him, no doctrine of necessity could be imported if an Appellate Tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for c the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second Appellate Tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

d 14. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 9-4-2018 is concerned, thanks to a government affidavit filed, e the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33-A and 31-A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33-A of the Water Act, and even if there is no appeal provided under Section 31-A f of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31-A of the Air Act is undoubtedly g equivalent to an order made under Section 31 of the Air Act, and therefore, would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and h relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as

² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

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the attack made upon the order dated 28-5-2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is non est and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in *L. Chandra Kumar v. Union of India*¹⁰ [*"L. Chandra Kumar"*], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed under Section 18 of the Water Act.

15. Having heard the learned counsel for all parties, it is important first to advert to the provisions of the three Acts in question.

16. The relevant sections of the Water Act are as follows:

"18. Powers to give directions.—(1) In the performance of its functions under this Act—

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it;

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

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25. Restrictions on new outlets and new discharges.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

¹⁰ (1997) 3 SCC 261 : 1997 SCC (L&S) 577

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a (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

b (c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

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(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

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(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

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(i) in cases referred to in clauses (a) and (b) of sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

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(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

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(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new

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discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and Sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

26. Provision regarding existing discharge of sewage or trade effluent.—Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of Section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.

27. Refusal or withdrawal of consent by State Board. (1) A State Board shall not grant its consent under sub-section (4) of Section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established

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as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

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(2) A State Board may from time to time review—

(a) any condition imposed under Section 25 or Section 26 and may serve on the person to whom a consent under Section 25 or Section 26 is granted a notice making any reasonable variation of or revoking any such condition;

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(b) the refusal of any consent referred to in sub-section (1) of Section 25 or Section 26 or the grant of such consent without any condition, and may make such orders as it deems fit.

(3) Any condition imposed under Section 25 or Section 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section.

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28. Appeals.—(1) Any person aggrieved by an order made by the State Board under Section 25, Section 26 or Section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

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Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.

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(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

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(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,—

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

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(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

29. Revision.—(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under Section 25, Section 26 or Section 27 for the purpose of satisfying itself as to the legality

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or propriety of any such order and may pass such order in relation thereto as it may think fit:

Provided that the State Government shall not pass any order under this subsection without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in the matter. a

(2) The State Government shall not revise any order made under Section 25, Section 26 or Section 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority. b

* * *

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

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

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

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

33-B. Appeal to National Green Tribunal.—Any person aggrieved by,—

(a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or e

(b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or

(c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.” f

17. The relevant sections of the Air Act are as follows:

“21. Restrictions on use of certain industrial plants. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area: g

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an h

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a application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

b Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

c (3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

d (4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

e Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely

f (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

g (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

h (vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months;

Provided further that

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

* * *

31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The appellate authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

31-A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue

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any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

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

31-B. Appeal to National Green Tribunal. Any person aggrieved by an order or decision of the appellate authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.”

18. The relevant sections of the NGT Act are as follows:

“**2. Definitions.** (1) In this Act, unless the context otherwise requires,

* * *

(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;

* * *

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 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);

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a (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);

b (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);

c (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);

d (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),

e 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:

f 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.

* * *

g **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.

h (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.

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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.”

19. It is important now to advert to both the orders dated 8-8-2013² and 15-12-2018³, insofar as they deal with the maintainability of the appeals before them.

20. By the judgment of the NGT dated 8-8-2013², the NGT disposed of the plea on maintainability as follows: [*Sterlite Industries (India) Ltd. case*², SCC OnLine NGT paras 62-64]

“62. Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant Company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant Company, particularly keeping in view the emergent situation created by issuance of the order dated 29-3-2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant Company had been directed to be shut down and the appellant Company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the appellant Company has also placed its reliance on Section 31-B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31-B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31-B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant Company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal v. Ugrasen*¹¹ where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct

² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

¹¹ (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524

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a the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in *Manohar Lal*¹¹.

b 63. We are unable to contribute ourselves to the contention raised that a direction passed under Section 31-A of the Air Act is not covered under the expression "order" used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. "Direction" itself means an order; an instruction how to proceed, like the Judge's direction to the jury, while "order" is defined as a command, direction or instruction. This is how *Black's Law Dictionary*, 9th Edn., refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.

c 64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three-member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short "the NGT Act") even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

f 21. Insofar as the judgment dated 15-12-2018³ is concerned, the NGT, on maintainability, held as follows: (*Vedanta Ltd. case*³, SCC OnLine NGT paras 44-46 & 48-49)

g "44. It is undisputed that this Tribunal is an appellate authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12-4-2018, 23-5-2018 and 28-5-2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the appellate authority by this Tribunal. As already noted, the appellate authority has declined to proceed with the matter. The grounds in the impugned orders dated 9-4-2018, 12-4-2018, 23-5-2018 and 28-5-2018 are

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11 *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557; (2010) 1 SCC (Civ) 524
3 *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the appellate authority is also appealable before this Tribunal under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

45. Mere fact that the State of Tamil Nadu also endorsed the order of the TNPCB and that order of the State is not appealable to this Tribunal, does not deviate from the legal position that order of TNPCB is appealable to this Tribunal. Moreover, order of the State of Tamil Nadu is not a policy matter but mere endorsement of order of the TNPCB.

46. The judgments relied upon by the respondents are distinguishable. Unlike *Edukanti Kistamma v. S. Venkatarreddy*¹², this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

* * *

48. The order of the Government of Tamil Nadu issued under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

49. In the present proceedings, as already noted, the appellate authority having declined to proceed with the matter and the order of closure being appealable before this Tribunal, there is no ground to reject the appeal on the ground of maintainability so as to deprive the appellant of any judicial remedy in the matter.”

(1) Re: Order dated 9-4-2018

22. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33-B(a) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air

12 (2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244

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a Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31-B of the Air Act and Section 16(f) of the NGT Act.

b **23.** As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeals Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22-6-2018 before the NGT inter alia against the order of refusal of consent to operate dated 9-4-2018. Shri Sundaram, however, argued before us that the order dated 6-6-2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28-5-2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10-7-2018. The said appeals on 10-7-2018 were further adjourned, and it is only on 18-12-2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15-12-2018³ in which it had set aside the order dated 9-4-2018.

c **24.** What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 9-4-2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negatived as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 9-4-2018.

d **25.** At this point, it is important to advert to a few judgments of this Court. In *Kundur Rudrappa v. Mysore Revenue Appellate Tribunal*¹³, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated: (SCC pp. 413-14, paras 4-5)

e "4. The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(a) which is material for the purpose of this appeal:

"64. Appeals. (1) Any person

f ³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239
13 (1975) 2 SCC 411

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(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

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may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.’

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. *Appeal is a creature of the statute.* There is no dispute that Section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. *There is no appeal provided for under Section 64 against an order issuing a permit in pursuance of the order granting the permit.* Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under Section 64 of the Act and both the Tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing¹⁴ the writ application of the appellant which ought to have been allowed.” (emphasis supplied)

26. Similarly, in a concurring judgment of Sinha, J., in *Cellular Operators Assn. of India v. Union of India*¹⁵, the learned Judge observed: (SCC p. 211, para 27)

“27. TDSAT was required to exercise its jurisdiction¹⁶ in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof. *The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is,*

14 *Kundur Rudruppa v. Mysore Revenue Appellate Tribunal*. 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281

15 (2003) 3 SCC 186

16 *Cellular Operators Assn. of India v. Union of India*. 2002 SCC OnLine TDSAT 9

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a *therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law.” (emphasis supplied)*

b **27.** In *B. Himmattal Agrawal v. Competition Commission of India*¹⁷, this Court, while dealing with Section 53-B of the Competition Act, 2002 held: (SCC p. 424, para 10)

c “10. The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Sub-section (3) of Section 53-B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. *The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision.* This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself.” (emphasis supplied)

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g **28.** In *Raja Soap Factory v. S.P. Shanthuraj*¹⁸, the plaintiff’s instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held: (SCR p. 802 : AIR p. 1450, paras 5-6)

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17 (2018) 17 SCC 121
18 (1965) 2 SCR 800 : AIR 1965 SC 1449

“5. The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction; it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of Trade and Merchandise Marks Act 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute or under its constitution with that jurisdiction was incompetent to entertain a passing off action.

6. But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance.”

29. In *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.*¹⁹, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held: (SCC pp. 464-65 & 468, paras 10 & 12)

“10. ... The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. ... So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection. ...

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12. ... But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication

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a order of the Collector of Customs by way of appeals or revisions as per the
aforesaid relevant statutory provisions, to which we have made a mention,
has got to be followed in such an eventuality. Bypassing the said statutory
procedure a direct frog leap to CEGAT is contra-indicated by the statutory
scheme of the Act. If such direct appeals are permitted the very scheme of
Section 129-D(1) would get stultified. It must, therefore, be held that direct
b appeal filed by the Union of India through Industries Ministry to CEGAT
under Section 129-A(1) was clearly incompetent. It may be added that the
Union of India could have used the mode set out in Section 129-D, but it
did not do so.”

