BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 879 OF 2022

IN THE MATTER OF:

GAURI MAULEKHI ...APPLICANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

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SHORT REPLY ON BEHALF OF THE ORIGINAL APPLICANT TO THE ADDITIONAL AFFIDAVIT DATED 26.11.2024 FILED BY RESPONDENT NO. 4.

1. The Original Applicant has approached this Hon'ble Tribunal vide the above-captioned Original Application seeking the inclusion of slaughterhouses and meat, poultry and fish processing units in India, within the ambit of the Environmental Impact Assessment Notification, 2006 [EIA Notification] and subjecting them to the process of granting an Environmental Clearance [EC] before starting operations, as they are highly polluting projects/ activities and have been classified as a red category industry. The contents of the Original Application and subsequent pleadings by the Applicant may be read as part of this Reply and are not being repeated herein for the sake of brevity.

2. The contents of the Additional Affidavit filed by the Respondent No. 4 i.e. All India Buffalo & Sheep Meat Exporters Association, to the extent they are inconsistent with the submissions hereinafter made in this Reply, are incorrect and are denied. The pleadings as stated in the Original Application, Additional Affidavit on behalf of the Applicant dated 02.05.2023, Reply by the Applicant dated 30.03.2024, Rejoinder by the Applicant dated 06.11.2024, in which majority of the

submissions by Respondent No. 4 have been addressed, are reiterated and reaffirmed and are not repeated herein for the sake of brevity.

3. That the Applicant seeks to place on record the following additional submissions in response to the Additional Affidavit dated 26.11.2024 by Respondent No. 4. The Applicant further reserves the right to file a detailed para-wise reply at a later stage, if the need arises.

4. At the outset, it is stated that on 07.11.2024 when the matter was taken up by this Hon'ble Tribunal for arguments, one of the questions posed by this Hon'ble Tribunal was concerning presence of experts in the field of environment in bodies constituted under other existing laws. It is submitted that the Respondent No. 4 has failed to showcase presence of such experts in the field of environment in other bodies such as Food Authority, Agricultural and Processed Food Products Export Development Authority, Animal Welfare Board, Animal Husbandry Department etc. It is submitted that while these bodies may consists of experts in their respective fields, they do not comprise of experts in the field of environment of the qualifications of experts present in the Expert Appraisal Committee. **[Ref. Pg. 1420-1426]**

5. That the Respondent No. 4 has stated in the Additional Affidavit that public hearing would not be applicable to slaughterhouses because they are set up away from human settlements/habitations and residential areas [Pg. 1430]. On the contrary, it is submitted that such large slaughterhouses, due to the dense population in the cities, often end up in/near residential areas/ human settlements/habitations. Deonar Abattoir, example of which has been cited by the Respondent No. 4, is also admittedly located in the middle of the residential area in Mumbai. The need for public hearing is further highlighted by a study titled *Environmental and Health Impacts from Slaughter Houses Located on the City Outskirts: A Case Study* relied upon by the Applicant [Pg.

240], which assesses the impact of slaughterhouses in Aligarh on the environment and health of residents living in its vicinity. The study reveals:

- *Slaughter houses were located in the midst of residential areas whether they were inside the city or in the outskirts. The local authorities and municipality should properly chalk out plans for its proper place i.e. outside the residential areas so they do not degrade the environment and harm the health of the residents.*
- *Conditions were worst for: 1) residents living in the immediate vicinity of the slaughter house and 2) for those living in the vicinity of slaughter houses along Mathura bypass road.*

Public hearing is therefore quintessential to ensure that slaughterhouses are established away from residential areas/settlements/human habitation, water bodies, airports, schools etc. It is further necessary to ensure availability of road/rail transport and of labour and to ensure that there is a forum for people living in the vicinity to raise environmental, public health and safety concerns arising out of establishment of slaughterhouses.

Purpose of Environmental Impact Assessment [EIA] is to comprehensively assess the concerned project qua its environmental, social and economic impact.

6. As per Paragraph 6, EIA Notification, all applications seeking prior environment clearance must be made in **Form I, Appendix I, EIA Notification** [Form I]**.** Form I provides a sui generis and comprehensive checklist on which detailed information is to be provided by the Project proponent. True copy of Form I, Appendix I to the EIA Notification is annexed as **Annexure No. 1**.

7. It is submitted that EIA aims to assess the concerned project comprehensively vis-à-vis the following aspects on which information is sought from the Project Proponent in terms of **Form I:-**
    a. Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).
    b. Use of natural resources for construction or operation of the project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply).
    c. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.
    d. Production of solid wastes during construction, operation or decommissioning.
    e. Release of pollutants or any hazardous, toxic or noxious substances to air.
    f. Generation of noise and vibration, and emissions of light and heat.
    g. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.
    h. Risk of accidents during construction or operation of the project, which could affect human health or the environment.
    i. Environment sensitivity which includes, amongst other things, the furnishing of the following details: areas protected under international and national legislation; ecologically sensitive areas; and areas used by protected, important or sensitive species of flora or fauna.

8. The focus of EIA is broad and encompassing of nuanced aspects such as *provisions for temporary sites used for housing of construction*

workers, facilities for long term housing of operational workers, new road/rail/sea traffic during construction or operation, changes in water bodies or the land surface affecting drainage or run off, loss of native species or genetic diversity, expected source and competing users of water, use of hazardous material, changing living conditions of affected people, vulnerable groups affected by the project, generation of noise/light/heat from various sources, risk of accidents amongst many other aspects as listed in Form I. Such all-encompassing assessment is not carried out/mandated under any other law cited by Respondent No. 4.

9. It is reiterated that despite the existence of several legal safeguards to regulate a majority of projects/ industries/ activities, the Respondent No. 1 had itself notified the EIA Notification with the objective to foresee the pollution potential and impose certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities **based on their potential environmental impacts at an early stage of planning and design,** in accordance with the objective of the *National Environment Policy [NEP]* as approved by the Union Cabinet on 18th May, 2006. The objective and purpose of EIA has been elaborated upon in the EIA Notification, NEP and various pronouncements of the Hon'ble Supreme Court is tabulated as follows:-

S. No.	**Particulars**	**Object of Environment Impact Assessment**
1.	EIA Notification 2006 dated 14.09.2006.	"*Whereas, a draft notification under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities* ***based on their potential environmental impacts*** *as indicated in the Schedule to the notification, being undertaken in any part of*

		India[1], ***unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18th May, 2006....”***
2.	Annual Report 2006-2007 issued by the Respondent No.1/MOEFCC **[Foreword to the EIA notification at Pg. 524; Annual Report 2006-2007 issued by the Respondent No.1 annexed with the Applicant's Additional Affidavit dated 02.05.2023 at Pg.537; Objectives/Principles of National Environment Policy at Pg. 526-529].**	“*The objective of EIA is to foresee and* ***address the potential environmental problems at an early stage of planning and design.*** *Environmental clearances based on EIA study was introduced as an administrative measure in 1978-79 and was made mandatory for 32 categories of developmental projects through EIA Notification,1994 under the Environment (Protection) Act, 1986. Over the period, certain bottle necks, limitations/ constraints were observed in smooth implementation of the Notification. Ministry had therefore undertaken a comprehensive review of the existing Environmental Clearance Process for further enhancing the quality of the appraisal and to reduce time in the decision-making within the prescribed statutory period. After holding extensive consultations with stakeholders over a period of one year, a draft notification on the revised environmental clearance process was notified on September 15, 2005 inviting objections and suggestions from the public within sixty days. After due consideration of all the suggestions received, the Ministry notified the final Notification on September 14, 2006 superseding the EIA Notification 1994.”* The EIA Notification also mentions that the grant of EC has to be in terms of the objectives and principles of the *National Environment Policy* as approved by the Union Cabinet on 18th May, 2006, primary of which objectives are:- o ***Intra-generational Equity*** o ***Inter-generational Equity***

		○ ***Integration of Environmental Concerns in Economic and Social Development*** ○ ***Efficiency in Environmental Resource Use*** ○ ***Environmental Governance*** ○ ***Enhancement of Resources for Environmental Conservation*** The principles of *National Environment Policy* are:- ○ ***Human Beings are at the Centre of Sustainable Development Concerns*** ○ ***Environmental Protection is an Integral part of the Development Process*** ○ ***The Precautionary Approach*** ○ ***Economic Efficiency*** ○ ***Polluter Pays.***
3.	*Hanuman Laxman Aroskar v. Union of India (2019) 15 SCC 401*	*"The objective of the EIA process is to ensure that the environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available."* … **[Para 34]** *"The salient objective which underlies the 2006 Notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernisation of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the authority concerned. EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to the notification…"* **[Para 42]** *"…The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment:*

		there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development." **[Para 56]** True copy of *Hanuman Laxman Aroskar v. Union of India (2019) 15 SCC 401* is annexed as **Annexure No. 2.**
4.	*Tata Housing Development Company Ltd. V. Aalok Jagga & Ors. (2020) 15 SCC 784.*	*In M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213, the Court evolved polluter pays principle and observed:* *"8. Apart from the above statutes and the rules made thereunder, Article 48A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.*

		9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries etc., are all judgments which seek to protect the environment. **[Para 34]** True copy of *Tata Housing Development Company Ltd. V. Aalok Jagga & Ors. (2020) 15 SCC 784* is annexed as **Annexure No. 3.**
5.	*Municipal Corporation of Greater Mumbai v. Ankita Sinha & Others, (2022) 13 SCC 401.*	*82. By expanding the scope of Articles 21, 32, 48-A, 51-A(g), this Court has guaranteed the right to a pollution-free environment for a holistic existence. Most crucially, the expansion of right to life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In Subhash Kumar v. State of Bihar, this Court explicitly held the following: (SCC p. 604, para 7)* **[Para 82]**

		"7.... Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life." *83. ..."The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment.... The right was recognised as part of the right to life in 1991....The Court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."* **[Para 83]** *87. ... "49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the*

		concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts." **[Para 87]** True copy of *Municipal Corporation of Greater Mumbai v. Ankita Sinha & Others, (2022) 13 SCC 401* is annexed as **Annexure No. 4.**

10. That the Pollution Index Score of Slaughterhouses and meat processing units is **87.5 (Red Category)**. It is pointed out that several industries with lower pollution index (PI) than slaughterhouses are also covered under the ambit of EIA Notification. Examples of such industries are mining of minerals (75), coal washeries (50), asbestos milling (75), sugar industry (65) etc. In fact, coal washeries (50) and induction/arc furnaces (50) are orange category industries covered under the EIA Notification. True copy of a chart showcasing PI Scores and Categorisation of some major industries covered under the EIA Notification is annexed as **Annexure No. 5.**

11. It is reiterated that commercial difficulties cannot be a ground to seek exemption from the rigors of environmental laws which are framed to protect and advance Right to Life under Article 21. [Reference is drawn to- *Tapas Guha & Ors. v. Union of India & Ors. Civil Appeal No. 4603-4604 of 2024, SC*]. **[at Pg. 1372, Rejoinder by the Applicant to Counter Affidavit filed by Respondent No. 4.** True copy of *Tapas Guha & Ors. v. Union of India & Ors. Civil Appeal No. 4603-4604 of 2024* is annexed as **Annexure No. 6.**

PRAYER

In light of the aforesaid Submissions, humbly prayed that this Hon'ble Tribunal may be pleased to direct that the following recommendations of the Expert Committee headed by Dr. S. R. Wate be forthwith implemented:-

"A. All slaughterhouses need to obtain prior environmental clearance under the EIA Notification, 2006. As per 'Prevention of Cruelty to Animals (Slaughter House) Rules, 2001'; a place is considered to be a slaughterhouse wherein 10 or more animals are slaughtered every day and is duly licensed or recognized under a Central, State or Provincial Act or any rules or regulations made thereunder.

B. The stand alone slaughterhouses, wherein 10-50 large animals per day or equivalent 60-300 small animals per day or combination thereof are slaughtered, will be appraised as Category B Projects for prior environmental clearance. The stand alone Meat Handling & Processing units having production of 1-5 tonnes of meat per day shall be appraised as category B projects.

C. The stand alone slaughterhouses, wherein >50 large animals are slaughtered per day or equivalent >300 small animal per day or a combination thereof are slaughtered, will be appraised as category A projects for prior environmental clearance. In the case of stand-alone Meat Handling & Processing units having production of >5 tonnes of meat per day shall be appraised as category A projects.

D. In case of integrated Slaughterhouse and Meat Handling & Processing units, project/ activity shall be appraised as per slaughtering activity.

E. Poultry meat and/ or Fish processing/ freezing units or combination thereof (stand alone slaughterhouses, if applicable or integrated with meat Handling & Processing units or combination thereof) with a

production capacity of 1- 5 tonnes of meat per day shall be appraised as category B project.

F. Poultry meat and/ or Fish processing/ freezing units or combination thereof (stand alone slaughterhouses, if applicable or integrated with meat Handling & Processing units or combination thereof) with a production capacity of >5 tonnes of meat per day shall be appraised as category A project

G. All Category B project will be appraised as Category BI projects."

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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ORIGINAL JURISDICTION

ORIGINAL APPLICATION (O.A.) No. 879 OF 2022

IN THE MATTER OF:

GAURI MAULEKHI ...APPLICANT

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I, Ms. Gauri Maulekhi, wife of Shri Dushyant Maulekhi, aged about 47 years, office at Plot No. 26, D.D.A, Gate No. 3, Gulmohar Enclave, New Delhi-110049, do hereby stated on solemn affirmation as under: -

1. That I am the Applicant in the above-captioned matter, and I am fully conversant with the facts of the case and am competent to swear to this affidavit.
2. I say that the reply has been drafted by my counsel on my instructions. I have read and understood the same and say that the facts stated therein are true and correct to my knowledge and nothing material has been concealed therefrom.
3. That no part of this affidavit is false and nothing material has been concealed therefrom.
4. That the reply shall be read as part and parcel and the contents of the same are not repeated herein for the sake of brevity.

NOTARY R.V. SINGH Advocate Regn.No.2282 Commission Expire on 24-10-2027 Area-Delhi GOVT. OF INDIA

DEPONENT

VERIFICATION:

Verified at New Delhi on this 24 JAN 2025 day of January 2025 and the contents of my above affidavit are true to the best of my knowledge and belief and also on the basis of record, information received and believed to be correct. No part of it is false, and nothing material has been concealed therefrom.

DEPONENT

I identified the deponent/executant who has signed in my presence.
01/6843/19

NOTARY
R.V. SINGH
Advocate
Regn. No. 2282
Commission
Expire on
24-10-2027
Area-Delhi
GOVT. OF INDIA

Solemnly affirmed before me, read over & explained to the deponent

Notary Public. DELHI

24 JAN 2025

APPENDIX I

(See paragraph – 6)

FORM 1

(I) Basic Information

Name of the Project:

Location / site alternatives under consideration:

Size of the Project: *

Expected cost of the project:

Contact Information:

Screening Category:

- *Capacity corresponding to sectoral activity (such as production capacity for manufacturing, mining lease area and production capacity for mineral production, area for mineral exploration, length for linear transport infrastructure, generation capacity for power generation etc.,)*

(II) Activity

1. **Construction, operation or decommissioning of the Project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.)**

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)		
1.2	Clearance of existing land, vegetation and buildings?		
1.3	Creation of new land uses?		
1.4	Pre-construction investigations e.g. bore houses, soil testing?		
1.5	Construction works?		

1.6	Demolition works?		
1.7	Temporary sites used for construction works or housing of construction workers?		
1.8	Above ground buildings, structures or earthworks including linear structures, cut and fill or excavations		
1.9	Underground works including mining or tunneling?		
1.10	Reclamation works?		
1.11	Dredging?		
1.12	Offshore structures?		
1.13	Production and manufacturing processes?		
1.14	Facilities for storage of goods or materials?		
1.15	Facilities for treatment or disposal of solid waste or liquid effluents?		
1.16	Facilities for long term housing of operational workers?		
1.17	New road, rail or sea traffic during construction or operation?		
1.18	New road, rail, air waterborne or other transport infrastructure including new or altered routes and stations, ports, airports etc?		
1.19	Closure or diversion of existing transport routes or infrastructure leading to changes in traffic movements?		
1.20	New or diverted transmission lines or pipelines?		
1.21	Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?		
1.22	Stream crossings?		
1.23	Abstraction or transfers of water form ground or surface waters?		
1.24	Changes in water bodies or the land surface affecting drainage or run-off?		