30. In *Manohar Lal v. Ugrasen*¹¹, one of the questions involved, under sub-
para 2(a) of the judgment, was as follows: (SCC p. 562, para 2)

c “2. In these appeals, three substantial questions of law for consideration
of this Court are involved. They are, namely:

(a) As to whether the State Government, a revisional authority
under the statute, could take upon itself the task of a lower statutory
authority?”

d After reviewing a number of cases, this Court then concluded: (*Manohar Lal
case*¹¹, SCC p. 567, para 23)

e “23. Therefore, the law on the question can be summarised to the
effect that no higher authority in the hierarchy or an appellate or revisional
authority can exercise the power of the statutory authority nor can the
superior authority mortgage its wisdom and direct the statutory authority
to act in a particular manner. If the appellate or revisional authority takes
upon itself the task of the statutory authority and passes an order, it remains
unenforceable for the reason that it cannot be termed to be an order passed
under the Act.”

f 31. In *Arcot Textile Mills Ltd. v. Regl. Provident Fund Commr.*²⁰, appeals
lay to the Tribunal constituted under the Employees’ Provident Funds and
Miscellaneous Provisions Act, 1952, under Section 7-I of the Act. Whereas
appeals lay against orders passed under Section 7-A of the Act, which provided
for determination of monies due from employers, no appeal lay against orders
made under Section 7-Q of the said Act, which spoke of interest payable by the
employer. This Court held: (SCC p. 10, para 20)

g “20. On a scrutiny of Section 7-I, we notice that the language is
clear and unambiguous and it does not provide for an appeal against the
determination made under Section 7-Q. It is well settled in law that right of
appeal is a creature of statute, for the right of appeal inheres in no one and,
therefore, for maintainability of an appeal there must be authority of law.
This being the position a provision providing for appeal should neither be

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11 (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 521
20 (2013) 16 SCC 1 : (2014) 3 SCC (L.&S) 358

construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar*²¹, *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad*²², *State of Haryana v. Maruti Udyog Ltd.*²³, *Super Cassettes Industries Ltd. v. State of U.P.*²⁴, *Raj Kumar Shivhare v. Directorate of Enforcement*²⁵, *Competition Commission of India v. SAIL*²⁶.)

In para 21, this Court further went on to hold that in case an order under Section 7-A speaks of delay in payment as well as interest, a composite order passed would be amenable to appeal under Section 7-I, as interest is only parasitic on the principal sum due under Section 7-A. However, if an independent order is passed under Section 7-Q for interest alone, the same was held to be not appealable.

32. From the above authorities, it is clear that an appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33-B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31-B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33-B of the Water Act, read with Section 31-B of the Air Act, read with Sections 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 9-4-2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

21 (1974) 2 SCC 393

22 (1999) 4 SCC 468 : 1994 SCC (L&S) 993

23 (2000) 7 SCC 348

24 (2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280

25 (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712

26 (2010) 10 SCC 744

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a **33.** In fact, in the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. Thus, the Administration of Justice Act, 1969 states that such a leapfrog appeal directly to the Supreme Court may be filed on grant of certificate by the trial Judge in the following terms:

b “**12. Grant of certificate by trial Judge.** (1) Where on the application of any of the parties to any proceedings to which this section applies the Judge is satisfied—

(a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in sub-section (3-A) (“the alternative conditions”) are satisfied in relation to those proceedings, and
(b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...

c (c) * * *

the Judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

d (2) This section applies to any civil proceedings in the High Court which are either

(a) proceedings before a Single Judge of the High Court (including a person acting as such a Judge under Section 3 of the Judicature Act, 1925), or

e (b) * * *

(c) proceedings before a Divisional Court.

f (3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the Judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—

(a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the Judge in the proceedings, or

(b) is one in respect of which the Judge is bound by a decision of the court of appeal or of the Supreme Court in previous proceedings, and was fully considered in the judgments given by the court of appeal or the Supreme Court (as the case may be) in those previous proceedings.”

g **34.** To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the UK are referred to as “leapfrog appeals” [see *S. Franses Ltd. v. Cavendish Hotel (London) Ltd.*²⁷, para 7].

h **35.** It is, therefore, clear that no such provisions, as are contained in the UK Acts, being present in any of the Acts that we are concerned with, such leapfrog appeals to the NGT would necessarily be without jurisdiction.

²⁷ (2018) 3 WLR 1952; 2018 UKSC 62

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(II) *Re: Orders passed under Section 33-A of the Water Act and Section 31-A of the Air Act*

36. We have referred to the orders dated 12-4-2018, 23-5-2018, and 28-5-2018 passed by the TNPCB under Sections 33-A and 31-A of the Water Act and the Air Act respectively. At this juncture, it is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made *both* under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject-matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" under Section 31-A of the Air Act is nothing but an "order", and would, therefore, be appealable as such under Section 31-B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to

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a the Explanation to Section 31-A of the Air Act that “directions” partake of the nature of “orders” when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act b are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to *P. Ramanatha Aiyar’s Law Lexicon* and *Black’s Law Dictionary*, which state that in certain circumstances, orders are also directions and vice versa, would not apply to c the present case, given the express statutory scheme. In this connection, Shri Sundaram cited *Kanhiya Lal Omar v. R.K. Trivedi*²⁸, and relied upon para 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a “direction” may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

d **37.** Shri Sundaram then cited *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*²⁹. In this judgment, the High Court had struck down³⁰ Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time-consuming, would involve several thousand man-hours, and is bound to throw the entire system out of e gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see para 27]. It is in this context that this Court held: (SCC p. 57, para 29)

f “29. ... It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.”

To bodily lift the aforesaid sentence and apply it to the fact situation here would be a huge leap which we are not prepared to make. Further, given the statutory scheme as aforesaid, it is not possible for us to provide *an appeal where there is none* in the guise of making an appellate system workable in practice.

g **38.** Shri Sundaram then relied upon this Court’s judgments in *Galuda Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*³¹ and

28 (1985) 1 SCC 628

29 (1984) 1 SCC 27

h 30 *Paritosh Bhupeshkumar Sheth v. Maharashtra State Board of Secondary and Higher Secondary Education*, 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587

31 (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765

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*Allokam Peddabbayya v. Allahabad Bank*³² for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

39. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In *Garikapati Veeraya v. N. Subbiah Choudhry*³³, this Court held: (SCR pp. 514-15 : AIR p. 553, para 23)

“23. From the decisions cited above, the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.”

This argument must, therefore, be rejected.

(III) Re: Order passed under Section 18 of the Water Act

40. So far as the order dated 28-5-2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to

³² (2017) 8 SCC 272 : (2017) 1 SCC (Civ) 62

³³ 1957 SCR 488 : AIR 1957 SC 540

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a the sections that follow in Chapter V, which deals with prevention and control
of water pollution, which orders are made against individuals and individual
industries. On the assumption that Shri Sundaram is correct in this argument, it
is clear that such order can only be set aside in a suit by a civil court, or under
Article 226 of the Constitution of India by a High Court. It is not possible to
agree with the argument of Shri Sundaram that such orders can be ignored,
being non est. It is settled that an administrative order, when made, does not bear
b the brand of invalidity on its forehead, as has been held in *Smith v. East Elloe
Rural District Council*³⁴, All ER p. 871, which has been followed by this Court
in *State of Punjab v. Gurdev Singh*³⁵, SCC p. 6; *Tayabhai M. Bagasarwalla v.
Hind Rubber Industries (P) Ltd.*³⁶, SCC p. 455; *Pune Municipal Corpn. v. State
of Maharashtra*³⁷, SCC p. 225; *Krishnadevi Malchand Kamathia v. Bombay
Environmental Action Group*³⁸, SCC p. 369 and *Port of Kandla v. Hargovind
Jasraj*³⁹, SCC p. 193. Therefore, this order can only be set aside either in a suit,
c or by the High Court in the exercise of judicial review. Faced with this, Shri
Sundaram then argued that though the said order states that it is traceable to
Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same
Act. Section 29 deals with the revisional power, in which the State Government
is to pass a quasi-judicial order after hearing both the State Board and the person
d who is affected. Quite obviously, this order is not a quasi-judicial order as the
State Government has not found it necessary to hear either the State Board, or
any person affected by such order. Further, such order does not purport to be
an order which either affirms or sets aside any order made under Sections 25,
26, or 27 of the Water Act. This argument of despair, therefore, must also be
rejected.

e **41.** Shri Sundaram then argued that this Court in *L. Chandra Kumar*¹⁰ made
it clear that tribunals that are set up, generally have the power of judicial review,
save and except a challenge to the vires of the legislation under which such
tribunals are themselves set up. For this, he relied strongly upon paras 90 and
93 of the judgment in *L. Chandra Kumar*¹⁰. It is important to notice that *L.
f Chandra Kumar*¹⁰ pertained to a tribunal that was set up under Article 323-A
of the Constitution of India. Under Article 323-A(2)(d), the Administrative
Tribunal so set up would be able to exercise the jurisdiction of all courts except
the jurisdiction of the Supreme Court under Article 136 of the Constitution.
This would mean that the Administrative Tribunal so set up could exercise the
jurisdiction of all High Courts when it came to the matters specified in Article
g 323-A. This is further made clear by a conjoint reading of Section 14 and
Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