1.25	Transport of personnel or materials for construction, operation or decommissioning?		
1.26	Long-term dismantling or decommissioning or restoration works?		
1.27	Ongoing activity during decommissioning which could have an impact on the environment?		
1.28	Influx of people to an area in either temporarily or permanently?		
1.29	Introduction of alien species?		
1.30	Loss of native species or genetic diversity?		
1.31	Any other actions?		

2. **Use of Natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply):**

S.No.	Information/checklist confirmation	Yes/No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
2.1	Land especially undeveloped or agricultural land (ha)		
2.2	Water (expected source & competing users) unit: KLD		
2.3	Minerals (MT)		
2.4	Construction material – stone, aggregates, and / soil (expected source – MT)		
2.5	Forests and timber (source – MT)		
2.6	Energy including electricity and fuels (source, competing users) Unit: fuel (MT), energy (MW)		
2.7	Any other natural resources (use appropriate standard units)		

3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about actual or perceived risks to human health.

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
3.1	Use of substances or materials, which are hazardous (as per MSIHC rules) to human health or the environment (flora, fauna, and water supplies)		
3.2	Changes in occurrence of disease or affect disease vectors (e.g. insect or water borne diseases)		
3.3	Affect the welfare of people e.g. by changing living conditions?		
3.4	Vulnerable groups of people who could be affected by the project e.g. hospital patients, children, the elderly etc.,		
3.5	Any other causes		

4. Production of solid wastes during construction or operation or decommissioning (MT/month)

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
4.1	Spoil, overburden or mine wastes		
4.2	Municipal waste (domestic and or commercial wastes)		
4.3	Hazardous wastes (as per Hazardous Waste Management Rules)		

4.4	Other industrial process wastes		
4.5	Surplus product		
4.6	Sewage sludge or other sludge from effluent treatment		
4.7	Construction or demolition wastes		
4.8	Redundant machinery or equipment		
4.9	Contaminated soils or other materials		
4.10	Agricultural wastes		
4.11	Other solid wastes		

5. Release of pollutants or any hazardous, toxic or noxious substances to air (Kg/hr)

S.No.	**Information/Checklist confirmation**	**Yes/No**	**Details thereof (with approximate quantities/rates, wherever possible) with source of information data**
5.1	Emissions from combustion of fossil fuels from stationary or mobile sources		
5.2	Emissions from production processes		
5.3	Emissions from materials handling including storage or transport		
5.4	Emissions from construction activities including plant and equipment		
5.5	Dust or odours from handling of materials including construction materials, sewage and waste		

5.6	Emissions from incineration of waste		
5.7	Emissions from burning of waste in open air (e.g. slash materials, construction debris)		
5.8	Emissions from any other sources		

6. Generation of Noise and Vibration, and Emissions of Light and Heat:

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data with source of information data
6.1	From operation of equipment e.g. engines, ventilation plant, crushers		
6.2	From industrial or similar processes		
6.3	From construction or demolition		
6.4	From blasting or piling		
6.5	From construction or operational traffic		
6.6	From lighting or cooling systems		
6.7	From any other sources		

7. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea:

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
7.1	From handling, storage, use or spillage of hazardous materials		
7.2	From discharge of sewage or other effluents to water or the land (expected mode and place of discharge)		
7.3	By deposition of pollutants emitted to air into the land or into water		
7.4	From any other sources		
7.5	Is there a risk of long term build up of pollutants in the environment from these sources?		

8. Risk of accidents during construction or operation of the Project, which could affect human health or the environment

S.No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
8.1	From explosions, spillages, fires etc from storage, handling, use or production of hazardous substances		
8.2	From any other causes		
8.3	Could the project be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslides, cloudburst etc)?		

9. Factors which should be considered (such as consequential development) which could lead to environmental effects or the potential for cumulative impacts with other existing or planned activities in the locality

S. No.	Information/Checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
9.1	Lead to development of supporting. lities, ancillary development or development stimulated by the project which could have impact on the environment e.g.: • Supporting infrastructure (roads, power supply, waste or waste water treatment, etc.) • housing development • extractive industries • supply industries • other		
9.2	Lead to after-use of the site, which could havean impact on the environment		
9.3	Set a precedent for later developments		
9.4	Have cumulative effects due to proximity to other existing or planned projects with similar effects		

(III) Environmental Sensitivity

S.No.	Areas	Name/ Identity	Aerial distance (within 15 km.) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value		

2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests		
3	Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration		
4	Inland, coastal, marine or underground waters		
5	State, National boundaries		
6	Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas		
7	Defence installations		
8	Densely populated or built-up area		
9	Areas occupied by sensitive man-made land uses *(hospitals, schools, places of worship, community facilities)*		
10	Areas containing important, high quality or scarce resources *(ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)*		
11	Areas already subjected to pollution or environmental damage. *(those where existing legal environmental standards are exceeded)*		
12	Areas susceptible to natural hazard which could cause the project to present environmental problems (*earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions*)		

(IV). Proposed Terms of Reference for EIA studies

(2019) 15 Supreme Court Cases 401

(BEFORE DR D.Y. CHANDRACHUD AND HEMANT GUPTA, JJ.)

Civil Appeal No. 12251 of 2018†

HANUMAN LAXMAN AROSKAR .. Appellant;

Versus

UNION OF INDIA .. Respondent.

With

Civil Appeal No. 1053 of 2019

FEDERATION OF RAINBOW WARRIORS .. Appellant;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 12251 of 2018 with
No. 1053 of 2019, decided on March 29, 2019

A. **Environment Law — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/ Environmental clearance/viability — Development of greenfield airport project in State of Goa — Environmental clearance (EC) — Flaws in environmental impact assessment (EIA) process — Suspension of environmental clearance (EC) and directions issued for proper EIA — Expert Appraisal Committee (EAC) constituted under EIA Notification, 2006 directed to revisit recommendations made by it for grant of EC having regard to specific concerns highlighted in this judgment**

— One month's time given for this — Till then EC granted by Ministry of Environment, Forests and Climate Change (MoEFCC) on 28-10-2015 shall remain suspended — No other court or tribunal shall entertain any challenge to report that is to be submitted before Court by EAC in compliance with the present order — MoEFCC and State Government given liberty to file report of EAC before Court to facilitate passing of appropriate orders thereon (Paras 162 to 166)

— Concerns highlighted in judgment:

— (1) Flaws in EIA process — (a) Non-disclosure of vital information, suppression of material facts by project proponent, (b) non-application of mind by EAC as an expert body and its failure to give cogent reasons, while recommending for grant of EC, and (c) failure of NGT as an adjudicatory body to carry out a merits review

† Arising from the Judgment and Order in *Hanuman Laxman Aroskar* v. *Union of India* (National Green Tribunal, Principal Bench at New Delhi, Appeal No. 6 of 2018, 21-8-2018 sub nom *Federation of Rainbow Warriors* v. *Union of India* [National Green Tribunal, Principal Bench at New Delhi, Appeal No. 5 of 2018 (earlier Appeal No. 61/2015/WZ), dt. 21-8-2018] 2018 SCC OnLine NGT 831

— (2) Airport operations — Collection of baseline data — Guidance Manual for Airports specifically requires collection of baseline data on (i) land environment, (ii) water environment, (iii) air environment, (iv) noise environment, (v) biological environment, (vi) socioeconomic environment, and (vii) solid waste — As airport operations might have possible impact on biological environment, collection of baseline data on sensitive habitats and wild or endangered species in project area is contemplated — Baseline data of environmental parameters aid in preparation of an environment management plan (EMP) (Paras 63 to 69)

— (3) EAC shall have due regard to assurance furnished by concessionaire to Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports (Para 163.5)

— (4) Duty and onus of project proponent — It is duty of project proponent to make full, complete and candid disclosure of all environmental aspects — Burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of environment — However, in present case project proponent failed to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1 of EIA Notification, 2006 — Duty to disclosure about forest does not mean only reserve forest as contemplated within S. 20(2) of Forest Act, 1927 or forest as understood in any statutory enactment — Expression "forest" must receive its ordinary and natural connotation — The effort must not be to overlook and destroy forests but to notice and protect them — A failure to disclose information in Form 1 impairs the functioning of EAC in preparation of ToR and in consequence, leads to preparation of a deficient EIA report — There has been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law (Paras 70 to 82)

— (5) EIA report defective — EIA report failed to notice existence of Ecologically Sensitive Zones (ESZs) within buffer distance of 10 km of project site — EIA report must encompass all aspects of environmental concern which render area ecologically sensitive i.e. wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests (Paras 91 and 92)

— (6) Data collection incomplete — Allegedly, no primary data with regard to environmental parameters like air quality, water quality, noise quality and flora and fauna were collected from State of Maharashtra and related only to State of Goa (Paras 93 to 101)

— (7) Incorrect information about trees — EIA report incorrectly stated that area required for proposed airport has only few trees but evidently permissions were granted for felling 54,676 trees — Issues pertaining to vegetational cover must be taken seriously in the EIA process (Paras 102 to 109)

— (8) Issues raised in pubic consultation not included in EIA — Intrinsic and instrumental value of public consultation — Stages of public consultation — Project proponent's duty to address all material environmental concerns raised during public consultation and make appropriate changes in draft EIA and EMP — Though only seven out of sixty-eight issues dealt with issue of unemployment, project proponent observed that major issue was unemployment — Duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC, which it failed in doing (Paras 110 to 117)

— (9) EAC as an expert body failed to apply mind — Duty to apply mind to documents like EIA report, outcome of public consultation and public hearing proceedings — EAC is under a mandate to conduct process of appraisal in "a transparent manner" — And make a categorical recommendation about grant of EC on stipulated terms and conditions or rejection of EC — Recommendations made by EAC to regulatory authority must be based on "reasons" — Said recommendations constitute substantive material which ultimately affects decision-making process and also might form subject-matter of challenge before Tribunal — However, minutes indicate non-application of mind by EAC with reference to 15 ESZs in study area — In absence of critical analysis EAC failed in discharging its duties under 2006 Notification (Paras 118 to 129)

— (10) NGT as an expert adjudicatory body on environment failed in its duty to exercise the jurisdiction entrusted to it under S. 16(h) r/w S. 20, NGT Act, 2010 by merely deferring decision to recommend and grant an EC — Though several important submissions were urged before it, entire analysis by NGT is contained in one paragraph and next para only deals with requirement of data collection — This does not fulfil requirement of merits review by the expert adjudicatory body like NGT (Paras 130 to 141)

— (11) In environmental governance, means are as significant as ends, process of decision is as crucial as ultimate decision — However, there has been a failure of due process commencing from non-disclosure of vital information by project proponent to non-application of mind by EAC and failure of merits review by NGT — Thus in present case neither decision-making process nor ultimate decision of granting EC can be said to be valid — Bearing in mind that there is an urgency for setting up a new airport to tackle with increasing volume of passengers and at the same time protect environment, time bound directions were issued (Paras 142 to 167)

— Infrastructure Laws — Carriage of Goods and Persons by Air, Land and Sea — Carriage by Air/Aircraft and Airports — Airport Development — EIA Guidance Manual for Airports, 2010 — Forests, Wildlife and Zoos — Demarcation/Determination/Identification of Forest Land — Forest Act, 1927 — S. 20 — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Form 1 — Regulatory Framework, Bodies and Judicial Intervention — Expert Appraisal Committee (EAC) — Duties of and manner of exercise of power while conducting EIA in grant of EC — National Green Tribunal Act, 2010 — Ss. 16(h) and 20 — Duties of and proper

exercise of power — Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review — Words and Phrases — "Forest"

B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court against orders of Tribunal — Maintainability — Locus standi, bona fides, plea of personal agenda — Approach of Court — Doctrine of proportionality must be applied to matters concerning the environment as part of judicial review**

— In cases concerning environmental governance, courts should decide case on merits — Such cases involve present and future generations, sustainable development for today and tomorrow — If a court comes to finding that appeal before it lacks bona fides, it may issue directions which it thinks appropriate in that case — Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment — Regulatory Framework, Bodies and Judicial Intervention — Generally — Environmental adjudication — Approach to — Constitution of India, Arts. 21 and 19(1)(g) & (g) (Para 164)

C. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 distinguished from 1994 Notification (Para 41)**

D. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Procedure for grant of environmental clearance (EC) under — Four stages of obtaining EC, discussed, that is, screening, scoping, public consultation and appraisal by EAC — Importance and objectives of 2006 Notification**

— In laying down a detailed procedure for the grant of an EC, 2006 Notification attempts to bridge perceived gap between environment and development — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

E. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — EIA Notification, 2006 — Procedure for grant of environmental clearance (EC) under — Rejection of application for EC for missing and misleading information provided in Form 1 by project proponent**

— Information provided by project proponent in Form 1 serves as the base upon which EAC or the State Expert Appraisal Committees (SEAC) to prepare comprehensive Terms of Reference (ToR), which applicant is required to address during course of preparation of EIA — ToR so prepared addresses all possible environmental concerns — Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and process stipulated under the notification — For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately — Development vis-à-vis Ecology: National, Urban and Rural

Development — Development Projects — Prerequisites for/Environmental clearance/viability (Paras 45 to 62)

F. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — Objectives of EIA process**

— To ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available — This will determine what conditions be imposed for grant of EC — EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to 2006 Notification — Development vis-à-vis Ecology: National, Urban and Rural Development — Development Projects — Prerequisites for/ Environmental clearance/viability (Paras 34 to 62)

The present appeal under Section 22 of the NGT Act, 2010 was filed to challenge the grant of environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. The allegation was that project proponent (the State Government) did not disclose the material facts required by the 2006 Notification. And that the project proponent did not appraise the EAC about important issues raised during public consultation. And that the EAC as an expert body abdicated its duty to apply mind and give cogent reasons for grant of EC. And that NGT, an expert adjudicatory body also failed to carry out a merits review of grant of EC. NGT approved EC granted with certain additional conditions. Hence, the present appeals.

Allowing the appeals and setting aside EC granted and remanding matter back to EAC for proper application of mind with other directions, the Supreme Court

Held :

C. ***Scheme of the 2006 Notification and the Guidance Manual for Airports***

C.1. ***EIA Process***

The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available. (Para 34)

The salient objective which underlies the 2006 Notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernisation of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the authority concerned. EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to the notification. (Para 42)

The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development. (Para 56)

It is for this reason that EAC and SEAC comprise experts in the field of environmental law. Given that these bodies comprise experts in the field of environmental law, the recommendation of EAC or SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority. (Paras 57 and 58)

Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions. (Para 59)

Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive Terms of Reference (ToR) which the applicant is required to address during the course of the preparation of the EIA. The ToR so prepared addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment. (Paras 60 and 61)

The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. (Para 62)

C.2. *Guidance Manual for Airports*

In February 2010, MoEF brought out its Guidance Manual for Airports. The need for a sector-specific manual arose because the 2006 Notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of EC process. The 2006 Notification noted that as many as 39 developmental sectors require prior ECs. Sector-specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. (Para 63)

Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following: (*i*) land environment; (*ii*) water environment; (*iii*) air environment; (*iv*) noise environment;

(*v*) biological environment; (*iv*) socioeconomic environment; and (*vii*) solid waste. (Para 64)

a The Guidance Manual brings into focus the biological environment. It acknowledges that airport operations may alter ecosystems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. (Para 68)

It is in the backdrop of the 2006 Notification and the Guidance Manual that it b becomes necessary to assess the process that was adopted in the present case and its outcome. (Para 69)

D. ***Forests***

The court cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required c by Form 1. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1. (Paras 70 to 73)

It cannot be accepted that the disclosure required was of reserved forests d comprehended within a notification under Section 20(2) of the Forest Act, 1927. The expression "forests", means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the e environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose. (Para 74)

In the context of the 2006 Notification and the underlying purpose of facilitating an EIA report, the expression "forests" must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them. (Para 77)

f *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267; *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744, *distinguished*

Federation of Rainbow Warriors v. *Union of India*, 2017 SCC OnLine NGT 1964; *Federation of Rainbow Warriors* v. *Union of India*, 2017 SCC OnLine NGT 1962; *Federation of Rainbow Warriors* v. *Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424; *Hanuman Laxman Aroskar* v. *Union of India*, 2019 SCC OnLine SC 500, *referred to*

g ***Alternative submission that disclosure about forests was made not tenable***

The alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area is not tenable. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, it has to be considered whether this by itself warrants the grant of an EC in spite of the fact that there has been a patent h failure on part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. A failure to disclose information in Form 1 impairs

the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report. (Paras 78 to 81)

The failure on the part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law. (Para 82)

E. ***Ecologically Sensitive Zones (ESZs)***

The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs. (Para 91)

The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration. (Para 92)

F. ***Sampling points***

The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. (Para 93)

The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant's submission. (Paras 93 to 101)

F.5. ***Felling of trees***

The Court expresses its serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The State of Goa would have the court gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual

data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented. (Paras 102 to 108)

The purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance. (Para 108)

Issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. (Para 109)

G. *Public consultation*

The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. (Paras 110 to 112)

Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. (Para 113)

Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before EAC: the need for employment opportunities. The project proponent failed in its duty to inform EAC. The record does not indicate a critical appraisal or analysis by EAC. EAC was duty-bound to apply its mind to the environmental

concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard. (Paras 113 to 117)

Utkarsh Mandal v. *Union of India*, 2009 SCC OnLine Del 3836, *approved*

H. *Appraisal by EAC*

Appraisal by EAC is structured and defined by the 2006 Notification. The process of appraisal is defined to mean "a detailed scrutiny" by EAC of the application and other documents like EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, EAC has to make "categorical recommendations" to the regulatory authority either for:

(*i*) the grant of a prior environmental clearance on stipulated terms and conditions; or

(*ii*) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on "reasons". (Para 118)

EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise. (Paras 119 to 125)

EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated. (Para 127)

EAC, as an expert body, has to scrutinise all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by EAC as an expert body and its reasons must reflect that this has been done. As the minutes indicate, the non-application of mind by EAC is evident with reference to the presence of 15 ESZs in the study area. EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 Notification. The recommendations of EAC furnish a guide for MoEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally

be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC. (Para 129)

I. *The appellate jurisdiction of NGT: the requirement of a merits review*

The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of the Supreme Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT. (Paras 132 to 136)

Save Mon Region Federation v. *Union of India*, (2013) 1 All India NGT Reporter 1; *Sreeranganathan K.P.* v. *Union of India*, 2014 SCC OnLine NGT 15, *approved*

The doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. (Para 140)

Lafarge Umiam Mining (P) Ltd. v. *Union of India*, (2011) 7 SCC 338, *relied on*

EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(*h*) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression. (Paras 130 to 141)

Mantri Techzone (P) Ltd. v. *Forward Foundation*, (2019) 18 SCC 494 : 2019 SCC OnLine SC 322; *Chunilal V. Mehta and Sons Ltd.* v. *Century Spg. and Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 353; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87, *relied on*

J. *Environmental rule of law*

Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement—both in developed and developing countries alike. The environmental rule of law seeks to address this gap. (Paras 142 to 155)

United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowe d=y>; Bruntdland definition of Sustainable Development, *referred to*

In the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive. (Paras 156 and 157)

In the present case, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. (Para 159)

EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. (Para 160)

In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, time-bound directions should be issued. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. (Paras 158 and 161 to 167)

Federation of Rainbow Warriors v. *Union of India*, 2018 SCC OnLine NGT 831, *reversed*

SS-D/62216/S

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14. (1999) 2 SCC 718, *A.P. Pollution Control Board* v. *M.V. Nayudu* 458*a*
15. (1997) 2 SCC 353, *M.C. Mehta* v. *Union of India* 458*a*
16. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad* v. *Union of India* 419*b*, 421*d*, 421*d-e*, 438*g*, 460*g-h*
17. (1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath* 458*a*
18. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 458*a*
19. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta and Sons Ltd.* v. *Century Spg. and Mfg. Co. Ltd.* 461*g*

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.—

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A. *Introduction*

1. An appeal was filed before the Principal Bench of the National Green Tribunal (NGT) at New Delhi challenging the grant of an environmental clearance (EC) for the development of a greenfield international airport at Mopa in Goa. NGT, by its judgment dated 21-8-2018[1] came to the conclusion that the present case "is not a case where the project compromises with the environment". While affirming EC, NGT came to the conclusion that "further safeguards for environmental protection need to be incorporated". NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of EC.

1 *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831

2. Village Mopa is situated in North Goa, in close proximity to the inter-State boundary which the State shares with Maharashtra. The site of the proposed airport lies at a distance of 35 km from Panaji, the capital of Goa. The Village of Mopa is situated in Pernem Taluka. The site for the development of the airport is situated on a tabletop plateau which rises to a height of 150 to 180 m above mean sea level and is surrounded by steep slopes. The soil is predominantly of a laterite character. The airport which presently serves the region is situated at Dabolim, Goa.

3. Since the airport at Dabolim is saturated in terms of its capacity for annual air traffic, the State Government initiated a process in 1997 to commission studies and project reports for a proposed international airport, which include the following:

3.1. A project report prepared by Engineers and Management Associates, Spain in 1997.

3.2. A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998.

3.3. A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005.

3.4. A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007.

3.5. A report of a Six-member Committee chaired by the Chief Minister of Goa in 2008 to "look into all aspects relating to construction of an international airport at Mopa, Goa".

3.6. A document styled as the "Airport Master Plan" dated 10-2-2012, submitted to the Public Private Partnership (PPP) cell of the Government of Goa by Ammann & Whitney, USA envisaging: "consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa".

4. On 1-5-2000, the Government of India communicated its approval for the setting up of an airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1-7-2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4500 ac. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2271 ac.

5. On 14-9-2006, the Government of India in the Ministry of Environment and Forests (MoEF, later renamed as MoEFCC in 2014) issued a notification [No. S.O. 1533 (the 2006 Notification)] mandating a prior EC for Category 'A' projects (specified in the Schedule) by the Union Government and for Category 'B' projects at the State level by the State Level Environment Impact Assessment Authority (SEIAA). Following the 2006 Notification, MoEF placed an EIA Guidance Manual for Airports (the Guidance Manual) in the public

domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of EC for the proposed airport are governed by the express terms of the 2006 Notification.

6. In March 2011, the State of Goa, as the project proponent submitted Form 1 as stipulated in the 2006 Notification to MoEF. On 8-3-2011, the State of Goa applied for terms of reference (ToR) to MoEF. ToR were finalised on 11-5-2011 and 12-5-2011 by the Expert Appraisal Committee (EAC) constituted under the 2006 Notification. On 1-6-2011, MoEF issued ToR for the preparation of the Environmental Impact Assessment (EIA) report. ToR was valid for a period of two years until 31-5-2013. On 22-11-2012, the Government of Goa revised the project boundary by decreasing the project area from 4500 ac to 2271 ac. At its meetings on 28-1-2013 and 29-1-2013, EAC recommended an amendment to ToR as requested by the State Government and granted an extension to the validity of ToR until 31-5-2014. On 19-6-2013, MoEF communicated its approval for the amendment of ToR and for the extension of its validity.

7. On 3-10-2014, the State Government floated a tender for the development of a greenfield international airport project on a PPP basis. On 20-10-2014, the Directorate of Civil Aviation, Government of Goa submitted a draft EIA report to the Goa State Pollution Control Board, requesting it to initiate steps to conduct a public hearing. A public hearing was conducted at the project site on 1-2-2015. EAC, at its meetings held on 9-3-2015 to 11-3-2015, recommended an extension of the validity of ToR for another year ending on 31-5-2015.

8. On 20-5-2015, the State of Goa submitted a final EIA report to MoEFCC, seeking the grant of an EC for the project. On 29-5-2015, MoEFCC communicated its approval for extending the validity of ToR until 31-5-2015. Between 24-6-2015 and 26-6-2015, EAC, at its 149th meeting, deliberated on the EIA report and sought additional information from the project proponent, inter alia, on:

> "• 10 years' data regarding rainfall in the area;
>
> • Drawing of traffic circulation plan for smooth circulation of traffic in the area;
>
> • Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated ACs, and a revised energy conservation plan to be submitted;
>
> • Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport area to be submitted."

In the meantime, a representation was submitted by the Federation of Rainbow Warriors, one of the appellants before this Court to EAC. EAC, at its 151st meeting held on 7-9-2015 to 9-9-2015, deliberated upon the representation and sought a clarification from the project proponent on the issues raised. On 28-9-2015, the project proponent submitted its reply to the representation. EAC, at its 152nd meeting on 20-10-2015, sought a further clarification from

the project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, EAC recommended the grant of an EC for the project.

9. On 28-10-2015, MoEFCC, as the regulatory authority under the 2006 Notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of EC, the tender process which had been initiated on 3-10-2014 was concluded on 26-8-2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Ltd. (GGIAL) was awarded the contract on a revenue sharing of 36.99% to the State of Goa. On 8-11-2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4-9-2017. The target date for the commissioning of the first phase of the project is 3-9-2020.

10. The grant of EC was challenged before the Western Zonal Bench of NGT (Appeal No. 61 of 2015) by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal (Appeal No. 1 of 2016) before the Western Zonal Bench of NGT. These appeals were subsequently renumbered (Appeals Nos. 5 and 6 of 2018) before the Principal Bench of NGT at New Delhi. On 7-11-2017[2], NGT issued an ad interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22-11-2017[3], the order of restraint was modified on the statement of the Advocate General of Goa that the State shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6-2-2018, the Deputy Conservator of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act, 1984 (6 of 1984) dismissed the appeal on 7-3-2018.

11. On 8-3-2018[4], the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2-4-2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (*i*) enumeration of trees; and (*ii*) the plantation of ten times the number of trees felled. Upon being moved in a public interest litigation (PIL), the High Court by its order dated 25-4-2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1548 trees which had been

2 *Federation of Rainbow Warriors* v. *Union of India*, 2017 SCC OnLine NGT 1964
3 *Federation of Rainbow Warriors* v. *Union of India*, 2017 SCC OnLine NGT 1962
4 *Federation of Rainbow Warriors* v. *Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424

felled earlier in terms of the order dated 6-2-2018 of the Deputy Conservator of Forests. On 13-1-2018, the High Court issued final directions in the PIL directing the State of Goa to approach NGT seeking permission for felling and cutting trees. The State was directed to carry out the cutting and felling of trees only after prior permission was granted by NGT.

12. A miscellaneous application (MA No. 975 of 2018) was filed by the State of Goa before NGT on 2-7-2018 seeking permission for the felling of trees. By its judgment dated 21-8-2018[1], NGT disposed of both the appeals and the miscellaneous application filed by the State of Goa, upholding EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3-9-2018 and completed on 14-1-2019. Assailing the judgment of NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar (Civil Appeal No. 12251 of 2018) and the other by the Federation of Rainbow Warriors (Civil Appeal No. 1053 of 2019).

13. On 18-1-2019[5], notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal.

B. ***Submissions***

14. We have heard Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants. Mr K.K. Venugopal, learned Attorney General (AG) for India appeared on behalf of the State of Goa. Mr Atmaram S. Nadkarni, learned Additional Solicitor General (ASG) of India appeared on behalf of MoEFCC. Mr Parag P. Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel appeared on behalf of the concessionaire.

15. Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants urged that the EIA report which is carried out under the terms of the 2006 Notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 Notification. In addition to the 2006 Notification, the Guidance Manual furnishes a significant signpost in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. ToR which is finalised by EAC is founded on the disclosures which are made by the project proponent.

16. In this backdrop, the principal submissions urged by the appellants before the Court are as follows:

16.1. There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form 1, which was submitted by the project proponent, was silent in regard to the

1 *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831
5 *Hanuman Laxman Aroskar* v. *Union of India*, 2019 SCC OnLine SC 500

number of trees required to be felled. The final EIA report, while dealing with the biological environment in Clause 2.1.5 contains the following statement:

> "2.1.5. Biological environment
>
> Construction phase
>
> *Impacts (Significance-Medium)*
>
> The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation."

Contrary to the above assertion is the statement contained in the counter-affidavit filed by the State of Goa:

> "…I say that the permissions which have been obtained for cutting of 54,676 trees have been granted by the authorities concerned in terms of the relevant statutory provisions and after laying down various conditions. I say that the context in which it was mentioned as sparse trees has to be seen from the huge area of the land. The land being 2133 ac, it would proportionally work out to about 25 trees in an area of 1 ac i.e. 4000 sq m, which is one tree in an area of about 160 sq m."

The submission urged by the appellants is that the purpose of the EIA report is to form an assessment of the state of environment as it exists in reality. The project proponent is duty-bound to make a proper disclosure and the highest level of transparency is required. Accompanying Form 1 is a declaration of the project proponent that EC will be liable to be rejected in the event of a suppression or misstatement of material facts. The State of Goa filed a miscellaneous application before NGT seeking permission to fell around 55,000 trees. This is a clear indicator that the original statement by the project proponent in Form 1 as well as in Clause 2.1.5 of the EIA report that only a few trees were required to be felled is factually incorrect.

16.2. There was a concealment of Ecologically Sensitive Zones (ESZs) in the State of Maharashtra. In terms of the Guidance Manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 km radius from the Aerodrome Reference Point (ARP) and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 km for the parameters which are specifically mentioned in Column 9(III) of Form 1 of the 2006 Notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 km, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 km from ARP and that there are no reserve forests in that radius. After hearings had begun before NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12-2-2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified under Section 20 of the Forest Act, 1927 in Sawantwadi Forest Division of Sindhudurg District in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division

(2014-15 to 2023-24). The letter stated that there was no reserved forest notified under Section 20 of the Forest Act, 1927 in the Sawantwadi Forest Division, within a radius of 15 km from the ARP. On this aspect, it was urged on behalf of the appellants that restrictions come into force as soon as a notification under Section 4 of the Forest Act, 1927 is issued. Under the Forest Conservation Act, 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India*[6] (*Godavarman*). The purpose of elucidating forest areas which fall within an aerial distance of 15 km from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report.

16.3. Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 km of the project boundary. The EIA report rests content in stating that Pernem Taluka is not included in an ESZ by the High Level Working Group (HLWG) constituted under the Chairmanship of Dr K. Kasturirangan, Member (Science), Planning Commission (Kasturirangan Report). The project proponent, in response to the disclosures required for areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 km. HLWG recognised that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 km from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem Taluka is not included in an ESZ.

16.4. The State of Maharashtra comprises nearly 40% of the study area. Yet, there was no sampling of soil, air and water in Maharashtra. Sampling was carried out in 2011 and 2014-15 in Goa but no sampling site is situated in Maharashtra. In the absence of baseline data generated with regard to environmental parameters in the State of Maharashtra surrounding the project site, the EIA report suffers from a gross deficiency.

16.5. The EIA report is grossly deficient in failing to notice wildlife in the surrounding forests. On the contrary, the appellants have relied on a rapid survey conducted to assess the presence of various mammals in the study area. Moreover, no avi-faunal study was done.

17. Apart from the above submissions, Ms Shenoy has urged that the stages of public consultation and appraisal under the 2006 Notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70 persons spoke, 1150 representations were received and 1586 persons are stated to have participated. The range of concerns expressed during

6 (1997) 2 SCC 267

the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 Notification, the State Pollution Control Board (SPCB) was required to collate the issues raised and the response of the project proponent, before submitting required documents to EAC. Before EAC, the project proponent in its presentation, indicated that the objections were only about employment opportunities. The project proponent clearly failed in its duty to appraise EAC about serious environmental concerns which were raised during the course of the public consultation.