34 (1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL))

35 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082

36 (1997) 3 SCC 413

37 (2007) 5 SCC 211

38 (2011) 3 SCC 363

39 (2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1

10 *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by the Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other

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a authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

b (b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

* * *

c **28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.** On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except

d (a) the Supreme Court; or
(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

e shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.”

f Article 323-B of the Constitution of India also provides for tribunals for certain other matters which are specified by clause (2) thereof. 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. Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

g **42.** It is in the context of Article 323-A and the Administrative Tribunals Act, 1985 that this Court in *L. Chandra Kumar*¹⁰ has observed in para 93 as follows: (SCC pp. 308-09)

h “93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes

¹⁰ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L.&S) 577

for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

43. In *BSNL v. TRAI*¹⁰ [*“BSNL”*], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in *L. Chandra Kumar*¹⁰, this Court held: (*BSNL case*¹⁰, SCC pp. 293, 297 & 303-04, paras 108, 114 & 123-24)

“108. Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word “orders”, sub-sections (3) and (4) thereof used the word “decision”. In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (b) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as

¹⁰ (2014) 3 SCC 222

¹⁰ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

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a considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(b).

* * *

b 114. ... From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word "directions" used in Section 29 of the TRAI Act was interpreted to include orders and regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down
c a proposition of law that the words "direction", "decision" or "order" used in Section 14(b) would include regulations framed under Section 36, which are in the nature of subordinate legislation.

* * *

d 123. In *Union of India v. Madras Bar Assn.*⁴¹ and *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*⁴², this Court applied the principles laid down in *L. Chandra Kumar case*¹⁰ and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

e 124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by TRAI under Section 36 of the TRAI Act."

f 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
g 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*⁴³, made in the following words: (SCR p. 499 : AIR p. 789, para 138)

h 41 (2010) 11 SCC 1
42 (2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Civ) 35 : (2013) 1 SCC (L.&S) 56
10 *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L.&S) 577
43 (1965) 1 SCR 413 : AIR 1965 SC 745

“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’⁴⁴. ”

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*⁴⁰, 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*⁴⁵ 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.

44. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

⁴⁴ *Halsbury’s Laws of England*, Vol. 9, p. 349

⁴⁰ *BSNL v. TRAI*, (2014) 3 SCC 222

⁴⁵ 2014 SCC OnLine NGT 6860

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a **45.** Equally, so far as the order dated 8-8-2013² is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us supra, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

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c **46.** In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 9-4-2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22-1-2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15-12-2018³ and the order dated 29-3-2013, dealt with by the final judgment dated 8-8-2013², are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 9-4-2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to the 9-4-2018 order of the TNPCB. The appeals are disposed of accordingly.

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² *Sterlite Industries (India) Ltd. v. T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

³ *Vedanta Ltd. v. State of T.N.*, 2018 SCC OnLine NGT 1239

ANNEXURE- 4

C.R.P.(NPD) No.3354 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) No.3354 of 2018

M.Ramasamy

... Petitioner

Vs

1.K.Ponnusamy
2.Chenni
3.C.Palanisamy
4.Annapoorani

M.Manian (Died)

5.M.Thangamani STS
6.M.Karunanithi (SS)
7.A.Palaniyammal
8.R.Muthammal
9.Kamalam

... Respondents

सत्यमेव जयते

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Decretal Order dated 25.07.2018 made in I.A.No.261 of 2016 in I.A.No.255 of 2012 in I.A.No.709 of 2011 in O.S.No.201 of 2009 on the file of the Sub Court, Perundurai, Erode District.

C.R.P.(NPD) No.3354 of 2018

For Petitioner : Ms.R.Shase

For Respondents : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed against the Fair and Decretal Order dated 25.07.2018 made in I.A.No.261 of 2016 in I.A.No.255 of 2012 in I.A.No.709 of 2011 in O.S.No.201 of 2009 on the file of the Sub Court, Perundurai, Erode District, thereby dismissing the petition to condone the delay.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed the suit for specific performance. When the suit was posted for trial, the petitioner was examined as P.W.1 on 25.10.2010. Thereafter, he failed to appear for cross examination and as such, the suit was dismissed for default on 09.06.2011. Next day, the petitioner filed a petition to restore the suit and unfortunately, thereafter he again failed to appear before the trial Court and again it is also dismissed on 26.09.2011. Therefore, to restore the restoration petition filed with the delay of 24 days in I.A.No.255 of 2012.

3. While pending the said petition, the fifth defendant in the suit died, and as such, the Court below directed the petitioner to take steps to implead the legal heirs of the deceased fifth defendant. Since already the legal heirs of the deceased fifth defendant are on record in the plaint, the condone delay petition was dismissed by the Court below on 21.11.2012.

4. Thereafter, the petitioner suffered with Jaundice and he had taken treatment at Kerala, again thereafter, he met with an accident and admitted in private hospital at KMCH, Erode for 39 days. Therefore, there was a delay of 1175 days in filing the petition to restore the condone delay petition in filing of restore petition to restore the main suit.

5. The learned counsel for the petitioner would submit that the petitioner was examined as P.W.1 and marked Ex.P1, in respect of medical records. The Court below dismissed only for the reason that except Ex.P1 no other documents were produced to substantiate sufficient cause as stated by the petitioner. She also relied upon Section 59 of the Indian Evidence

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Act, 1982 in respect of oral evidence. He categorically deposed that from time to time had taken treatment in various hospitals, and thereafter, the case bundle was also misplaced in the Advocate's Office. Therefore, there was a delay of 1175 days.

6. Without considering all the facts and also Ex.P1, the Court below dismissed the condone delay petition. She further submitted that even on factual aspects, there are totally 23 persons agreed to execute the sale deed, in which, 13 persons executed the sale deed and only remaining 10 persons have to be executed the sale deed. Therefore, the petitioner has got very good case to succeed in the suit.

7. The learned counsel for the respondent would submit that the suit itself is barred by limitation. Since the agreement dated 05.02.1995 and the time stipulated in the contract is only one year and the suit itself is clearly barred by limitation and as such the petitioner has no case to succeed before the trial Court. However, after filing the written statement, the petitioner dragging the suit for two years even for his chief examination. He was

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examined in chief only on 25.10.2010 and thereafter, he failed to appear before the trial Court. Therefore, the trial Court rightly dismissed the suit for default. Thereafter, he simply drag on the proceedings till 2016 and filed a petition to condone the delay of 1175 days. The Court below rightly dismissed the petition and it does not warrant any interference by this Court.

8. In support of the contention of the petitioner, the learned counsel relied upon the Judgment reported in

1). (1988) 7 SCC 123 *N.Balakrishnan -vs- M.Krishnamurthy* is held as follows:

"9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of

discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. The reason for such a different stance is thus:

The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would

never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

2). C.R.P.(NPD) No.2887 of 2018 in C.M.P.No.16934 of 2018 Ramesh -vs- Sadhasivamoorthy is as follows:

"11. The learned Senior counsel for the petitioner had relied upon the following judgments reported in 2001 (6) SCC 176 [M.K.Prasad V. P.Arumogam] and 2002 (3) SCC 195 [Ram Nath Sao @ Ram Nath Sahu and others V. Gobardhan Sao and others] and submitted that the expression "sufficient cause" within the manner of Section 5 of the Limitation Act or under Order 22 Rule 9 of the Civil Procedure Code should be

*given liberal construction so as to advance substantial justice. The aforesaid two judgments came to be considered by a learned Single Judge in a judgment in **Rajangam and others V. Senthamaraj and others** reported in **2016 (2) CTC 714** and this Court, while analysing the scope and Section 5 of the Limitation Act, had taken into consideration various judgments of the Hon'ble Apex Court and held as follows:-*

“8. The learned counsel for the Revision Petitioners would submit that the length of delay alone is not a criteria to dismiss the petition and the Court is expected to consider the nature of the claim made in the suit, the nature of defence taken by the defendants, the stake involved in the matter and the possibility of rendering substantial justice to the parties. It is also represented that the inconvenience caused to the other side can be compensated by costs and the defendants are ready to pay the costs, if imposed by this Court.

8.1. The learned counsel for the Revision petitioners relied upon the following decisions, in order to support the contention that the grounds, which are required to be considered by the Court, (which passed the impugned order), were not considered and if that had been done, the petition would not have resulted in dismissal:-

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(i) CDJ 2014 MHC 3671 (M/S. Bharat Petroleum vs C.S.Prakasa Rao):-

14. While deciding, whether the delay has to be condoned or not, the nature of the relief claimed in the plaint, the nature of the defence taken and the benefits, that could be sought under Section 9 of the City Tenants Protection Act or in the alternative, to make a claim of compensation under Section 3 of the City Tenants' Protection Act, have to be kept in mind".