18. On the aspect of appraisal, it has been urged that the minutes of EAC meeting recommending the grant of an EC contain, as the learned counsel for the appellants submitted, "not a line on the EIA report". EAC was required to state its reasons for recommending the grant of an EC in terms of the 2006 Notification. The reasons must indicate that there was an appraisal by EAC. In the present case, the recommendations of EAC are based on vague considerations such as: (*i*) larger public interest; (*ii*) non-concealment of the facts by the project proponent; and (*iii*) the delay which had occurred in the process. The submission urged is that EAC, as an expert body, has failed to furnish reasons; acted on the basis of considerations which are not germane to the exercise of its functions and failed to apply its mind to relevant considerations including the environmental consequences of the project.

19. Finally, it has been submitted that under Section 16(*h*) of the National Green Tribunal Act, 2010 (the NGT Act, 2010) an appellate remedy is provided against the order granting EC. By virtue of the provisions of Section 20, NGT is under a mandate to apply the principles of sustainable development, the precautionary principle and the polluter pays principle while passing any order, decision or making the award. An appeal lies before this Court under Section 22 from an order, decision or award of the Tribunal on a substantial question of law as specified in Section 100 of the Code of Civil Procedure, 1908. NGT, by virtue of its adjudicatory authority under Section 16(*h*), is entrusted with a duty to conduct a merits review. The failure to consider materials on a vital issue constitutes a substantial question of law as does the failure to consider vital issues in the proceedings before it. In the present case, the Tribunal has merely relied on the process conducted by EAC and its recommendations, abdicating its own jurisdiction to conduct a merits review.

20. Mr A.N.S. Nadkarni, learned Additional Solicitor General appearing on behalf of MoEFCC, urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. EAC is sourced from experts from outside the Government. The airport project was conceived in 1996; consultants were appointed and three sites were initially shortlisted. It was in 2011 that ToR were sought by and given to the project proponent by EAC. The draft EIA

was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors.

21. Countering the submission of the appellants on the non-disclosure of *reserved forests* in Form 1, the learned ASG urged the following submissions:

21.1. The submission of the appellants was not raised either in the public hearing or in the grounds urged before NGT, but was addressed in the written submissions filed before NGT and when a map of the Surveyor General of India was produced.

21.2. Table 2.1.5 of the EIA report states that there is no reserved forest in the State of Maharashtra while delineating ESZs within 15 km from the project boundary. The report proceeded on the plain meaning of the Forest Act, 1927 according to which it is only upon the issuance of a notification under Section 20 that a reserved forest is declared.

21.3. As a matter of fact, within the area of 15 km from the project boundary in the State of Maharashtra, no reserved forest stands declared under Section 20(2) of the Forest Act, 1927.

21.4. The decision in *Godavarman*[6] which adopts the ordinary meaning of the expression "forest" is site specific: MoEFCC follows it scrupulously even if there is a notification under Section 4 while considering the diversion of forest land for non-forest uses. The decision in *Godavarman*[6] has also been explained in the decision of this Court in *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*[7] (*Okhla Bird Sanctuary*).

21.5. The Guidance Manual notices that environmental facets which have to be considered in relation to airport development are categorised into seven groups: (*a*) land use; (*b*) water quality; (*c*) air quality; (*d*) noise pollution; (*e*) biological environment; (*f*) socioeconomic changes and occupational health; and (*g*) solid waste management. Baseline data of these environmental facets is ascertained through primary data extending to one season while secondary data extending to a year is gathered in terms of the Guidance Manual and the distance specified in Para 4.1.

21.6. The EIA report records that the surrounding land use of the airport site is predominantly forest land. Land use and land cover specifically for a 10 km radius from the airport site in Maharashtra is also set out in Chapter II of the EIA report, which indicates a reference to the forest area. Annexure IX of the EIA report incorporates land use with land cover maps, both for Goa and Maharashtra in the 10 km radius, which includes forested areas within the State of Maharashtra; Annexure X of the EIA report elucidates surface water bodies both in Maharashtra and in Goa in the radius of 10 km while Annexure XI provides a hydrogeomorphological map of Goa and Maharashtra. In other

6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
7 (2011) 1 SCC 744

words, it was urged that: (*i*) a legally designated forest under the Forest Act, 1927 requires a notification under Section 20; however, at the same time, (*ii*) the EIA report contains a clear disclosure of the presence of forest areas in both the States of Goa and Maharashtra within a radius of 10 km including areas of dense forest.

22. As regards the lack of *sampling points* in Maharashtra, the learned ASG urged that while all the six sampling points for ambient air quality within 10 km of the study area were in Goa, the air quality which was being tracked was within the stipulated radius and was not confined to the State of Goa. Similarly, in studying the water environment, the groundwater quality was measured at four locations in Goa within 10 km of the study area. As regards the monitoring of noise, nine sampling points were chosen within the State of Goa in accordance with the Central Pollution Control Board (CPCB) guidelines. The monitoring of noise environment, both at the construction and operational phases, has similarly been dealt with in the EIA report. The learned ASG urged that the choice of the sampling locations was not arbitrary: though the sampling points were not in Maharashtra, data required was tracked across a radius of 10 km from the ARP which also included the State of Maharashtra.

23. Dealing with the submission that no avi-faunal study was carried out, it was urged that the EIA report specifically deals with this aspect in paragraph 4.6 of Chapter II which elucidates that 385 species of plants belonging to 88 plant families were documented and identified in the 10 km radial distance of the proposed project site. The study similarly dealt with faunal diversity. As many as 86 species of birds were observed in the course of the avi-faunal study, which has been elucidated in Table 4.17 of the EIA report.

24. On the issue of ESZs, the learned ASG urged that there is a specific reference to the Kasturirangan Report, under the heading of "Environmentally Sensitive Zones" in Chapter IV of the EIA report. The EIA report notices that the proposed airport site falls in Pernem Taluka of North Goa which has not been included in the ESZs mapped by HLWG. Annexure XVI of the EIA report is a notification dated 13-11-2013 (the 2013 Notification) of MoEF, which contains a list of villages (State, district and taluk-wise) identified by HLWG. Para 9 of the 2013 Notification which has been issued under Section 5 of the Environment (Protection) Act, 1986 specifies the categories of new and expansion projects which are prohibited in ESZ. The proposed airport notification project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 Notification had no application.

25. The learned ASG has also urged that the report of HLWG on Western Ghats, submitted on 15-4-2013, stipulates certain development restrictions in ESZs which are as follows:

25.1. A complete ban on mining, quarrying and sand mining.

25.2. A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions.

25.3. A strict prohibition on "red category" industries.

25.4. A prohibition on building and construction projects of 20,000 sq m.

a **25.5.** All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category 'A' projects under the 2006 Notification.

25.6. All development projects within 10 km of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 Notification.

b **26.** Based on the above recommendation of HLWG, it was submitted that the proposed airport project, which falls under Category 'A' projects as delineated by the 2006 Notification, is regulated by it and does not attract a blanket prohibition.

27. The submission that EAC had failed to apprise the environmental consequences of the project and should have applied its mind to environmental c concerns has been countered by relying on the minutes of the meetings conducted by EAC.

27.1. At its 149th meeting held on 26-6-2015, EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent.

d **27.2.** At its 151st meeting held on 7-9-2015 to 9-9-2015, EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation.

27.3. At its 152nd meeting held on 20-10-2015, EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow e Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

28. On 28-10-2015, EC was granted by the Union Government. On the basis of the procedure which was followed by EAC, the following submissions have been urged:

f **28.1.** The application of mind by EAC can be inferred and seen from the record.

28.2. Where considered necessary, EAC sought information outside the EIA report.

28.3. Having appraised the EIA report, EAC imposed site specific conditions.

g **28.4.** EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

29. Mr K.K. Venugopal, learned Attorney General, appearing on behalf of the State of Goa, urged the following submissions:

h **29.1.** The proposed project for setting up an international airport at Mopa has been on the drawing board for nearly two decades. Successive studies were

commissioned to assess the feasibility of the project from diverse sources, both within and outside the Government. This includes studies by private organisations as well as reports by Airports Authority of India, the International Civil Aviation Organisation and the six-member Committee constituted by the State Government under the auspices of the Chief Minister.

29.2. The setting up of an airport is an imminent need, since the existing airport at Dabolim has reached a saturation point and is unable to cater to the growing volume of passenger traffic into Goa.

29.3. Tourism, it has been urged, is a major source of revenue for the State, with the banning of mining activities. A balance must be drawn between development and the environment. A distinction needs to be drawn between overwhelming environmental objections which are not reversible and incapable of amelioration, and cases such as the present where the environmental consequences of project are capable of being countered by suitable measures.

29.4. Objections primarily based on a defect in procedure should not be sufficient to quash a project conceived in public interest with vast benefits for the development of the State and for the members of the travelling public. It was urged that there was no major environmental objection and the challenge to the EIA report is not substantial enough to overcome the interests of three million passengers. The expected inflow is anticipated to reach 30 million in 2030.

30. On the aspect of the *felling of trees*, the learned AG submitted that following the order of the Bombay High Court, the Principal Chief Conservator of Forests passed an order on 2-4-2018 providing for:

(*i*) enumeration of all trees covered by the project site;

(*ii*) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and

(*iii*) plantation of ten times the number of trees felled under the supervision of the Forest Department.

Thereafter, when the High Court was moved in a PIL, an order was passed on 13-6-2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after NGT granted permission in the pending proceedings. A miscellaneous application seeking permission for the felling of trees was instituted before NGT. In its final order dated 21-8-2018[1], NGT disposed of both the appeals as well as the miscellaneous application. Moreover, NGT has specifically dealt with the felling of trees in the course of its distinction.

31. On behalf of the concessionaire, Mr Parag P. Tripathi, learned Senior Counsel and Ms Astha Mehta, learned counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8-11-2016. Possession of the project site was handed over on 4-9-2017 and work commenced on 3-3-2018. The indicative capital for Phase 1 of the development is Rs 1900 crores while the cost of the entire project is likely to

1 *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831

be Rs 3000 crores. The State of Goa has incurred a total expenditure of Rs 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs 230 crores as on 18-1-2019. 14.06% of the project work has been completed and a manpower consisting of 1500 persons has been mobilised at the site together with plant and machinery.

32. The concessionaire has stated that it has tied up with a consortium of banks and the servicing of the loans is linked to project milestones. As on 18-1-2019, the major works in progress included:

(*i*) site preparation and earth works such as excavation and filling up of runways, taxiways, aprons and parking bays;

(*ii*) PTB-foundations and column works; and

(*iii*) excavation of the foundations for the ATC building.

The concessionaire has submitted that apart from the plantation of ten trees for every single tree which has been felled, the Forest Department identified about 500 trees for transplantation, which process is being carried out. In this background, it has been submitted that the project should not be interdicted. The concessionaire, it has been urged, is committed to the completion of the project which accords with all the approvals that have been received.

33. The rival submissions now fall for our consideration.

C. *Scheme of the 2006 Notification and the Guidance Manual for Airports*

C. 1. *EIA Process*

34. The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

35. The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(*g*) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

36. On 27-1-1994, MoEF, in exercise of the powers conferred by sub-section (1) and clause (*v*) of sub-section (2) of Section 3 of the 1986 Act read with clause (*d*) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, issued a notification, S.O. 60(E) (the 1994 Notification) imposing restrictions and prohibitions on the expansion and modernisation of any activity

or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernising an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

37. The application, which was to be made in accordance with the schedule provided in the notification was to be submitted with a project report which included with it an EIA report, an Environment Management Plan (EMP) and the details of a public hearing which had been carried out in accordance with guidelines issued by the Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

38. MoEF as the Impact Assessment Agency (IAA) would then evaluate the application and reports submitted. IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC granted on that basis.

39. The 1994 Notification was amended to reflect the growing protection accorded to the environment.

40. On 14-9-2006, MoEF released another notification, S.O. 1533 (the 2006 Notification) in supersession of the previous notification. The 2006 Notification directed thus:

> "…on and from the date of its publication the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification."

41. There are significant differences between the 1994 Notification and the 2006 Notification. They are:

41.1. The 2006 Notification categorically states that an EC must be granted by the regulatory authority prior to the commencement of any construction work or preparation of land.

41.2. The 2006 Notification divides all projects into Category 'A' and Category 'B' projects. MoEFCC continues to regulate projects of large scale (Category 'A'), while SEIAAs regulate comparatively smaller projects (Category 'B').

41.3. Under the 1994 Notification, an applicant was required to submit an application along with all reports including the EIA report at the time of the application. Under the 2006 Notification, prior to the preparation of the EIA report by the applicant, the authority concerned formulates comprehensive ToR on the basis of the information furnished by the applicant addressing all relevant environmental concerns. This forms the basis for the preparation of the EIA report. A pre-feasibility report must also be submitted with the application unless exempted in the notification. Under the 2006 Notification, a draft EIA is first prepared and it is only after the public consultation process that a final EIA report must be prepared addressing all the concerns raised during public consultation.

41.4. The 2006 Notification stipulates the creation of a regulatory body at the State level — SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects.

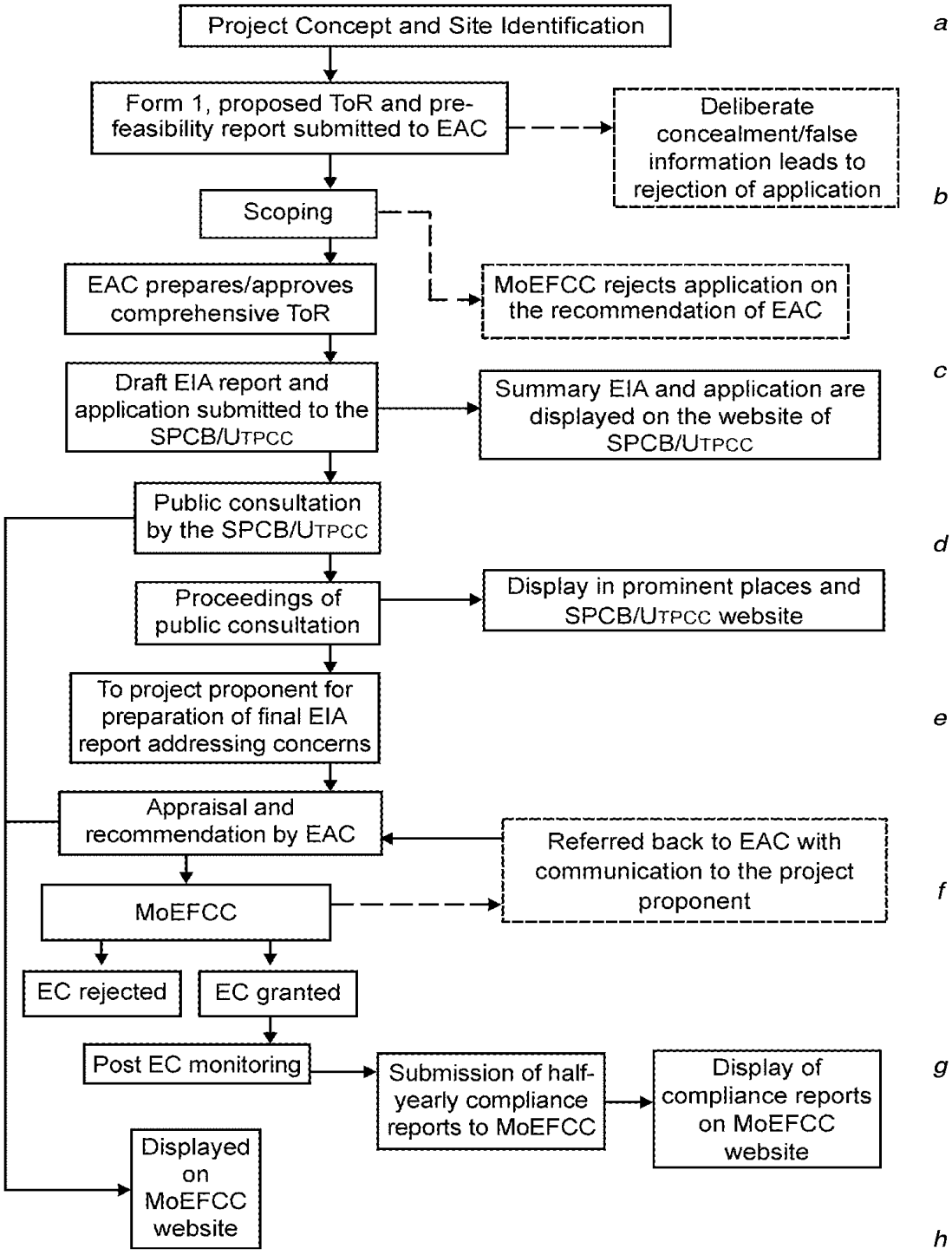
41.5. Under the 1994 Notification, the final approval was granted by IAA. Under the 2006 Notification, though the final regulatory approval is granted by MoEFCC or SEIAA, as the case may be, the approval is to be based on the recommendations of EAC functioning in MoEFCC or the State Expert Appraisal Committees (SEAC) which are constituted for that specific purpose.