(ii) CDJ 2001 SC 404 (M.K.Prasad v. P.Arumugam):-

While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs.

(iii) CDJ 2002 SC 190 (Ram Nath Sao @ Ram Nath Sahu And ... vs Gobardhan Sao And Others):-

13. *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor.*

(iv) *Order of this Court, dated 31.07.2015 in CRP No.662 of 2005 (Manimegalai : vs Panaitan):-*

6. *The Supreme Court in M.K.Prasad v. P.Arumugam [2001 (6) SCC 176], while considering the question regarding delay in applying for setting aside the exparte decree, observed that the Court ought to keep in mind the judgment impugned in the matter, the extent of property involved and the stake of the parties, while deciding an application to set aside the exparte decree.*

7. *The Supreme Court in Ram Nath Sao v. Gobardhan Sao [2002(3) SCC 195], explained the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963. The Supreme Court very clearly observed that*

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explanation for the delay should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case.

(v) Order of this Court, dated 07.01.2016 (Shri. Srijith C vs The Customs):-

(iv) Standard Treads v. Collector, reported in 1996 (83) ELT 30 (Ker):-

4. It has to be kept in the forefront that ordinarily a litigant does not stand to benefit by lodging an appeal late. He has no interest in wasting time. It has also to be borne in mind that the great possibility of disastrous results creating a situation that a meritorious matter being thrown out at the threshold causing a heavy burden to the cause of justice has to be defeated at the very start.

5. Judiciary gets its respect in the legal order not on account of its power to legalize injustice on technical grounds. But, it has the capacity and purpose to remove injustice wherever it is in sight and this is what is understood and pointed out by the Apex Court as justice-oriented approach in regard to the matters being thrown out at the threshold of the concerned proceedings.”

8.2. *Considering the dictum laid down in the above cases, it is for this Court to consider the cumulative circumstances available in this case as to the nature of the relief claimed, the stake involved and the possibility of doing substantial justice to the parties, while compensating the party who suffered inconvenience.*

8.3. *The delay involved even after entering appearance in the final decree cannot be appreciated, but, at the same time, the predicament involved in not permitting the second Revision Petitioner (8th defendant) to contest the case on merits should be taken into account, while deciding whether to condone the delay or not.*

By adopting the ratio laid down by the Hon'ble Apex Court in all the aforesaid decisions which came to be relied by the learned Single Judge of this Court, I am of the view that the reasons for the delay assigned in the application can be deemed to be a sufficient cause for condoning the delay."

9. The Hon'ble Supreme Court of India held that length of delay is no matter, acceptability of the explanation is only a criterion. Once the Court

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accepts the explanation as sufficient, it is the resort of positive exercises of discretion. The condonation of delay is a matter of discretion of the Court. The Section 5 of the Limitation Act does not say that such discretion cannot be exercised only the delay is within certain limit. In the case in hand, as stated supra, the petitioner met with an accident and admitted in the hospital for 39 days. He sustained grave injuries. Even then, the Court bundle misplaced in the Advocate's Office, therefore, there was a delay of 1175 days. The petitioner was examined as P.W.1 and marked Ex.P1.

10. As pointed out by the learned counsel for the petitioner, Section 59 of the Indian Evidence Act says that all facts except the contents of documents and electronic records may be proved by oral evidence. The petitioner categorically deposed that he had taken treatment for 6 months at Kerala. Thereafter, he met with an accident and admitted in the hospital. Therefore, the above Judgment cited by the petitioner is squarely applicable to this case. That apart, the petitioner is the plaintiff who filed a suit for specific performance. Therefore, it cannot be said that the petitioner resorted to dilatory tactics to drag the proceedings.

11. The learned counsel for the respondents further submitted that though the petitioner was examined as P.W.1, his evidence has to be rejected for the reason lack of *bona-fide*. In support of his contention, he relied upon the Judgment in *(2015) 1 Supreme Court Cases 680 H.Dohil Constructions Company Private Limited -vs- Nahar Exports Limited and another* is extracted below:

"23. We may also usefully refer to the recent decision of this Court in *Esha Bhattacharjee* where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp. 658-59)

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the

former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

12. The Hon'ble Supreme Court of India held that while considering the condone delay petition, the conduct, behaviour and attitude of the party relating to its inaction or negligence are relevant factors to be taken into consideration. The lack of *bona-fide* equitable to a party seeking condonation of delay is sufficient and relevant fact whereas in the case in

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hand, the petitioner was examined as P.W.1 and also marked Ex.P1. Admittedly, he met with an accident and admitted in the hospital for 39 days. Therefore, it cannot be said that the deposition of P.W.1 is lack of *bona-fide*, as such, the Judgment cited by the learned counsel for the respondent is not helpful to this case.

13. In view of the above descriptions, this Court is inclined to restore to condone the delay in filing the restoration petition to restore the main suit. This Court is also conscious of the fact that about prejudice caused to the respondents and defend the application before the trial Court as well as this Court. Therefore, the inconvenience caused to the respondents can be compensated by awarding appropriate costs.

14. Accordingly, Order dated 25.07.2018 made in I.A.No.261 of 2016 in I.A.No.255 of 2012 in I.A.No.709 of 2011 in O.S.No.201 of 2009 on the file of the Sub-Court, Perundurai, Erode District, is set aside and this Civil Revision Petition is allowed on condition that the petitioner is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as costs to

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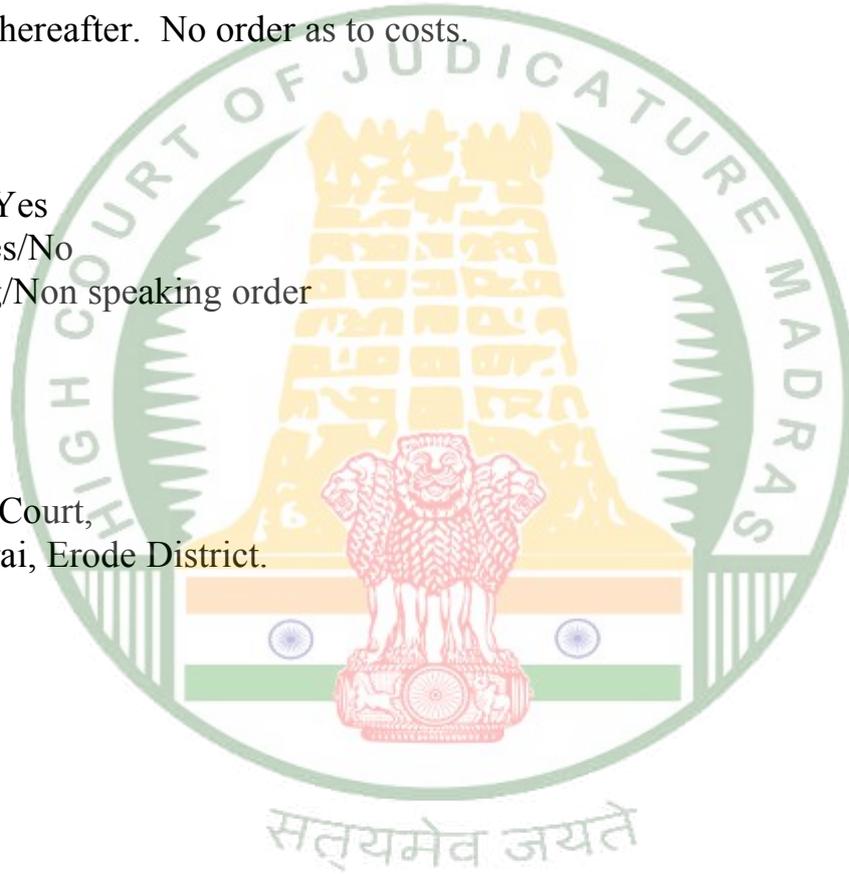
the respondents within a period of **two weeks** from the date of receipt of a copy of this order. Failing which, the order passed by this Court shall automatically stand cancelled. On such compliance, the Court below is directed to restore the suit and dispose the suit within a period of **three months** thereafter. No order as to costs.

01.07.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
rna

To

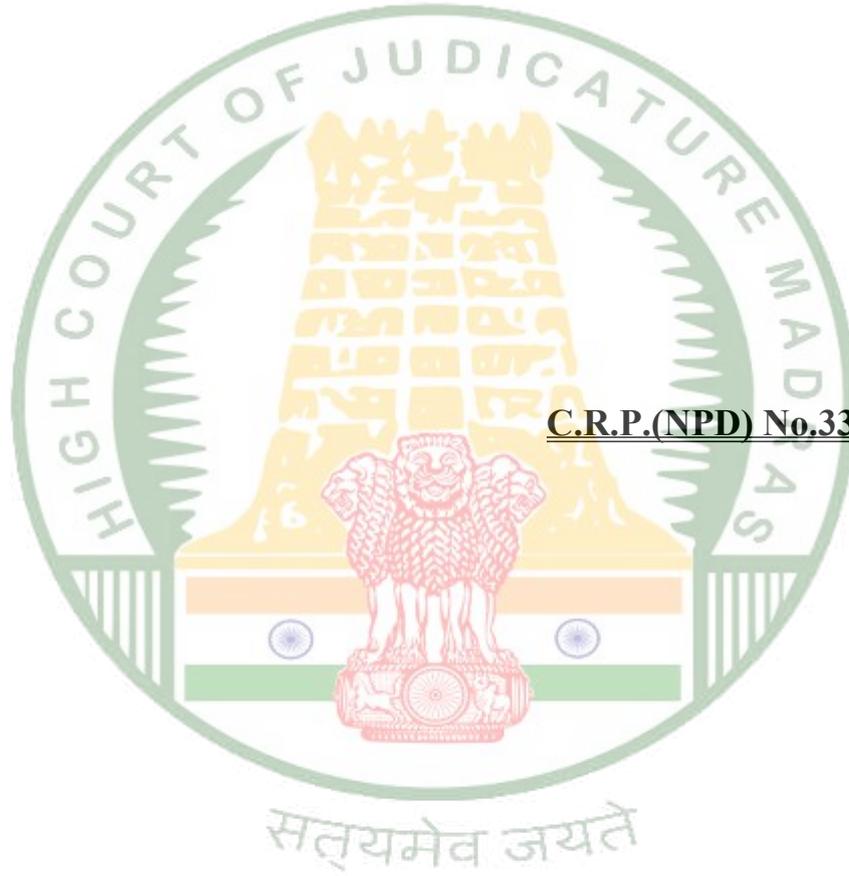
The Sub Court,
Perundurai, Erode District.

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C.R.P.(NPD) No.3354 of 2018

G.K.ILANTHIRAIYAN. J,

rna



C.R.P.(NPD) No.3354 of 2018

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01.07.2021

Item No. 01

Court No. 1

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

Original Application No. 327/2024

Hubtown Limited

Applicant

Versus

Ministry of Environment Forest
and Climate Change & Ors.

Respondent(s)

Date of hearing: 23.08.2024

Date of pronouncement and uploading: 24.10.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Karan Bharioke, Mr. Parag Kabadi, Ms. Anshita Sethi & Ms. Himani Yadav, Advocates.

Respondent: Ms. Praveena Gautam, Ms. Kanika Kalyan, Ms. Akanksha Tyagi & Mr. Pawan Shukla, Advocates for R-1.
Mr. Mukesh Verma, Advocate for R-2 & 4.

ORDER

1. In this original application, the applicant has sought directions/clarifications that the respondents are bound by the order of the National Green Tribunal (NGT) dated 07.10.2012, passed in Appeal No. 13, 14, 19 and 20 of 2012 and they have no power to show the entire Subject Property artificially painted green in the Coastal Zone Management Plan (CZMP), 2019. The applicant has further sought a direction to the respondents to grant the application dated 02.03.2022 for approval of its Slum Scheme forwarded to the Maharashtra Coastal Zone Management Authority (MCZMA) by the Slum Rehabilitation Authority (SRA) by letter dated 20.04.2022.

2. The case of the applicant is that it is a developer of the property bearing CTS No. B-908 to B-910 and B-911 (pt.) situated at Bandra, Mount Mary Hills, Kadeshwari Mandir Marg, H/W ward, Mumbai-400050 (hereinafter referred to as "Subject Property"). The Development Control

Regulation (DCR 1967) and the Development Plan for Greater Mumbai (1967 DP) were published in 1967 in pursuance of the Maharashtra Regional Town Planning (MRTP) Act, 1966. Under 1967 DP, the Subject Property was reserved for the purpose of a Garden. According to the applicant, this reservation was never acted upon by the relevant authorities and the Subject Property was never used as a Garden but it was encroached by the slum dwellers.

3. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 was enacted for the improvement and clearance of slum areas, ensuring redevelopment of the slum areas and protection of occupiers in the slum areas from eviction and distress warrants in the State of Maharashtra.

4. Further plea of the applicant is that since the Subject Property was encroached upon by the slum dwellers, therefore, in 1976 it was declared as a censused slum and the slum dwellers on the Subject Property had formed themselves into four slum societies, namely, (i) Bandra Jaffar Baba CHS Limited; (ii) Shiv Mandir CHS (proposed); (iii) Hill People CHS (proposed) and (iv) Durga Mata CHS (proposed) (hereinafter referred to as the "Slum Societies").

5. The Coastal Regulation Zone (CRZ) Notification, 1991 was published exercising powers under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, *inter-alia*, providing for measures to protect and conserve the coastline and marine ecosystem.

6. On 20.02.1991, the DCR 1967 and 1967 DP were replaced by the DCR 1991 and 1991 DP, wherein the Subject Property continued to be shown as Garden.

7. The applicant was appointed by the Slum Societies as the developer of the Subject Property for implementing the Slum Scheme on the Subject Property. The applicant submitted a proposal on 15.10.1998 to the Slum Rehabilitation Authority (SRA) for the development of the Subject Property. The proposal of the applicant was accepted by the SRA which issued its Letter of Intent (LOI) dated 23.11.1998 providing for an area of 4110.58 sqm, i.e., 33% out of the Subject Property was to be surrendered towards a non-buildable reservation of Garden. The SRA also issued the intimation of approval dated 29.12.1998 for the construction of a building to rehabilitate the slum dwellers on the Subject Property. The revised LOI dated 29.12.1998 contained the same provision relating to surrendered of 4110.58 sqm towards the non-buildable reservation of Garden. This 4110.58 sqm kept aside in the Subject Property for Garden reservation was to be handed over to Brihanmumbai Municipal Corporation (BMP) free of cost and free of encumbrances on or before completion of the development of the Subject Property and the balance area was to be used by the applicant for construction of the building for rehabilitation of slum dwellers and also for the free sale component, as per the approved Slum Scheme.

8. Further case of the applicant is that SRA issued a revised LOI dated 30.11.2004 regarding the Subject Property, whereunder Floor Space Index (FSI) of 2.289 was granted but *in-situ* FSI was restricted to 1.25. Under this revised LOI also the condition relating to keeping aside 4110.58 sqm for Garden was kept intact.

9. The Slum Scheme of the applicant under the EIA Notification 2006 was given clearance by the MoEF&CC on 02.03.2007. Since, the applicant wanted to utilize 2.5 FSI *in-situ* against a sanction of 1.25 FSI,

it made an application dated 06.02.2007 to the MCZMA. The applicant's proposal was considered by the MCZMA on 14.05.2009.

10. In its 52nd meeting on 14.05.2009, the MCZMA took the view that as per the approved condition of CZMP of Maharashtra, residential use of open space is not a permissible activity and that the proposed Slum Scheme of the applicant was planned on the land reserved for Garden and as such not allowed. The MCZMA observed that the Subject Property reserved for the Garden was no longer open space as it was occupied by some dwellers prior to 19.02.1991. The MCZMA accordingly referred the matter to MoEF&CC for its decision.

11. The proposal of the applicant was rejected by the MoEF&CC on 10.08.2009 on the grounds that the Subject Property was on the seaward side of the existing road and that the Subject Property was reserved for Garden under the 1991 DP and CRZ Notification 1991, any existing open space situated in CRZ-II Zones was categorized into CRZ-III, therefore, as per CZMP of Maharashtra, construction could not be permitted.

12. Against the decision dated 10.08.2009, the applicant had preferred an Appeal before the National Coastal Zone Management Authority (NCZMA).

13. Vide letter dated 18th January 2010 the Applicant had submitted HTL/LTL demarcation done by NIO to MOEF which the MOEF forwarded to MCZMA for examination and further action vide letter dated 16th February 2010.

14. In the meanwhile, on 06.01.2011, the CRZ Notification 1991 was superseded by CRZ Notification 2011, wherein under clause 8(V) it was provided that in coastal areas falling under CRZ-II, Slum Schemes will be

permitted to be developed with the Floor Space Index in accordance with the Town & Country Planning Regulations prevailing as on date of which the project was granted approval by the Competent Authority, provided such redevelopment is undertaken directly or through a joint venture or public-private partnership or other similar models, ensuring that the stake of the State Government or its parastatal entities is not less than 51%.

15. The BMC had issued the letter dated 04.07.2011 clarifying that the Subject Property was on the landward side of an existing road. The MCZMA had issued a stop work notice dated 02.09.2011 to the applicant in respect of the Subject Property. The NCZMA on its 23rd meeting held on 04.01.2012 rejected the applicant's plea that the Subject Property should not be categorized as CRZ-III since no Garden or open space existed on the Subject Property for more than 35 years. The NCZMA held that the applicant's submission amounted to reclassification of CRZ areas from CRZ-III to CRZ-II.

16. The applicant had filed Appeal No. 14/2012 before the NGT aggrieved with the decision of the MoEF&CC dated 10.08.2009 and 16.02.2010 and NCZMA order dated 04.01.2012. Separate appeals were filed before the applicant in respect of different Slum Schemes.

17. The plea of the applicant is that the NGT by order dated 17.10.2012 had allowed the Appeals by reaching to the conclusion that the Subject Property could not be treated as a Garden and it was a slum. The NGT directed the MoEF&CC to restore the applicant's proposal and take a decision in the light of the observation made in the order of the NGT.