41.6. Under the 2006 Notification, the application can be rejected by the regulatory authority on the basis of the recommendation of EAC or SEAC, as the case may be, at the preliminary stage itself, prior to public consultation.

41.7. Under the 1994 Notification, the public hearing process was overseen by the State Pollution Control Boards (SPCB) which would constitute a public hearing panel for the purpose. Under the 2006 Notification, the public consultation process is expanded to include the receipt of written comments from persons concerned. The public hearing component was to be overseen by SPCBs or the Union Territory Pollution Control Committee (UTPCC).

42. The salient objective which underlies the 2006 Notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernisation of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the authority concerned. EC is required before any construction work, or preparation of land (except for securing the land) is started on the project or activity listed in the schedule to the notification. The process stipulated under the 2006 Notification is illustrated by the following flowchart:

EIA Process for Category 'A' projects



43. Based on the spatial extent of the potential impact and the potential impacts on human health and natural and man-made resources, the 2006 Notification categorises all projects into Category 'A' and Category 'B' projects. MoEFCC in the Central Government and SEIAA at the State level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from MoEFCC, based on the recommendation of EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from SEIAA, based on the recommendations of SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

44. Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1-A[8], if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in Item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

45. The process to obtain environmental clearance as stipulated by the notification for *new* projects[9] comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

1. Screening;
2. Scoping;
3. Public Consultation; and
4. Appraisal.

Screening

46. This step is restricted only to Category 'B' projects. This stage entails an examination of whether the proposed project or activity requires further environmental studies for the preparation of an EIA for its appraisal prior to the grant of an EC. Those projects requiring an EIA are further categorised as Category 'B1' projects and remaining projects are categorised as Category 'B2' projects. Category 'B2' projects do not require an EIA. The categorisation is in accordance with the guidelines issued in this regard by MoEFCC from time to time.

8 Only for construction projects listed under Item 8 of the Schedule.

9 Applications for EC for expansions or modernisation of *existing* units as stipulated under the notification are made in Form 1 and shall be considered by EAC or SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

Scoping

47. At this stage, EAC or SEAC, as the case may be, formulates detailed and comprehensive terms of reference which address all relevant environmental concerns for the preparation of the EIA. Amongst other things, the information furnished by the applicant in Form 1/Form 1-A along with the proposed ToR by the applicant form the basis for the preparation of ToR. ToR must be conveyed to the applicant within 60 days of the receipt of Form 1, failing which, ToR proposed by the applicant shall be deemed as approved. Significantly, applications for EC may be rejected by the regulatory authority at this stage itself on the recommendation of EAC or SEAC, as the case may be, and the decision along with reasons is to be communicated to the applicant within 60 days of receipt of application.

Public Consultation

48. Prior to this stage, a summary EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process "by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate". The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 Notification, all Category 'A' and Category 'B1' projects shall undertake the public consultation process. This stage comprises of two components:

(*i*) A public hearing at the site or in its close proximity — district-wise to be carried out in the manner prescribed in Appendix IV; and

(*ii*) Procurement of written responses from persons concerned having a plausible stake in the environmental aspects surrounding the project.

49. The State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case SPCB or UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time-bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity district-wise". The public hearing proceeding is filmed and a copy of the video is submitted to the regulatory authority concerned.

50. Within seven days of receiving a written request to initiate the public consultation process, SPCB or UTPCC shall place the summary EIA and the application on their website and invite responses. The authority concerned may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any person concerned, the authority will make available a hard copy of the draft

EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

51. After the public consultation process, the applicant is duty-bound to address all the material environmental concerns expressed during the process and make appropriate changes to the draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate the next stage. Alternatively, the applicant may submit a supplementary report to the summary EIA and EMP.

Appraisal

52. This stage involves detailed scrutiny by EAC or SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorised representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

(*i*) Final EIA report

(*ii*) A copy of the video tape or CD of the public hearing proceedings

(*iii*) A copy of the final layout plan

(*iv*) A copy of the project feasibility report.

53. The regulatory authority must examine the documents "strictly with reference to ToR" and communicate any inadequacy to EAC or SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, EAC or SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, EAC or SEAC shall make categorical recommendations to the regulatory authority concerned to either grant EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1-A, as applicable.

54. MoEFCC or SEIAA shall thereafter consider the recommendations of EAC or SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall *normally* accept the recommendations of EAC or SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. EAC or SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days.

55. If no decision is communicated to the applicant within the time prescribed, the applicant may proceed according to the recommendation of EAC or SEAC recommending either the grant or rejection of EC. The decision of the regulatory authority and the final recommendations of EAC or SEAC shall be public documents on the expiry of the prescribed timelines. Deliberate concealment and/or the submission of false or misleading information material to the steps involved in the grant of an EC make the application liable for rejection and cancellation of any EC granted on that basis.

56. The 2006 Notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 Notification attempts to bridge the perceived gap between the environment and development.

57. It is for this reason that EAC and SEAC comprise experts in the field of environmental law. The Chairperson of EAC shall be a person who is an "outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector". Appendix VI to the 2006 Notification stipulates that EAC and SEAC comprise 15 members who are either "experts" or "professionals". Experts must have at least 15 years of relevant experience in the field or an advanced degree (PhD) with 10 years of relevant experience. Where experts are not available, professionals may be appointed to EAC.

58. EAC and SEAC are charged with evaluating the information submitted by the applicant in Form 1/Form 1-A and preparing comprehensive ToR which guide the preparation of the EIA reports. Given that these bodies comprise experts in the field of environmental law, the recommendation of EAC or SEAC to grant EC to an applicant or reject the application is *normally* accepted by the regulatory authority.

59. The regulatory authority at the State level (SEIAA) which is charged with the approval or rejection of an application for EC comprises three members who possess the qualifications in the field as prescribed in Appendix VI. Significantly, sub-clause (7) of Para 3 of the 2006 Notification stipulates that all decisions of SEIAA shall be unanimous and taken in a meeting. Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the State level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of EC and conditions.

60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1-A. Crucial information regarding the particulars of the proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:

60.1. Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).

60.2. Use of natural resources for construction or operation of the project (such as land, water, materials or energy, especially any resources which are non-renewable or in short supply).

60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.

60.4. Production of solid wastes during construction, operation or decommissioning.

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

60.7. Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. Environment sensitivity which includes, amongst other things, the furnishing of the following details:

60.9.1. Areas protected under international and national legislation.

60.9.2. Ecologically sensitive areas.

60.9.3. Areas used by protected, important or sensitive species of flora or fauna.

61. Under the 2006 Notification, EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:

61.1. EAC or SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment.

61.2. At the appraisal stage, the regulatory authority examines the documents submitted by the applicant "strictly with reference to ToR" and communicates any inadequacy to EAC or SEAC.

61.3. Category B2 projects, which do not require scoping, are evaluated by SEAC on the basis of the information furnished by the applicant in Form 1 alone.

61.4. The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form 1 and Form 1-A as applicable.

61.5. An application for extension of the validity of EC for certain projects is to be made by submitting a revised Form 1 within the validity period.

62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 Notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (*vi*) of Para 8 of the notification provides thus:

> "Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

C.2. *Guidance Manual for Airports*

63. In February 2010, MoEF brought out its Guidance Manual for Airports. The need for a sector specific manual arose because the 2006 Notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of EC process. The 2006 Notification noted that as many as 39 developmental sectors require prior ECs. Sector specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. Chapter IV of the Guidance Manual, which is titled "Description of Environment", prescribes the study area for carrying out an EIA:

> "Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains

a height of 1000 ft in this area below which noise and air pollution are generated maximum during its take off stage. Secondary data should be collected within 15 km aerial distance for the parameters as specifically mentioned at Column 9(III) of Form I of the EIA Notification, 2006. Details of secondary data, the method of collection of secondary data, should be furnished. Similarly, the proposed locations of monitoring stations of water, air, soil and noise, etc. should be shown on the study area map."

64. Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future expansions in a sustainable manner. The Guidance Manual specifically requires collection of baseline data on the following: (*i*) land environment; (*ii*) water environment; (*iii*) air environment; (*iv*) noise environment; (*v*) biological environment; (*vi*) socioeconomic environment; and (*vii*) solid waste.

65. The importance of collecting data on land environment is emphasised in the following extract:

"The terrain and hill slope, general slope and elevation of the area, the flow direction of streams and rivers, the water bodies and wetlands and the vegetation which together describe the physiography of the land, will control the drainage pattern in the region. Land farms, terrain, may get affected due to construction of airport. It may require large-scale quarrying, dredging and reclamation, which may cause changes in the topography. This in turn may affect the drainage pattern of the land/terrain. Baseline data pertaining to existing land at the proposed project area including the description of terrain hill slopes, terrain features, slope and elevation are to be collected. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places, etc., is to be undertaken by employing remote sensing techniques and ground truthing. Ecological features of forest area; agricultural land; grazing land; wildlife sanctuary land and national parks; migratory routes of fauna; water bodies; and drainage pattern including the orders of the drain and watersheds are to be described. Settlements in the study area may be delineated with respect to ARP on the site map. High rise buildings, industrial areas and zones, slaughterhouses and other features of flight safety importance may also be marked on the map. Secondary data from Central Water Board, GOI; State Groundwater Department, State Irrigation Department is to be obtained. Geomorphology of the region is to be clearly delineated. Study of land use patterns, habitation, cropping pattern, and forest cover data is undertaken. Information on the location of water bodies, drainage, forests, surface travel routes with respect to the project site is obtained within the study area and plotted on a map. This map will show the natural slopes and the drainage

patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and waterlogging in the project area."

66. The study of the water environment is necessitated for the following reasons:

"Groundwater quality is important, as change in its chemical parameters will affect the water quality. Airport activities during construction/operation may have impact on groundwater quality. Due to airport construction, existing low areas may be reclaimed with dredged spoil. The pollutants from dredged spoil are likely to enter into the groundwater. This is likely to increase sedimentation of pollutants in airport area, which may migrate in time to the neighbouring groundwater. Also runoff from solid waste, if any, may percolate into the ground and may contaminate the groundwater. Hence, they need to be studied through primary surveys and secondary sources. Monitoring locations are to be finalised as per CPCB norms which can represent the baseline conditions."

67. On the aspect of air environment, the Guidance Manual emphasises that:

"Aircraft engines produce emissions that are similar to other emissions resulting from any oil-based fuel combustion. These, like any exhaust emissions, can affect local air quality at ground level. It is emissions from aircraft below 1000 ft, above the ground (typically around 3km from departure or, for arrivals, around 6 km from touchdown) that are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions from other sources such as emissions from domestic sources, emissions from industries and from surface transport."

Local emissions attributed to aircraft operations at airports include oxides of nitrogen (NOx), carbon monoxide (CO), hydrocarbons (HC), sulphur dioxide (SO_2), and particulate matter (PM 10 and PM 2.5).

68. The Guidance Manual brings into focus the biological environment. It acknowledges that airport operations may alter ecosystems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. The Guidance Manual stipulates thus:

"Airport operations may cause change in local ecosystems, threaten endangered species, and disturb movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural), which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas will also be designated for their nature conservation value. The biological environment of the airport should hence be seen as

an integral component of the wider landscape scale ecological network. To accomplish this:

(*i*) Baseline data from field observations for various terrestrial and aquatic systems are to be generated.

(*ii*) Comparison of the data with authentic past records to understand changes is undertaken.

(*iii*) Environmental components like land, water, flora and fauna are characterised and,

(*iv*) The impact of airport development on vegetation structure in and around project site is to be understood.

Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolises the functioning efficiency of the entire ecosystem. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per the Wildlife Act (1972), the various wild animals are enlisted in the schedules of the Wildlife Act based on the intensity of threat to them as rare, endangered, threatened, vulnerable, etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data."

69. It is in the backdrop of the 2006 Notification and the Guidance Manual that it becomes necessary to assess the process that was adopted in the present case and its outcome.

D. ***Forests***

70. The essence of the challenge to EC is twofold:

70.1. Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of 15 km. Item 2 under the heading of "Environmental Sensitivity" requires a clear disclosure of "areas which are important or sensitive for ecological reasons — wetlands, water sources or other water bodies, coastal zone, biospheres, mountains and forests".

70.2. Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance of 15 km from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 km from the project boundary.

71. The learned ASG made an earnest effort to support this by urging that a reserved forest is one which is notified under Section 20 of the Forest Act, 1927. The issuance of a notification under Section 4, it was urged, is indicative only of an intent and a forest stands reserved under sub-section (2) of Section 20 only upon the issuance of a notification. The ASG submitted that the reliance which the appellants placed on the Survey of India map is misplaced as, in the absence of a notification under Section 20, a forest cannot be regarded as being

reserved. In the alternative, it was urged that as a matter of fact, the EIA report (save and except Table 2.1) takes into account the forest cover surrounding the site and within the prescribed aerial distance. As regards Form 1, the learned ASG submitted that at that stage, the project proponent may not be expected to be aware of all the features of the environment and hence, the omission to refer to forests and other areas which are sensitive ecologically should be discountenanced.

72. We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.

73. There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 Notification. Hence, clause (*vi*) of Para 8 of the 2006 Notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.

74. We are unable to accept the submission that the disclosure required was of reserved forests comprehended within a notification under sub-section (2) of Section 20 of the Forest Act, 1927. Form 1 requires a disclosure of areas which are important or sensitive for ecological reasons, among them, being "forests". The expression "forests" is used without reference to a statutory or artificial definition and must hence incorporate a meaning which bears upon the ordinary description of the term. The expression "forests", means a forest as commonly understood, without reference to a notification under the Forest Act, 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that baselines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

75. The need to construe the expression "forests" in a broad and generic sense was emphasised in the decision of this Court in *Godavarman*[6]. This Court held: (SCC pp. 269-70, para 4)

> "*4*. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation

6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest (Conservation) Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership."

76. Subsequently, in *Okhla Bird Sanctuary*[7], this Court explained the position: (SCC p. 762, para 35)

> "*35.* Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries."

In *Okhla Bird Sanctuary*[7], trees had been planted with an intent to set up an urban park. This Court found it "inconceivable" that those trees would turn into a forest "within a span of ten to twelve years and the land, which was for agricultural use would be converted into forest land". Hence, the decision was based on a factually distinguishable situation. The decision emphasises that in construing the term "forest", courts must have due regard both to text and to context.

77. In the context of the 2006 Notification and the underlying purpose of facilitating an EIA report, the expression "forests" must receive its ordinary and natural connotation. The effort must not be to overlook and destroy forests but to notice and protect them.

78. Having said this, we must delve into the alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area. In this context, Para 2 of the Executive Summary introducing the EIA report acknowledges that the "surrounding land use of the airport site is predominantly forest land". In the context of land environment, the EIA report records that "forest is the predominant land use in the study area". The EIA report acknowledges that territories in Maharashtra fall within one kilometre from the proposed greenfield airport. Villages falling in Goa and Maharashtra within the 10 km radius were considered for assessment. Para 2.3.1 of Chapter II deals with land use. Land use/Land cover statistics for a 10 km radius from the Mopa airport in the State of Maharashtra have been tabulated. Among them is the following:

Sl. No.	*Description*	*Area (sq m)*	*Area (ha)*
5.	Forest-Tree Clad Area-Dense	6,63,41,913.84	6634.19

7 *Noida Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744

Similarly Para 4.4 in Chapter IV, which is titled "description of environment statistically", provides thus:

> "Surrounding land use of the airport site is predominantly forest land. The northern and eastern side of site is reserve forest areas, whereas western side is barren and village cultivated land. The existing land use plan is attached as Annexure IX."

79. The presence of a "diverse system set as dense and open forest, cultivated lands, sand dune vegetation, wetlands and human habitation" is noticed in Para 4.6 dealing with the biological environment. Annexure IX to the EIA report provides land use/land cover maps for both Goa and Maharashtra in the study area. The maps in Annexure IX cover forested areas in Maharashtra and Goa within an aerial boundary of 10 km from the project site. Annexure XI contains the hydrogeomorphological maps for Goa and Maharashtra.

80. Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC in spite of the fact that there has been a patent failure on the part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of ToR by EAC. EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating ToR and between the ambit of the EIA report required by ToR and the final EIA report. ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of EAC in the preparation of ToR and in consequence, leads to preparation of a deficient EIA report.

81. The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of ToR. The application may be rejected on the basis of the information furnished by the project proponent in Form 1. Claiming an EC as a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is required to assess the final documents submitted to it "strictly with reference to ToR" and communicate to EAC and SEAC any discrepancies between the EIA report and ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

82. The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 Notification has a cascading effect on the salient objective which underlies the 2006 Notification. The 2006 Notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 Notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The

terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on the part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 Notification, that must have consequences in law. There can be no gambles with the environment: a "heads I win, tails you lose" approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law.

E. ***Ecologically Sensitive Zones (ESZs)***

83. The substratum of the case of the appellants is based on the following extract contained in the EIA report:

> "Ecologically Sensitive Zones, Ministry of Environment and Forests had constituted a High-level Working Group (HLWG) under the Chairmanship of Dr K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17-8-2012 to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity. HLWG submitted its report to MoEF on 15-4-2013. HLWG identified 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing protected areas, world heritage sites and tiger and elephant corridors as ecologically sensitive areas (ESA). The present proposed airport site is falling under Pernem Taluka of North Goa District. The Pernem Taluka has not been included in the ecologically sensitive areas submitted by HLWG. MoEF order on ESA is attached as Annexure XVI."

84. According to Ms Shenoy, the EIA report notices the Kasturirangan Report submitted on 15-4-2013. The submission is that the EIA report has conveniently glossed over the areas adverted to by the Kasturirangan Report as an ESZ. This includes those areas which fall within the study area on the ground that Pernem Taluka, where the project site is situated, has not been included as an ESZ. In this context, reliance is placed on a draft notification dated 3-10-2018 issued by MoEFCC under which the Union Government has proposed to notify 56,825 sq m spread across six States — Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as the Western Ghats ESZ. The preamble to the draft notification adverts to the steps taken by the Union Government between 2013 and 2016 in pursuance of the report of the HLWG. This includes draft notifications issued on 10-3-2014 and 4-9-2015. The draft notification dated 3-10-2018 emphasises the importance of the Western Ghats as a global biodiversity hot spot:

> "WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India and it is the origin of Godavari, Krishna, Cauvery and a number of other rivers and extends over a distance of approximately 1500 km from Tapti River in the north to Kanyakumari

in the south with an average elevation of more than 600 m and traverses through six States, namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu;

AND WHEREAS, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity and it harbours many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates and it is also an important centre of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamon, mango and jackfruit;

AND WHEREAS, Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat-topped lateritic plateaus, the Sholas and wetland and riverine ecosystems;

AND WHEREAS, UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a centre of origin of many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;"

85. Ms Shenoy has emphasised that sixteen villages in the taluka of Sawantwadi of the district of Sindhudurg which fall within the study area have been mapped as an ESZ in the annexure to the draft notification dated 3-10-2018. They are:

"*State*	*District*	*Taluk*	*Village Name*
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhavade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majgaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarda
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarf Soundal"

86. A comparison of the above villages with Annexure IX of the EIA report indicates that several of the above villages which have been mapped as ESZs in the draft notification fall within the 10 km buffer from the project site. Hence, the submission of Ms Shenoy merits a close analysis.

87. The EIA report has rested content with the observation that Pernem Taluka, where the project site is situated, is not an ESZ. That is not sufficient or adequate, since the purpose of the EIA report is to make an assessment of ESZs which fall within the study area. Mr Nadkarni's response to the above submission is that:

87.1. Neither the Mopa Plateau nor Pernem Taluka constitute a part of the Western Ghats.

87.2. The HLWG chaired by Dr Kasturirangan recommended a prohibition of specified activities while for other activities, the 2006 Notification was required to be followed.

87.3. The EIA report, while considering the project, has also adverted to the Kasturirangan Report.

87.4. Infrastructure projects except in the prohibited category are permissible, subject to an EIA.

88. The report of the HLWG dated 15-4-2013 recommends that there should be a complete ban on mining, quarrying and sand mining activity in the ESZ. Similarly, it recommends that no thermal power project should be allowed in ESZs and that all "red category" industries should be strictly banned. Building and construction projects of 20,000 sq m and above should not be allowed. However, all other infrastructure and development projects, which have been recommended, should be subject to the grant of ECs under Category "A" projects of the 2006 Notification.

89. The Union Government issued a Notification on 13-11-2013 in pursuance of Section 5 of the Environment (Protection) Act, 1986 to the effect that from the date of the issuance of those directions, no pending case or fresh case shall be considered by EACs/MoEF or SEACs/SEIAAs covering the following industries:

(*a*) Mining, quarrying and sand mining;

(*b*) Thermal power plants;

(*c*) Building and construction projects of 20,000 sq m area and above;

(*d*) Township and area development projects with an area of 50 ha and above and/or with a built-up area of 1,50,000 sq m and above; and

(*e*) "Red category" industries.

90. The submission of the ASG is that there is no prohibition on setting up a Category "A" project in an ESZ. An infrastructure project such as an airport does not fall within the range of prohibited activities. What is necessary is that the project must be assessed in terms of the 2006 Notification.

91. The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 km of the project site. On one hand, the EIA report takes note of the HLWG report dated 15-4-2013. But, on the other hand, the EIA report ignores the existence of ESZs within the study area on the ground that the *project site* is not situated in an ESZ. That, as we have seen, can never be accepted as an adequate

response. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration, namely, that within the study area which has to be considered, there is the presence of ESZs.

92. In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the study area. The EIA report must factor in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wetlands, water sources, water bodies, coastal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of biodiversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration.

F. ***Sampling points***

93. The submission of the appellants is that the Guidance Manual requires the collection of primary data through measures and field studies in the study area within 10 km radius from the ARP. Secondary data has to be collected within a 15 km aerial distance for the parameters mentioned in Column 9(III) of Form 1 of the 2006 Notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and 2014 respectively. In response to this submission, it has been urged that all sampling points were based on Para 4.1 of the Guidance Manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report:

F.1. ***Air quality***

94. In order to study the ambient air quality in terms of suspended particulate matter, respirable particulate matter, SO_2, NO_X, CO and HC, ambient air quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa Village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 km from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA

report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 km was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area.

F.2. ***Water quality***

95. Para 4.2 of the EIA report states that groundwater quality was measured at four locations: Mopa Village, Pernem, Dargal and Patradevi marked within 10 km of the study area. The surface water quality was measured at three locations: Chapora River, Tiraikol River and Nala near Mopa Village within 10 km of the study area. The impact assessment is contained in the EIA report. The Mopa Plateau is at a height of 155 metres above mean sea level and water from the plateau flows down to the rivers in the State of Goa. The laterite plateau is an important source of drainage by providing natural channels for water. The impact of a greenfield airport on the closing of natural channels which feed the water bodies has not been scientifically mapped or studied.

F.3. ***Noise quality***

96. While monitoring the noise quality, the EIA report covered a radius of 10 km. In order to obtain baseline data of noise quality, nine monitoring stations were chosen in the study area. While it is true that all nine locations were situated in the State of Goa, one (Patradevi) was situated on the border shared between Goa and Maharashtra. The EIA report contains an impact study and the study area covered includes both the States.

F.4. ***Flora and fauna***

97. The EIA report indicates that the area surrounding the site for the proposed airport has dense forests[10]. These total up to nearly 6634.19 hectares[11]. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

98. While dealing with the above submissions, it is necessary to note that the Guidance Manual contains a specific reference to the collection of data of sensitive habitats and wild/endangered species in the project area. The Guidance Manual stipulates thus:

> "Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolises the functioning efficiency of the entire ecosystem. Just as wild flora needs special treatment for preservation and

10 See for instance Para 2.0 of the executive summary and Para 2.3.1 of Chapter I.
11 See Para 2.3.1, Chapter II.

growth, wild fauna as well deserves specific conservatory pursuits for posterity."

99. The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter-affidavit filed by the State of Goa would seem to support the appellant's submission. It is stated:

"I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications:

(*i*) *Birds of Goa* by Heinz Lainer & Rahul Alvares;

(*ii*) *The Goan Jungle Book* by Nirmal Kulkarni;

(*iii*) *A Photographic Guide to Butterflies of Goa* by Parag Ragnekar;

(*iv*) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 1) by R.S. Rao;

(*v*) *Flora of Goa, Diu, Daman, Dadra and Nagarhaveli* (Vol. 2) by R.S. Rao;

(*vi*) *Red Data Book* published by Botanical Survey of India;

(*vii*) Study materials published in Goa ENVIS Centre were also referred."

100. The appellant, on the other hand, has sought to rely upon several independent studies including the following:

"(*a*) A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S. Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine.

The report also mentions the presence of the Sawantwadi — Dodamarg wildlife corridor within the 10 km proposed project site.

(*b*) Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972.

(*c*) Report on two days' survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi Concanese which is critically

endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut."

101. We find that the collection of both primary and secondary data of fauna in the EIA report was perfunctory. The primary study is not based on data collected from acknowledged sources such as the Zoological Survey of India, Wildlife Institute of India and Ministry of Earth Sciences as required under the Guidance Manual. Similarly, as regards avi-faunal studies, the EIA report lists 385 plant species in Table 4.15 of Chapter IV, titled "Description on Environment". It also states that 86 species of birds were observed during the survey in the 10 km study area from the proposed site. Column 9(III) of Form 1 refers to "areas" in the following terms:

> "areas which are used by protected, important or sensitive species of flora or fauna for breeding, foraging, nesting, resting, over wintering or migration".

The above column was left blank by the project proponent in Form 1. According to the Guidance Manual, secondary data has to be collected within an aerial distance of 15 km for the parameters specifically specified in Column 9(III) of Form 1 of the 2006 Notification. This was evidently not done. A careful avi-faunal study was necessary, having due regard to the fact that the proposed project is an airport site. Bearing in mind the profile of airport operations, foraging or nesting by bird species in and around the airport must not be discarded. It must be accepted that in a project involving the setting up of an airport, the EIA report must deal with the impact of the airport on birds and likewise the impact of birds on aircraft operations.

F.5. ***Felling of trees***

102. Para 2.1.5 of the executive summary to the EIA report deals with the biological environment. Para 2.1.5 stipulates thus:

> "*The area required for proposed airport has only few trees, mainly bushes*. These will be cleared during site preparation." (emphasis supplied)

103. Similarly, Chapter II which deals with project description specifies in Para 2.3.1 that "*vegetation and trees are sparse at the site*". That the trees which were required to be felled were far from "few" is evident from the reply filed by the State of Goa in the present proceedings where it has been stated that permissions were granted for the *felling of 54,676 trees*. The EIA report ignored them. The submission in the EIA report that there were only sparse trees is sought to be explained by the State from the perspective of the large area of the land proposed for the project. It is sought to be explained that since the total area is 2133 ac, the number of trees would proportionately work out to about 25 trees in an area of one acre (about one tree in an area of 160 sq m).

104. In terms of the order passed by the Bombay High Court in the PIL, to which we have adverted earlier, the Principal Chief Conservator of Forests, Goa passed an order on 2-4-2018 providing for:

104.1. The enumeration of all trees.

104.2. Exploring the possibility of transplanting existing trees which could be safely transplanted into ground areas.

104.3. Issuance of tree cutting permission by the Deputy Conservator of Forests.

104.4. Planting of ten times the number of trees felled by the concessionaire under the supervision of the Forest Department.

105. On 6-2-2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act, 1984 filed by the Federation of Rainbow Warriors, a writ petition was filed before the Bombay High Court (WP No. 1 of 2018). The High Court set aside[4] the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates:

(*i*) 1422 trees by an order dated 20-4-2018;

(*ii*) 18,408 trees by an order dated 24-7-2018; and

(*iii*) 33,298 trees by an order dated 1-10-2018.

Following this exercise, the felling of trees was completed on 18-1-2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of NGT in the pending proceedings, a miscellaneous application was moved before NGT. While disposing of the main appeal, NGT also disposed of the miscellaneous application and under the head of "Biological Environment", the following directions have been issued:

"E. *Biological environment*

1. Efforts be made to transplant the trees to other locations in the same vicinity by using appropriate mechanical devices which are available these days.

2. Efforts be made to plant indigenous species which are tall in size rather than small saplings.

3. Concerns have been raised by the appellants with regard to plant species "Dipcadi Concanense" which has been claimed to be a threatened plant. This claim of the appellants has been negated by the respondent by producing a documentation of Botanical Survey of India, Western Regional Centre, Pune, Maharashtra titled as "A

4 *Federation of Rainbow Warriors* v. *Conservator of Forests*, 2018 SCC OnLine Bom 329 : (2018) 3 Mah LJ 424

> Note on Occurrence and Distribution of Dipcadi Concanense". By invoking precautionary principle, we direct the project proponent to draw up a conservancy by plan/scheme for "Dipcadi Concanense" in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation."

106. We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in Figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2133 ac averages out to 25 trees per acre or one tree over an area of 160 sq m. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinised the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

107. In the written submissions which have been filed by the State of Goa, it has been submitted that of the 54,676 trees which were felled:

(*i*) 32,193 trees representing 59% had a girth of 30 to 50 cm;

(*ii*) 19,903 trees representing 36% had a girth of 50 to 100 cm; and

(*iii*) "only 2580 trees" had a girth exceeding 100 cm.

108. The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(*j*) in the following terms:

> "**2. (*j*) "tree**" means any woody plant whose branches spring from and are supported upon the trunk or the body and whose trunk or body is not less than ten centimetres in diameter at a height of one meter from the ground level and includes coconut palm."

This definition has been highlighted to indicate that it incorporates a stringent meaning of the expression "trees". The point, however, is simple: there was a glaring omission of the factual existence of as many as 54,676 trees in the EIA report. For project proponents, the environment may not possess a human voice. But the purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring *any* component of the

environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

109. The order of the Principal Chief Conservator of Forests mandating transplantation, where possible, and the plantation of ten trees for every tree felled provides a measure of rectification. But there is a reason why issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 Notification must be transparent, candid and robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy.

G. *Public consultation*

110. The importance of public consultation is underscored by the 2006 Notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental ecosystems which define their existence and sustain their livelihoods.

111. Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognises that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognising that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

112. The 2006 Notification postulates:

112.1. A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons".

112.2. Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity.

112.3. The duty of SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time.

112.4. Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection.