18. Further plea of the applicant is that the MCZMA on 26.04.2013 in its 81st meeting based on the NGT's order decided to withdraw the stop work notice dated September 2011 and directed the SRA to ensure that the FSI of the Slum Scheme is in accordance with the DCR existing and in force on 19.02.1991.

19. The MCZMA issued letter dated 26.06.2013 to the applicant withdrawing the stop work notice in terms of the decision taken in the meeting dated 26.04.2013 and permitting the applicant to develop the Subject Property, as per the applicable DCR in force as on 19.02.1991, i.e., 1967 DCR.

20. Further case of the applicant is that between June 2013 and November 2016, the balance RCC work of the rehab building no. 2B as well as the finishing work of the said building was completed. The revised LOI dated 09.11.2016 was issued by SRA with respect to the Subject Property providing 4110.58 sqm area to be surrendered towards the unbuildable reservation of Garden.

21. The present grievance of the applicant started when the draft CZMP was published on 29.03.2017, wherein the entire Subject Property was shown to be reserved for Garden, whereas the issue was already settled by the NGT order. The applicant objected to it vide letter dated 24.04.2017.

22. The CRZ Notification 2019 was published on 18.01.2019. On 06.01.2020, the draft CZMP was published to give effect to CRZ Notification 2019, wherein the Subject Property was again shown as a Garden reserved for No Development Zone (NDZ). Applicant objected to it vide letter dated 05.02.2020.

23. Further plea of the applicant is that on 29.09.2021, the CZMP for Mumbai was approved and became applicable, wherein despite NGT's order the entire Subject Property was erroneously shaded in green showing as reserved for Garden.

24. In the meanwhile, SRA had issued a revised LOI dated 06.11.2020 in respect of the Subject Property considering 49-51 per cent private and State partnership under CRZ Notification 2011, which was applicable when the applicant had submitted the proposal. Further, the plea of the applicant is that since the applicant had accommodated 13 to 15 slum dwellers who were on the adjacent road, the area thereof was included in the Subject Property and accordingly the area of the Subject Property increased. Therefore, the revised LOI provided for 4681.90 sqm area to be surrendered towards non-buildable reservation for Garden. The applicant had also taken the necessary steps to obtain the NOC but, in the meantime, the CZMP with reference to CRZ Notification 2019 was published. Hence, that matter could not be taken forward.

25. The applicant had submitted the revised application dated 02.03.2022 for approval of its Slum Scheme pursuant to Regulation 5.2(ii) and 5.2 (iii) of CRZ Notification, 2019. It was forwarded to MCZMA by SRA vide letter dated 20.04.2022.

26. The plea of the applicant is that the MCZMA had kept the applicant's application along with another Slum Scheme and that the MCZMA in its 166th meeting held on 12.04.2023 and 13.04.2023 recommended the proposal in respect of another Slum Scheme from CRZ point of view after noting that the proposed construction of building in CRZ-II is permissible under Regulation 5.2(ii) and 5.2 (iii) of CRZ Notification 2019.

27. However, the applicant's proposal was considered by the MCZMA in the 167th meeting held on 18.05.2023, wherein MCZMA held that the applicant's Slum Scheme is situated in NDZ (CRZ III) of CRZ-II within Greater Mumbai by virtue of Garden reservation, as per approved CZMP 2019. The MCZMA, however, considering that the Slum Scheme was ongoing since 1998 referred the matter to MoEF&CC for guidance on the issue if the applicant's Slum Scheme could be allowed on land having Garden reservation. The applicant, thereafter sent communications dated 21.09.2023 to the Union of India and 17.10.2023 to MCZMA for rectification of the above error of wrongly treating the Slum Scheme of the applicant in NDZ by virtue of Garden reservation. Since no action was taken thereon, therefore, the present OA has been filed.

28. Affidavit on behalf of Respondents No. 2 and 4, the State of Maharashtra and MCZMA has been filed in this OA taking the stand that the project of SRA is situated in NDZ of CRZ-II within Greater Mumbai by virtue of Garden reservation as per approved CZMP 2019 and in this regard reliance on para 10.3 of CRZ Notification 2019 has been placed. A plea has been taken that land is reserved as a Garden in the development plan of Mumbai and as per para 10.3, CRZ Notification 2019 only civic amenities are allowed in the Garden reservation (NDZ) area. Further stand of respondents no. 2 and 4 is that considering the scheme to be ongoing scheme the matter has been referred by the MCZMA to MoEF&CC, Delhi for guidance on whether the subject ongoing SRA Scheme could be allowed on land having reservation of Garden and for taking necessary decision at NCZMA level.

29. Respondent no. 1, Union of India, MoEF&CC has filed the reply taking the stand that as per CRZ Notification 2011/2019, the State

Coastal Zone Management Authority (SCZMA) is primarily responsible for the enforcement and implementation of the provisions of CRZ Notification. Referring to the Notification dated 30.09.2022 empowering the SCZMA to take action under Sections 5, 10 and 19 of the Environment (Protection) Act, 1986 a stand has been taken by the MoEF&CC that CRZ Regulation are to be implemented and monitored (including violation thereof) by the concerned SCZMA in accordance with the approved CZMP of the respective States.

30. Submission of the counsel for the applicant is that NGT by the earlier order has already concluded the issue that the Subject Property is not a Garden but is inhabited by the slum dwellers and by the subsequent decision MCZMA by withdrawing the stop work notice and permitting construction in terms of SRA scheme accepted the NGT order. He further submits that the slum dwellers had vacated the slum before 2011, the applicant is paying ₹90 lakhs as transit rent and the slum dwellers are also waiting for their houses and the issue is concluded by the earlier order of the NGT, therefore, the MCZMA is not justified in delaying the matter on the plea of seeking clarification from MoEF&CC and MCZMA. He further submits that there is no plea raised by the respondents about violation of 1991 regulation and the applicant is leaving the green area in excess and the Environment Clearance (EC) has already been granted, therefore, now the MCZMA should take a decision on the application of the applicant within a time bound period keeping in view the earlier order of the NGT. He further submitted that the project is socially important and that under the CRZ Notification 2019, action taken under CRZ Notification 2011 has been saved.

31. That apart, counsel for the applicant has relied upon the judgment of the Division Bench of the Bombay High Court in the matter of **Sea**

Green Co-Operative Housing Society Ltd. v. Union of India and Ors.;

reported in (2015) 1 Mh.L.J., wherein the issue was exclusion of the staircase, lift and lift lobby from FSI calculation in reference to DCR 1967 or CRZ Notification dated 06.01.2011, the Division Bench held as under:-

“xxx-----xxx-----xxx-----xxx

20. *Learned counsel for MCZMA, however, submitted that in case of Suresh Estates Pvt. Ltd. and others vs. Municipal Corporation of Greater Mumbai and others, 2008(2) ALL MR 768, the Apex Court has held that existing Regulations on the date of coming into force of the CRZ Notification dated 19 February, 1991 were DC Regulations, 1967. Learned Counsel then submitted that under DC Regulations, 1967, the areas of staircase, lift and lift lobby were not required to be excluded from the calculations of FSI but only the room above the staircase and room above lift were excluded from FSI calculation. Strong reliance is placed on the observations made in the said decision to the effect that CRZ Notification dated 19 February, 1991 froze FSI as per DC Regulations of 1967.*

21. *In our view, it would have been necessary to consider the above submission in depth if the CRZ Notification of 6 January, 2011 had not come in the picture. Once CRZ Notification of 6 January, 2011 has come into force, it is not necessary to examine the above controversy. But in any view of the matter, having regard to the fact that State Government had always proceeded on the basis that DC Regulations of 1991 were applicable and not DC Regulations of 1967 (which contention the Apex Court did not accept in November, 2007), it cannot be held that the action of the Petitioner society in submitting the plans to Municipal Corporation and the action of Municipal Corporation in sanctioning those building plans wherein staircase, lift and lift lobby areas were excluded from FSI calculations, was mala fide.”*

32. Learned counsel for respondents no. 2 and 4 has submitted that the NGT in the earlier order had issued a limited direction and that the MCZMA has considered the issue in its meeting held on 18.05.2023 and has referred the matter to MoEF&CC for guidance and necessary decision at NCZMA level which is awaited.

33. Learned Counsel for Respondent no. 1, MoEF&CC has submitted that the respondent no. 4, MCZMA *vide* communication dated 10.08.2023 has only referred the matter to respondent no. 1 but has not made any recommendation, whereas in terms of clause 5.2(iii) of the CRZ

Notification 2019, the MCZMA was required to forward the proposal to the NCZMA with its views which has not been done. Further submission has been made that respondent no. 4 should take a decision within a time-bound period and if the proposal is not approved, respondent no. 4 should send it to respondent no. 1.