112.5. The duty of the applicant to address all material concerns expressed during the process of public consultation.

112.6. The making of appropriate changes in the draft EIA and EMP.

112.7. The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

112.8. Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

113. Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 Notification. A breach will render the process vulnerable to challenge on the ground that:

(*i*) significant environmental concerns have not been taken into account;

(*ii*) there was an absence of a full disclosure when the EIA report was put up for consultation; and

(*iii*) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

114. The public consultation was held on 1-2-2015 at Mopa. Nearly 70 persons spoke on the occasion and 1586 persons signed the attendance sheet. 1150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

114.1. Mopa Plateau has multiple watersheds and the discharge of water goes down to the rivers.

114.2. Nearly forty springs would be affected along with flora and fauna.

114.3. The public hearing had been conducted in an area where the land was barren and with no plantation.

114.4 The impact on River Chapora, which is within a 10 km radius from the project, has not been adequately analysed.

114.5. Mopa Plateau has a natural mechanism for groundwater recharge.

114.6. Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna.

114.7. The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone.

114.8. Local plantations would be affected.

114.9. The number of trees to be felled by the project proponent has not been specified in the EIA report.

114.10. The Dodamarg Wildlife Sanctuary had been "sanitised" by the High Court.

114.11. Forest clearance had not been obtained.

114.12. The sacred groves of the area have not been described, including the Barazan which will be lost.

114.13. The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of rupees fifty crores.

114.14. No study has been carried out in the 10 km radius falling in Maharashtra.

115. These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before EAC at its 149th meeting on 26-6-2015 where the project proponent made a presentation. The minutes of the meeting recorded the following observations of the project proponent:

> "(*x*) Public hearing was conducted on 1-2-2015 at Simechen Adven, Mopa, Goa. *The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities*." (emphasis supplied)

On the basis of a factual analysis, Ms Shenoy has submitted that only seven out of the 68 objections dealt with the issue of employment. Evidently, the project proponent failed to address the other significant concerns in the manner which is required by the 2006 Notification.

116. In *Utkarsh Mandal* v. *Union of India*[12], the Delhi High Court has succinctly summarised the duty of EAC to apply its mind to the objections raised in the course of public hearings: (SCC OnLine Del para 40)

> "*40*. … It is that body that has to apply its collective mind to the objections and not merely MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14-9-2006 and the mandatory requirement of holding

12 2009 SCC OnLine Del 3836

public hearings to invite objections it is the duty of EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."

117. Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before EAC: the need for employment opportunities. The project proponent failed in its duty to inform EAC. The record does not indicate a critical appraisal or analysis by EAC. EAC was duty-bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by EAC. The minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 Notification in this regard.

H. ***Appraisal by EAC***

118. Appraisal by EAC is structured and defined by the 2006 Notification. The process of appraisal is defined to mean "a detailed scrutiny" by EAC of the application and other documents like EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, EAC has to make "categorical recommendations" to the regulatory authority either for:

(*i*) the grant of a prior environmental clearance on stipulated terms and conditions; or

(*ii*) the rejection of the application.

The recommendations made by EAC to the regulatory authority must be based on "reasons".

119. EAC, at its 149th meeting held on 26-6-2015, considered the EIA report and sought a clarification from the project proponent on the following six aspects:

"(*i*) There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;

(*ii*) 10 year data regarding rainfall in the area;

(*iii*) Justification on sustainability of existing traffic and transportation arrangements especially at intersection points of the approach road to the airport needs to be submitted;

(*iv*) A traffic circulation plan needs to be evolved for smooth running of traffic in the area;

(*v*) Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport areas to be submitted; and

(*vi*) Minimum 20% energy conservation measures should be adopted incorporating provisions for use of LED, star-rated ACs, etc. Revised Energy Conservation Plan to be submitted."

120. A representation was received from the Federation of Rainbow Warriors, consequent to which the consideration was deferred and the project proponent was requested to submit a "pointwise reply to the issues raised" in the representation. EAC, at its 152nd meeting held on 20-10-2015, observed that the project proponent had provided "pointwise clarifications to the concerns raised by the 'NGO' ". EAC noted thus:

"(*i*) The EIA report has been updated by the PP after taking into account the issues raised in the public hearing and the same has been put in public domain.

(*ii*) The project is outside the ESZ delineated by the Dr Kasturirangan Committee and TERI.

(*iii*) The project envisages construction of rainwater harvesting pits within the plot area, which would contribute to groundwater recharge. Hence, the objection of NGO in this regard does not hold.

(*iv*) The biological data in respect of flora and fauna was collected by the functional area experts of M/s Engineers India Ltd. and not by M/s Pragati Labs stationed at Goa during November 2014 to January 2015 for collection of ambient air quality, noise, water quality, soil, socioeconomics."

121. Following the above statement, EAC recommended the grant of an EC subject to certain conditions. Para 3.1.2 of the minutes of EAC is as follows:

"The Committee noted the peculiar circumstances of the case and the difficulties in land acquisition which led to delay in preparation of the EIA report, and the larger public interest involved.

Keeping in view the fact that the project proponent has not concealed facts and circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid ToR, though the validity has been extended twice and regularised subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence, there is substantive and active public participation as required under the law for public consultation.

The PP further provided their reply to the rebuttal by the said NGO on various issues.

EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:

> (*i*) The project proponent shall ensure availability of adequate land at the junction of Mopa Airport Road and Mumbai/Goa NH 17 for traffic circulation/management and to provide for all the traffic interchanges and proposed cover.
>
> (*ii*) The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.
>
> (*iii*) A perusal of the topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelised. The area between the parallel taxi way and runway needs to be handled carefully to drain the water from the area in the outfall."

122. The above explanation must be assessed with reference to the norm that EAC is required to submit reasons for its recommendation. The above extract indicates that EAC has adverted to the following circumstances:

122.1. The "peculiar circumstances" of the case.

122.2. The difficulties in land acquisition which led to a delay in the preparation of the EIA report.

122.3. The "larger public interest" involved.

122.4. The project proponent had not concealed facts and circumstances of the case.

122.5. The project is in the public interest.

122.6. The project proponent had provided a reply to the rebuttal by Rainbow Warriors on various issues.

123. This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by EAC. The requirement that EAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons:

123.1. EAC makes a recommendation to the regulatory authority in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as Para 8(*ii*) provides, shall normally accept the recommendations of EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period.

123.2. The grant of an EC is subject to an appeal before NGT under Section 16 of the NGT Act, 2010.

124. The reasons furnished by EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC.

125. What, then, do the reasons which have been furnished by EAC tell us? EAC relies on the "peculiar circumstances of the case" as the basis of its recommendation. What the peculiar circumstances are, is left for pure guesswork or surmise. EAC refers to the delay in acquisition proceedings, a larger public interest and the fact that the project proponent "has not concealed facts and circumstances". Each one of the reasons which has weighed with EAC betrays a lack of comprehension of the true nature of its function under the 2006 Notification. EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis (as we have seen earlier) is incorrect. There is no analysis of the EIA report. EAC has failed to answer to the call to its expertise.

126. Clause (*vi*) of Para 8 of the 2006 Notification stipulates thus:

> "(*vi*) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 Notification. EAC has, in the brief reasons which are contained in Para 3.1.2, not applied its mind at all to the environmental concerns raised in relation to the project nor do its reasons indicate an appraisal of those concerns by evaluating the impact of the project.

127. EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty-bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by EAC constitute a live link between its processes and the outcome of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated.

128. Mr A.N.S. Nadkarni, learned ASG, urged that EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, EAC specifically called for a clarification on six issues. The next meeting was deferred. The minutes of the 152nd meeting contain no assessment of whether the clarifications which were sought by EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by EAC, however, are more fundamental. The minutes of the 152nd meeting indicate that EAC primarily, if not exclusively, dealt with the "pointwise clarifications" of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not exhaustive of the function of EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

129. EAC, as an expert body, has to scrutinise all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by EAC as an expert body and its reasons must reflect that this has been done. As the minutes indicate, the non-application of mind by EAC is evident with reference to the presence of 15 ESZs in the study area. EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 Notification. The recommendations of EAC furnish a guide for MoEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC.

I. *The appellate jurisdiction of NGT: the requirement of a merits review*

130. NGT is entrusted with appellate jurisdiction under Section 16 of the NGT Act, 2010. Section 16(*h*) provides thus:

> "**16.** ***Tribunal to have appellate jurisdiction.***—Any person aggrieved by—
>
> * * *
>
> (*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);"

131. Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles[13].

132. The decision of NGT indicates that several significant submissions were urged before it. The entire analysis by NGT is contained in one paragraph of its judgment dated 21-8-2018[1] which is extracted below: (*Federation of Rainbow Warriors case*[1], SCC OnLine NGT para 27)

> "*27.* We find that the Expert Appraisal Committee had before it pointwise reply of the project proponent which we have already quoted above. Therein delay in land acquisition process and collection of fresh baseline data are mentioned. It is also mentioned that data for Maharashtra was also considered. Other issues duly explained are hydro-geological features and data with regard to flora and fauna, socioeconomic profile, topography, vegetation, observance of due procedure in public hearing, relevance of study with regard to ecosensitive areas of Western Ghats, feasibility of proposed airport in terms of cost benefit analysis as well as environmental cost benefit analysis. EAC also considered the data compiled by various offices. Mere fact that different opinions have been expressed by other experts is not enough to hold that EAC did not apply its mind. The rehabilitation programme was also produced before EAC."

The next paragraph contains a brief reference to the fact that the requirement of a study over a distance of 15 km is in regard to the collection of secondary data. The above paragraph, in our view, does not fulfil the requirement of a merits review by an expert adjudicatory body vested with appellate jurisdiction.

133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. In order to be eligible for appointment as an expert member, a person must fulfil the following qualifications prescribed in Section 5(2):

> "**5. (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 year's practical experience in the field of environment and

13 *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 353; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87

1 *Federation of Rainbow Warriors* v. *Union of India*, 2018 SCC OnLine NGT 831

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."

134. NGT is an expert adjudicatory body on the environment.

135. In two of its previous decisions, NGT has shown the path along with which it must traverse in arriving at its decisions:

135.1. In *Save Mon Region Federation* v. *Union of India*[14], the grant of an EC to a 780 MW Hydroelectric Project in Tawang District of Arunachal Pradesh was challenged. NGT framed the question before it in broad terms:

"... the material issue, therefore, that needs to be answered in the present appeal is as to whether the process of grant of prior EC to the project in question suffers from vice of faulty scoping process or not."

Having reviewed the information furnished in Form 1 by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, NGT held that facts material to the case were not present before EAC and the consequent "vacuum in the EIA report" led to aberrations in the appraisal process conducted by it. Suspending EC granted to the project, NGT accepted the contention which was urged before it that NGT has the "authority to take an appropriate decision on the facts placed before it" and "set aside or suspend EC".

135.2. Similarly, in *Sreeranganathan K.P.* v. *Union of India*[15], the grant of an EC to the KGS Aranmula International Airport Project was challenged. NGT found fault with the process leading to up to the grant of EC since sector-specific issues had not been dealt with. NGT extensively reviewed the information submitted by the project proponent in Form 1, the deficiencies in the EIA report, the process of appraisal conducted by EAC and the sector-specific guidelines laid down with regard to the constructions of airports and held thus: (SCC OnLine NGT paras 182 & 187)

"*182*. ... a duty is cast upon EAC or SEAC, as the case may be, to apply the cardinal principle of sustainable development and principle of precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that EAC has miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. ... Thus, EAC has not conducted itself as mandated by the EIA Notification,

14 (2013) 1 All India NGT Reporter 1
15 2014 SCC OnLine NGT 15

2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC.

* * *

187. ... the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by MoEF to the 3rd respondent/ project proponent for setting up the Aranmula airport."

136. The failure to consider materials on a vital issue and indeed the non-consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of this Court under Section 22 of the NGT Act, 2010. The failure of process in the present case has been compounded by the absence of a merits review by NGT.

137. The learned ASG has placed reliance on the decision of this Court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[16] (*Lafarge*) to contend that the failure to disclose the presence of trees should not lead to the invalidation of EC. In that case, an application was made under the 1994 Notification for the grant of an EC to a proposed limestone mining project at Nongtrai Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to MoEF drawing attention to the non-disclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act, 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of EC, it was urged that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

138. A three-Judge Bench of this Court rejected the challenge and upheld the grant of EC to the proposed project. This Court relied, among other factors, on the following:

138.1. The mining of limestone in Khasi Hills dates back to 1763 and is an integral part of the culture of Nongtrai Village.

138.2. The site was cleared after thorough consultation with the custodian of the land, who decided to lease the land for the mining project following the loss of revenue caused due to mining by the unorganised sector.

138.3. The Headman of Nongtrai and Village Durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands.

138.4. At the stage of site clearance, MoEF had before it certificates by the Executive Committee, Khasi Hills Autonomous District Council and the DFO, Khasi Hill Division, Shillong, certifying that there were no forests in the proposed project site.

138.5. The DFO certified that the proposed mining site was not a forest as defined in *Godavarman*[6].

138.6. The 2006 Notification was not applicable.

16 (2011) 7 SCC 338

6 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

138.7. MoEF had, at multiple stages, sought clarifications from the project proponent and had undertaken requisite care and caution to protect the environment.

139. Upholding the grant of EC and the forest clearance, this Court held thus: (*Lafarge case*[16], SCC p. 380, para 120)

> "*120.* ... The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. *In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique landholding and tenure system of Nongtrai Village*. On the facts of this case, we are satisfied with the due diligence exercise undertaken by MoEF in the matter of forest diversion. *Thus, our order herein is confined to the facts of this case*." (emphasis supplied)

140. The decision of this Court in *Lafarge*[16], was based on the facts summarised above. Significantly, the standard of judicial review which must be applied in cases relating to the environment has been formulated by the three-Judge Bench in *Lafarge*[16]. S.H. Kapadia, C.J. noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus: (SCC p. 380, para 119)

> "*119.* ... In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint."

141. In a recent three-Judge Bench decision of this Court in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[17], this Court had the occasion to construe the provisions of Section 22 of the NGT Act, 2010. Speaking for the Bench, Abdul Nazeer, J. held that the test to determine whether a substantial question of law arises (within the meaning of Section 100 CPC) was formulated in the decision of a Constitution Bench in *Chunilal V. Mehta and Sons Ltd.* v. *Century Spg. and Mfg. Co. Ltd.*[18], where it was held thus: (AIR p. 1318, para 6)

> "*6.* ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general

16 *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*, (2011) 7 SCC 338
17 (2019) 18 SCC 494 : 2019 SCC OnLine SC 322
18 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

Reappreciation of the "factual matrix" has been held to be distinct from a substantial question of law. In the present case, we have indicated the basis for the invocation of the jurisdiction of this Court under Section 22. There was a failure to follow binding norms under the 2006 Notification. There were serious flaws in the decision-making process. Relevant material has been excluded from consideration and extraneous circumstances were borne in mind. EAC as an expert body abdicated its obligations to make an expert determination based on reasons. NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(*h*) read with Section 20 of the NGT Act, 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression.

J. ***Environmental Rule of Law***

142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.

143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike[19]. The environmental rule of law seeks to address this gap.

144. The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace[19]. It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance[19]. The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health,

19 United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowe d=y>

contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights[19]. Similarly, the rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights[20]."

145. Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard[21] to a standard based on freedoms[22]. Thus recharacterised, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar — or more — freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

146. Decision 27/9 which was adopted by the United Nations Environment Programme's (UNEP's) Governing Body at its first universal session in 2013 on "Advancing Justice, Governance and Law for Environmental Sustainability" was the first internationally negotiated document to establish the term "environmental rule of law." It declared that "the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations". It thus urged governments and organisations to reinforce cooperation to combat non-compliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the "development and implementation of environmental rule of law with attention at all levels to mutually supporting governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution". Similarly, the first United Nations Environment Assembly in 2014 adopted Resolution 1/13, which calls upon countries "to work for the strengthening of environmental rule of law at the international, regional and national levels".