34. We have heard learned counsel for the parties and perused the records.

35. The subject matter of present controversy falls within the territorial jurisdiction of the NGT, Western Zone Bench (WZB) at Pune but this OA is being decided by the principal bench in view of the order of Hon'ble Supreme Court dated 17.05.2024 passed in IA No. 84014-84015/2024 in the pending Civil Appeal No. 7807/2022 in the matter of ***National Green Tribunal & Anr. v. Goa Foundation & Ors.***

36. The undisputed fact is that though under DCR 1961 and 1967 DP the Subject Property was reserved for the purpose of Garden but it was declared as a censused slum in 1976 owing to the encroachment by slum dwellers. It is also undisputed that the slum dwellers had formed themselves into four slum societies, namely, (i) Bandra Jaffar Baba CHS Limited; (ii) Shiv Mandir CHS (proposed); (iii) Hill People CHS (proposed) and (iv) Durga Mata CHS (proposed). It is also not disputed that the Subject Property is situated on the landward side of the road. It has also not been disputed that earlier the MCZMA in its 52nd meeting held on 14.05.2009 had referred the matter to the MoEF&CC for its decision by observing that use of open space was not permissible activity and that the proposed Slum Scheme of the applicant was planned on land reserved for Garden and as such not allowed by the MoEF&CC. The MoEF&CC on 10.08.2009 had rejected the proposal. The applicant had

filed an appeal against this order before the NCZMA which was rejected on 04.01.2012, therefore, the applicant had filed appeal no. 14/2012 against the order of MoEF&CC dated 10.08.2009 and 16.02.2010 and NCZMA order dated 04.01.2012. The NGT by order dated 17.10.2012 had allowed the appeal by recording the findings in favour of the applicant and on that basis, the MCZMA on 26.04.2013 had taken a decision in favour of the applicant and stop work notice was withdrawn but in the CRZ Notification 2019 and the CZMP for Maharashtra prepared on that basis the Subject Property is again shown as green as Garden, The CRZ Notifications have been issued under Section 3(i) and 3(ii)(v) of the Environment (Protection) Act, 1986 and rule 5(3)(d) of the Environment (Protection) Rules, 1986 declaring coastal stretches as CRZ and regulating the activities in the CRZ.

37. Under the CRZ Notification 1991 for regulating development activities the coastal stretches of the land-ward side were classified into four categories, namely, CRZ-I, II, III and IV and the norms were prescribed for regulation of activities in these zones.

38. The CRZ-I include the areas which were ecologically sensitive and important and the area between Low Tide Line (LTL) and the High Tide Line (HTL). The CRZ-II includes the areas which were already developed upto or close to the shore line. The CRZ-III covered the areas relatively undisturbed and those which do not belong to category I or II. CRZ-IV covered coastal stretches in Andaman & Nicobar and Lakshadweep as per CRZ 1991.

39. The record reflects that in the CZMP of Maharashtra approved by the MoEF&CC, it is provided that parks, playgrounds, regional parks, general green zones and other non-buildable area which are in the

category CRZ-II will be treated as CRZ-III. Thus, by fiction, non-buildable areas such as parks, playgrounds, general areas etc. as mentioned in CZMP were shifted from CRZ-II to CRZ-III. Therefore, at the earlier stage, the MoEF&CC had not approved the proposal in view of the CRZ Notification 1991 on the ground that these subject plots were reserved for Garden and reclassified from category II to category III. The decisions of the MoEF&CC dated 10.08.2009 and 16.02.2010 and NCZMA dated 04.01.2012 in this regard became subject matter of challenge in the Appeals No. 13, 14, 19 and 20 of 2012 before the NGT, PB. While deciding these appeals the NGT had considered the issue if the Subject Property could be treated to as reserved for Garden when it was encroached upon and inhabited by the slum dwellers. The NGT on examination of this issue while allowing the above appeals by order dated 17.10.2012 recorded as under:-

“xxx-----xxx-----xxx-----xxx

2. *Appellant No. 1 M/s Hubtown Ltd. was previously styled as “Akruti City Ltd.” The Appellant No. 1 is developer and deals in construction activities. The Appellant No. 1, admittedly, undertook construction of buildings for Maya Nagar Cooperative Housing Society Ltd. and Durgamata Cooperative Housing Society Ltd. There is no dispute about the fact that both the housing societies are formed by slum dwellers. The rehabilitation project of slum dwellers was to be implemented by the Housing Societies formed by the slum dwellers. There is no dispute about the fact that one of such project is contemplated to be executed on a plot at Worli (Survey No. 32 Pt) and 38(Pt) admeasuring 5665 sq.meters and another at Bandra (CTS No. B-908, B-909, B-910 & B-911 (part) admeasuring 15,295 sq.mtrs. **There is no dispute about the fact that certain slum dwellers having their hutments on the subject plots were censused in/or about 1976. The State Government issued photo passes to them. It appears that the plots in question were already occupied by the slum dwellers prior to 19.2.1991.***
3. *On 19.2.1991 a Notification was issued by the Ministry of Environment & Forests (MoEF). Under the said notification, classification was made in respect of Coastal Area for the purpose of Development Regulations. By the said classification, Category-II CRZ (III) was declared to consist of the area which had already been developed up to limit of the*

shore land. The expression “developed area” was purported to mean the area within the Municipal Limits or in other designated urban area which was already substantially build up and which had been provided with drainage and project roads and other infrastructural facilities, such as water supply and Sewerage. Category-III (CRZ-III) was declared to consist of the areas within the Municipal Limits or other designated area, which were not substantially build up, and had been neglected. The development or construction activities in such areas was regulated by virtue of the said notification. On 27.9.1996 Coastal Zone Management Plan (CZMP) for the State of Maharashtra was approved by the MoEF as per the general conditions. In the order of approval, it has been mentioned that the Parks, Playgrounds, Regional Parks, General Green zones and other non-buildable areas, which are in the category “CRZ-II”, shall be treated as “CRZ-III.” Thus, by fiction the non-buildable areas as well as the parks ground general areas etc. were shifted from Category-II (CRZ-II) areas to category-III (CRZ-III) areas.

4. Slum Rehabilitation Authority (“SRA”) issued Letter Of Intent (LOI) to the appellants for grant of approval to the proposed redevelopment of the subject plots. The slum dwellers were permitted to be rehabilitated in the new buildings proposed to be constructed on the plots in question. On 4.1.2002, Maharashtra Coastal Zone Management (MCZMA) was requested to grant clearance for construction of the buildings over the subject plots for the rehabilitation of slum dwellers. Slum Development Rehabilitation Authority (SRA) issued amended Letter Of Intent (LOI) on 30th October, 2004. It appears that the appellants submitted an application to the MoEF for grant of clearance to their projects under the Environment Impact Assessment Notification. The appellant submitted proposals to MCZMA for no objection certificate. The MCZMA recommend for approval to proposals of the appellants on 14.5.2009. The MCZMA forwarded the recommendations to the Director, Coastal Zone Regulation, MoEF along with the proposals submitted by the appellants. **The MoEF did not give approval to the proposals in view of the CRZ Notification of 1991, on the ground that these subject plots were reserved for “Garden” and therefore reclassification of the plots from Category-II (CRZ-II) to Category CRZ -III could not be approved.** The appellants preferred an appeal to NCZMA (National Coastal Zone Management Authority). The appeals were not decided by the NCZMA and therefore the appellants filed two writ petitions in the High Court of Bombay, bearing Writ Petition No. 930 of 2011 and Writ Petition No. 931 of 2011. The High Court of Bombay disposed of both the Writ Petitions on 17.8.2011, directing the NCZMA to decide representation of the appellants though the appeals were not maintainable under the law. The appellants were granted leave to make supplementary representations and additional submissions before the NCZMA. They accordingly filed fresh representations to the NCZMA. The NCZMA eventually declined to accord permission for both the projects. The said orders of the NCZMA are subject matter of challenge in Appeal No. 13/2012 and Appeal No.

14/2012 which were taken in its 23rd meeting of 04.01.2012 on the above subject, which was Item No. 4 on agenda of the meeting of the NCZMA.

5. **The NCZMA held that although the subject plots were being used by the slum dwellers even prior to 1976, due to reservation of the plots as per the development plan under CRZ Notification, 1991, because those plots were reserved for "Garden" and therefore the request of the appellants for reclassification of CRZ areas from CRZ-III to CRZ-II cannot be considered** Still, however, the NCZMA observed that since scheme is for slum improvement, the MCZMA to consider such issues in the CZMP to be prepared under CRZ Notification, 2011 to protect the socially important project.

In other words, the NCZMA asked the MCZMA to place the proposals in the subsequent plan of CZMP as would be required under the CRZ Notification of 2011. **It clearly appears that the NCZMA came to the conclusion that it was necessary to prevent the hurdles for such "socially important projects".**

6. Feeling aggrieved by the decision taken by the NCZMA in its 23rd meeting of 04.01.2012 declining to approve the projects as stated above, the two (2) appeals (Appeal No. 13/2012 and 14/2012) have been preferred by the appellants.

The other two appeals (Appeal No. 19/2012 and Appeal No. 20/2012) are between the same parties and the issues involved are also the similar. In those two appeals the appellants have challenged letters dated 31.8.2009 and dated 16.2.2010 issued by the MoEF whereby the projects were not approved. The MoEF asked the NCZMA to refrain itself from making references of such cases which were not in accordance with CRZ Notification, 1991."

40. The above facts recorded in the order of the NGT in the earlier round of litigation have not been disputed by counsel for the parties in the present OA.

41. In the earlier round of litigation after considering the material, the NGT in the order dated 17.10.2012 had reached to the following conclusions:-

“xxx-----xxx-----xxx-----xxx

13. **Perusal of the impugned orders show that proposals of the projects were rejected only on a ground that site in question was shown as Garden in the development plan**

and was governed by CRZ Notification, 1991. It appears that the MoEF declined to consider the proposals on the ground that it would mean to allow reclassification of the subject plots from CRZ Category III to CRZ Category II. It is stated in the impugned orders that the remarks of the Urban Development Department, Government of Maharashtra indicated that the parks and play grounds and other non-buildable areas falling within CRZ-II Category have been categorised as CRZ-III. That appears to be main reason assigned by the MoEF in the impugned decisions.

14. **A close scrutiny of the record shows that there was no existence of Garden or park on the subject plots since much prior to 1991. It is an admitted fact that the area is covered by hutments. It is a fact that a large group of hutment dwellers falls under the census carried out by the Government agency in or about 1976. In other words, the subject plots were treated as Gardens/parks only because of the Coastal Regulations Zone Notification, 1991.**

15. **The question that needs to be addressed is whether the plots already covered by the slums could be treated as reserved Gardens/parks. Such a reservation is assumed by giving “deeming effect” on account of issuance of the CRZ Notification, 1991. Needless to say, what did not exist, in reality, is assumed to be in existence by virtue of the CRZ Notification, 1991 with retrospective effect. In our opinion, legal fiction may give deeming effect to the proposition or thing which does not exist as on the date of regulation or Law. However, no deeming effect can be given to assume non existence of thing to be an existing thing with retrospective effect. Such an interpretation may create anomalous position. For example, where a building is constructed and stands and the same was constructed by obtaining necessary permission as per the Law, which was in force at the time of such construction, by subsequent executive Instructions or Regulations, the existence of such a building cannot be made to “disappear” by legal fiction. We mean to say that subsequent executive Instructions or Regulations cannot be interpreted so as to make the same unworkable and impracticable. There is no magic wand under the CRZ Notification, 1991 to make disappear such slums which already existed since long before issuance of the CRZ Notification, 1991.**

16. This takes us to subsequent Notification dated 3.6.1992 issued by the Urban Development Department, State of Maharashtra, under Section 31(1) of the MRTP Act, the said Notification recognised the fact that the slums were in existence in the areas which were not designated as residential areas. This subsequent notification of the Urban Development Department dated 3.6.1992 appears to have been ignored by the NCZMA. The NCZMA did not consider whether both the subject plots are fully seaward or partly seaward or totally landward. In case, a part of the proposed

project falls within no-go zone, then the same has to be identified and segregated for the purpose of consideration. In our opinion, the NCZMA (MoEF) appears to have given no much tangible reasons in support of the impugned decisions. The communications served by the MoEF which are challenged in the present appeals are therefore passed by rendering non-speaking orders. Thus, both the impugned decisions are contrary to the principles of natural justice. It is well -settled that non-speaking order is one of the category which violates the principles of natural justice.

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18. *Considering the legal, and factual position, we are of the opinion that the NCZMA and MoEF ought to have properly exercised the discretion by harmonious interpretation of CRZ Notification, 1991 and subsequent Notification, 1992 as well as the purpose of classification under the CRZ Notification, 1991. In view of the discussion made above, we are of the opinion that the impugned decisions are required to be interfered with.*

19. *For the reasons discussed herein above, we partly allow both the appeals (Appeal Nos. 13 and 14 of 2012) and direct the MoEF to restore the earlier representation of the appellants and to take a fresh decision in the light of observations made above. It is made clear that we have not given any finding on merits of the matter and it will be within discretion of the competent authority to take any decision which will be backed by reasons.”*

42. Thus, in the above order the NGT had in substance found that by deeming fiction respondent could not bring into presence the Garden when, in fact, there were hutments on the Subject Property and it was being developed by the applicants since 1976. Meaning thereby the Tribunal held that since the slums already existed on the Subject Property, therefore, by the CRZ Notification 1991 the slums could not be wiped off and the existence of the Garden could not be shown there. The above order of the NGT has not been challenged and it has not been reversed, modified or set aside by any higher forum or court and has attained finality.

43. The above order of the NGT was duly accepted and acted upon and the MCZMA in its 81st meeting held on 26.04.2023 had considered the case of the applicant and decided that: -

- “1. *Stop work Notice issued to the SRA scheme dated Sept, 2011 by the MCZMA to be withdrawn.*
2. *The Slum Rehabilitation Authority (concern planning authority) approved the said SR scheme under CRZ Notification, 1991 prior to 4.1.2002. The SRA should ensure that the FSI of the said scheme is in accordance with the DCR existing and inforce as on 19.2.1991 i.e. DCR 1967.”*

44. Thus, the MCZMA in the above meeting had accepted the order of the NGT dated 17.10.2012 and finally concluded that SRA was approved by the competent authority after considering the provisions of CRZ notification 2019, the scheme was situated on the landward side of the existing road, the site fell under CRZ II area, Condition No. xvi) of the MoEF letter No. J-17011/8/95-1A-111 dated 27.9.1996 was not applicable in the instance case, there was no existence of Garden or parks on the subject plots since much prior to 1991 and there was existence of slum on site and that there was no violation in the case.

45. The MCZMA subsequently had sent the communication dated 26.06.2023 to the applicant withdrawing the stop work notice dated September, 2011. Thus, undisputedly the judgment of the Tribunal dated 07.10.2012 passed in Appeals No. 13, 14, 19 and 20 of 2012 was acted upon and the controversy was set at rest.

46. The stand of the applicant that after the order of the NGT dated 17.10.2012 and decision of the MCZMA dated 26.04.2023 much work has been accomplished under the Slum Scheme, has not been controverted by the respondents. The MCZMA in its meeting held on 18.05.2023 noted that the work of one building stood completed and the

occupation certificate was received. It has also been pointed out that further work in four other buildings is at an advanced stage and that the slum dwellers have vacated the subject land in 2011 and the applicant is paying transit rent of ₹90 lakhs and the slum dwellers are waiting for their houses. In such circumstances, the respondents were not expected to drag the matter raising the same issue again and again.

47. The respondents are also prevented from changing their stand in respect of the issue settled under the CRZ Notification 1991, in view of the saving clause contained in the CRZ Notification 2019.

48. Despite the fact that the land under consideration cannot be treated to be Garden due to slum inhabitation being concluded by the order of the NGT dated 17.10.2012 in Appeal No. 14/2012 and also the decision of the MCZMA dated 26.04.2023, in the subsequent draft CZMP published on 29.03.2017 and 06.01.2020 and the CZMP approved on 29.09.2021, the entire subject property was erroneously shown as reserved for Garden. The respondents are not justified in showing the Subject Property as Green in the CZMP ignoring the earlier order of the NGT and the decision taken by the MCZMA in its 81st meeting held on 26.04.2023. The proposal forwarded by the SRA to MCZMA on 20.04.2022 in respect of revised LOI in terms of clause 5.2 of CZMP 2019 was required to be considered by the MCZMA, keeping in view the above finally concluded position but the MCZMA instead of taking any decision on the proposal has merely referred the matter to MoEF&CC, New Delhi for guidance in its 167th meeting held on 18.05.2023. The MoEF&CC has rightly taken the stand in this OA that in terms of the CRZ Notification 2011/2019, the SCZMA is primarily responsible for enforcement and implementation of provisions of CRZ Notification. Hence, the decision is required to be taken by the MCZMA. Learned counsel for MoEF&CC

during the course of the arguments had stated that the observations made in the order of the NGT dated 17.10.2012 in Appeal No. 14/2012 are correct and as per the MCZMA classification of the subject land dated 26.04.2013 which is based on CRZ Notification 1991. The subsequent CRZ Notification 2011/2019 will have no bearing on the classification agreed upon by the MCZMA under CRZ Notification 1991. The MCZMA cannot repeatedly raise the same issue which is already concluded. The proposal of the applicant needs consideration under clause 5.2 (i), (ii) and (iii) of the CRZ Notification 2019.

49. When the issue was decided between the same parties in respect of the same property *qua* the same Slum Scheme by the NGT on 17.10.2012 which has attained finality, ignoring the said order of the Tribunal, a contrary stand cannot be taken by the respondents.

50. Hence, the OA is disposed of directing the respondent no. 4, MCZMA to take steps on the proposal of the applicant within two months in accordance with the order of the Tribunal dated 17.10.2012 passed in Appeal No. 14/2012 and the observations made above and ignoring the contrary reflection about the Subject Property in CZMP 2019.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

October 24, 2024
OA 327/2024
avt