19 United Nations Environment Programme, First Environmental Rule of Law Report. Available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowe d=y>

20 "UN Environment, Environmental Rule of Law". Available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>

21 Bruntdland definition of Sustainable Development

22 Amartya Sen, "Sustainable Development and Our Responsibilities". Available at <http://www.comitatoscientifico.org/temi%20 SD/documents/SEN%20 Responsibility&SD %2010.pdf>

147. In 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law[23] which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

(*i*) Obligation to Protect Nature
(*ii*) Right to Nature and Rights of Nature
(*iii*) Right to Environment.
(*iv*) Ecological Sustainability and Resilience
(*v*) In Dubio Pro Natura
(*vi*) Ecological Functions of Property
(*vii*) Intragenerational Equity
(*viii*) Intergenerational Equity
(*ix*) Gender Equality
(*x*) Participation of Minority and Vulnerable Groups
(*xi*) Indigenous and Tribal Peoples
(*xii*) Non-regression
(*xiii*) Progression

148. Dhvani Mehta's doctoral thesis[24] explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the Government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of Government—statutes, executive orders and judicial decisions. The indicators on the basis of which this is done are:

(*a*) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests;

(*b*) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and

(*c*) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

(*i*) Eradication of poverty;
(*ii*) Eradication of hunger;
(*iii*) Good health and well-being;

23 IUCN, "Environmental Rule of Law". Available at <://www.iucn.org/commissions/world-commission-environmental-law/wcel-resources/environmental-rule-law>

24 Dhvani Mehta, *The Environmental Rule of Law in India*, University of Oxford, 2017. Available at <https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a>

(*iv*) Quality education;

(*v*) Gender equality;

(*vi*) Clean water and sanitation;

(*vii*) Affordable and clean energy;

(*viii*) Decent work and economic growth;

(*ix*) Industry, innovation and infrastructure;

(*x*) Reduced inequalities;

(*xi*) Sustainable cities and communities;

(*xii*) Sustainable consumption and production;

(*xiii*) Climate action;

(*xiv*) Protecting life below water;

(*xv*) Life on land;

(*xvi*) Peace, justice and strong institutions; and

(*xvii*) Partnerships to achieve the goals.

150. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. UNEP recognises that the natural environment—forests, soils and wetlands—contributes to the management and regulation of water availability and water quality, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.

151. SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services.

152. The statistics on climate change indicate that:

152.1. Between 1880 and 2012, average global temperatures have increased by 0.85°C.

152.2. Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 cm.

152.3. Since 1990, global emissions of CO_2 increased by almost 50%.

152.4. Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

153. In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial ecosystems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial ecosystems provide a range of ecosystem services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of ecosystems is hence

crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16, therefore, construes the promotion of the rule of law as intrinsic towards implementing multilateral environmental agreements and progressing towards internationally agreed environmental goals.

154. On 2-10-2016, India ratified the Paris Agreement[25] on climate change which reaffirmed the goal of "limiting global temperature increase to well below 2°C, while pursuing efforts to limit the increase to 1.5 degrees above pre-industrial levels". Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which include forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments[26]:

(*i*) Greenhouse gas emission intensity of its gross domestic product will be reduced by 33-35% below 2005 levels by 2030;

(*ii*) 40% of India's power capacity would be based on non-fossil fuel sources; and

(*iii*) An additional "carbon sink" of 2.5 to 3 billion tonnes of CO_2 equivalent through additional forest and tree cover will be created by 2030.

155. In March 2019, UNEP released the Global Environment Outlook themed "Healthy Planet, Healthy People"[27]. Noting clear "links between human health and the state of the environment", the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, "transformative change" which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action[27] would ensure that a "healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being"[27].

156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.

25 Entered into force on 4-11-2016.

26 India's Intended Nationally Determined Contribution: Working Towards Climate Justice at P. 29, submitted to the UNFCCC secretariat.

27 Global Environment Outlook 6, UNEP, 4-3-2019

157. The 2006 Notification must hence be construed as a significant link in India's quest to pursue SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

158. Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.

159. In the present case, as our analysis has indicated, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance Manual, there is a presence of ESZs.

160. EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 Notification postulates that normally, MoEFCC would accept the recommendation of EAC. This makes the role of EAC even more significant. NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power under Section 16(*h*) and Section 20 of the NGT Act, 2010. In failing to carry out a merits review, NGT has not discharged an adjudicatory function which properly belongs to it.

161. In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international

airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, we have come to the conclusion that time-bound directions should be issued.

162. Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, we are of the view that it would be appropriate if EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which have been highlighted in this judgment. Such an exercise primarily is for EAC to carry out in its expert decision-making capacity. EAC is entrusted with that function as an expert body. The role of judicial review is to ensure that the rule of law is observed. Hence, we propose by the directions which we will issue under Article 142 of the Constitution, to direct EAC to revisit the conditions for the grant of an EC. While doing so, it would be open to EAC to have due regard to the conditions which were incorporated in the order of NGT and to suitably modulate those conditions in pursuance of the liberty which we have preserved to it. To facilitate an expeditious decision, we propose to direct EAC to carry out this exercise in a prescribed time schedule during which period, EC shall remain suspended. We propose to direct that after EAC has formulated its views, they shall be placed before this Court in a miscellaneous application in the present proceedings, so as to enable the Court to pass final orders. The miscellaneous application may be filed either by the State of Goa as the project proponent or by MoEFCC. We clarify that no other court or tribunal shall entertain any challenge to the ultimate decision of EAC and final orders thereon shall be passed by this Court in the present proceedings.

K. ***Directions***

163. We accordingly issue the following directions:

163.1. EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment.

163.2. EAC shall carry out the exercise under 163.1 above within a period of one month of the receipt of a certified copy of this order.

163.3. Until EAC carries out the fresh exercise as directed above, EC granted by MoEFCC on 28-10-2015 shall remain suspended.

163.4. Upon reconsidering the matter in terms of the present directions, EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial ecosystems noticed in this judgment. EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socioeconomic environment.

163.5. EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports.

163.6. We grant liberty to the State of Goa as the project proponent and MoEFCC, as the case may be, to file the report of EAC before this Court in the form of a miscellaneous application so as to facilitate the passing of appropriate orders in the proceedings.

163.7. No other court or tribunal shall entertain any challenge to the report that is to be submitted before this Court by EAC in compliance with the present order.

164. Before we part with the present case, we consider it appropriate to record a finding on the bona fides of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act, 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

165. The learned Attorney General for India has presented the submissions before this Court with his characteristic sense of objectivity and candour. We wish to record our appreciation for the able assistance rendered to this Court by Ms Anitha Shenoy, learned counsel for the petitioner, Mr A.N.S. Nadkarni, learned Additional Solicitor General for MoEF, Mr Parag P. Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel for the concessionaire.

166. The appeal is allowed in the above terms. There shall be no order as to costs.

Civil Appeal No. 1053 of 2019

167. This appeal is also disposed of in the same terms, conditions, directions and observations as in Civil Appeal No. 12251 of 2018.

3-Judge Bench
2019
Nov. 5

(2020) 15 Supreme Court Cases 784

(BEFORE ARUN MISHRA, M.R. SHAH AND B.R. GAVAI, JJ.)

TATA HOUSING DEVELOPMENT COMPANY LIMITED .. Appellant;

Versus

AALOK JAGGA AND OTHERS .. Respondents.

Civil Appeals Nos. 8398-99 of 2019†, decided on November 5, 2019

A. **Environment Law — General Principles of Environmental Law — Public trust doctrine — Nature and scope of — Explained — Evolution of, from Roman law and Common law, to its present conception under Indian law to encompass all ecosystems operating in our natural resources — Traced — Words and Phrases — "Public trust doctrine" — Constitution of India, Art. 21**

B. **Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — Water/Coastal Areas — Lake National Wildlife Sanctuary — Sukhna Lake — Housing project within catchment area of lake — Grant of environmental clearance — Invalidity of — Failure of State to invoke public trust doctrine to preserve ecology — Responsibility of courts to step in to protect environment — Clearance granted in arbitrary manner — Entire housing project quashed**

— Environment (Protection) Act, 1986 — S. 3 — Environment (Protection) Rules, 1996 — R. 5 — Punjab New Capital (Periphery) Control Act, 1952 (1 of 1953) — S. 6 — Wildlife (Protection) Act, 1972, S. 26-A

The appellant proposed to develop a housing-cum-retail project within limits of the State of Punjab. The appellant applied for the Environmental Clearance ("EC") from the State Level Impact Assessment Authority ("SEIAA"), State of Punjab. This application was forwarded to the State Expert Appraisal Committee ("SEAC"). This Committee recommended SEIAA for grant of EC subject to conditions specified therein. The Ministry of Environment and Forests ("MoEF") recommended for EC in its meeting held in 9-11-2010/10-11-2010. It called for report from Northern Regional Office regarding the project of the appellant. After inspection, it was mentioned that the project was within catchment area of Sukhna Lake as per the Survey of India Map. The appellant offered its clarification to MoEF that the project did not obstruct flow of lake.

A writ petition was filed challenging the project to be in violation of the Punjab New Capital (Periphery) Control Act, 1952 as well as the Environment (Protection) Act, 1986 claiming that the project is in eco-sensitive zone. SEIAA sought clarification from MoEF as to its competence to consider application of the appellant. In the meantime, the High Court directed the appellant to comply with statutory requirements for obtaining grant of necessary orders from competent authorities. This direction was challenged before the Supreme Court by filing SLP. The order passed by High Court was set aside. The writ petition was restored and transferred to the Delhi High Court.

† Arising out of SLPs (C) Nos. 21375-76 of 2017. Arising from the Judgment and Order in *Sarin Memorial Legal Aid Foundation* v. *State of Punjab*, 2017 SCC OnLine Del 7822 [Delhi High Court, WPs (C) Nos. 2924 and 2999 of 2014, dt. 12-4-2017]

In this second round of hearing, though the appellant contended that it is entitled to proceed with the project as it obtained necessary clearance but this stand was disputed by other parties. It was specifically contended that the project area was at a distance of 123 m from wildlife sanctuary. There was violation of the Punjab New Capital (Periphery) Control Act, 1952 and that clearance was not given as per Notification dated 14-9-2006.

The State of Punjab forwarded a letter to MoEF for permitting construction beyond 100 m, which was not accepted. MoEF asked the State of Punjab to send proposal for keeping the eco-sensitive zone within 1 km. However, there was no response to that.

One more factual aspect highlighted was that the project was originally proposed for the Punjab MLA Society for construction of residential houses of MLAs of the State of Punjab. Therefore, EC dated 17-9-2013 was colourable exercise of power and suffered from mala fides as 95 MLAs are beneficiaries of the proposed project. Some more environmental hazards of the proposed project were emphasised.

The State of Punjab supported claim of the appellant. However, the Union Territory of Chandigarh contended that area falls within catchment area of Sukhna Lake and heritage zone of the Capitol Complex, the project would have direct impact on existence of Sukhna Lake and environs of Chandigarh City. It was urged that the appellant required prior clearance from the Standing Committee of National Board of Wildlife before seeking EC. Considering overall aspects of the matter, the High Court allowed the writ petitions. Hence these appeals.

Dismissing the appeals, the Supreme Court

Held :

The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bears a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullious*) or by everyone in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. (Para 31)

M.C. Mehta v. *Kamal Nath*, (1997) 1 SCC 388, *affirmed*

The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters, and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. (Para 31)

M.C. Mehta v. *Kamal Nath*, (1997) 1 SCC 388, *affirmed*

It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce, and fishing. But the American courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *National Audubon Society*, 658 P 2d 709, clearly show the judicial concern in protecting all ecologically important lands, for example, freshwater, wetlands, or riparian forests. The observations of the Court in *Mono Lake case* to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The courts in the United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co.*, 1988 SCC OnLine US SC 20, the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case* assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. (Para 31)

Animal & Environment Legal Defence Fund v. *Union of India*, (1997) 3 SCC 549, *relied on*

M.C. Mehta v. *Kamal Nath*, (1997) 1 SCC 388, *affirmed*

Pradeep Krishen v. *Union of India*, (1996) 8 SCC 599; *National Audubon Society* v. *Superior Court of Alpine County*, 658 P 2d 709 : 33 Cal 3d 419 (1983); *Phillips Petroleum Co.* v. *Mississippi & Saga Petroleum U.S.*, 1988 SCC OnLine US SC 20 : 98 L Ed 2d 877 : 484 US 469 (1988), *cited*

The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. (Para 32)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647, *relied on*

Intellectuals Forum v. *State of A.P.*, (2006) 3 SCC 549, *affirmed*

The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law. (Para 36)

Indian Council For Enviro-Legal Action v. *Union of India*, (1996) 5 SCC 281; *M.C. Mehta (Badkhal & Surajkund Lakes Matter)* v. *Union of India*, (1997) 3 SCC 715, *relied on*

The Notification dated 14-9-2006 makes it clear that no new commercial construction of any kind shall be permitted within 0.5 km from the boundary of protected area or up to the boundary of the eco-sensitive zone. Construction of all types of new buildings and houses up to a distance of 0.5 km in Zone-I shall be prohibited from 0.5 km to 1.2 km, construction of low density (ground

coverage less than half of the plot size) and low rise building about 15 ft can be permitted. (Para 20)

It is not in dispute that proposal, which was sent by the Government of Punjab to MoEF, to keep the buffer zone within 100 m from Sukhna Wildlife Sanctuary, had not been accepted and the direction was issued to resubmit the proposal for at least 1 km buffer zone has not been forwarded by the State of Punjab. (Para 22)

Goa Foundation v. *Union of India*, (2011) 15 SCC 791, *referred to*

Goa Foundation v. *Union of India*, (2020) 15 SCC 811; *Goa Foundation* v. *Union of India*, (2011) 15 SCC 793, *cited*

It was incumbent upon the State of Punjab to send a proposal to MoEF, as required but it appears that it has not chosen to do so for a reason precious project concerning the MLAs is involved, and MoEF has not accepted its proposal for keeping buffer zone to 100 m. It has also been pointed out from the respondent side that Naya Gaon forms part of the Greater Mohali Region in the State of Punjab. In the statutory Greater Mohali Area Development Authority, Regional Plan for Greater Mohali Region in para 14.3.1, it has been mentioned that no development is possible within 5 km buffer distance from existing forest i.e. Sukhna Wildlife Sanctuary. Thus, apart from Shivalik there are several pockets of forests distributed all over the Greater Mohali Region. These have to be conserved, and the buffer zone recommended should be protected against urban development. (Para 24)

It is also clear that 2-2.75 km area has been ordered as eco-sensitive zone by MoEF and the Notification dated 18-1-2017 has been issued as to the adjacent area towards Chandigarh side of the Sukhna Wildlife Sanctuary. (Para 25)

In the aforesaid facts and circumstances of the case, considering the distance of 123 m from the Northern side and 183 m from the Eastern side of the project in question from wildlife sanctuary, no such project can be allowed to come up in the area in question. The State of Punjab was required to act on the basis of doctrine of public trust. It has failed to do so. The origination of the project itself indicates that the State of Punjab was not acting in furtherance of doctrine of public trust as 95 MLAs were to be the recipients of the flats. It is clear why the Government has not been able to protect the eco-sensitive zone around a wildlife sanctuary and has permitted setting up of high-rise buildings up to 92 m in the area in question, which is not at all permissible. (Para 37)

Resultantly, such projects cannot be permitted to come up within such a short distance from the wildlife sanctuary. More so, in view of the notification issued with respect to the Sukhna Wildlife Sanctuary towards the side of Chandigarh Union Territory and also considering the fact that proposal made by the Punjab Government, confining the buffer zone to 100 m, has rightly not been accepted by MoEF, as the Government of Punjab as well as MoEF, cannot be the final arbiter in the matter. The Supreme Court has to perform its duty in such a scenario when the authorities have failed to protect the wildlife sanctuary eco-sensitive zone. The entire exercise of obtaining clearance relating to the project is quashed. It is regretted that such a scenario has emerged in the matter and that it involved a large number of MLAs of Punjab Legislative Assembly. The entire exercise smacks of arbitrariness on the part of the Government including functionaries. (Para 38)

Sarin Memorial Legal Aid Foundation v. *State of Punjab*, 2017 SCC OnLine Del 7822, *affirmed*

Aalok Jagga v. *Union of India*, 2012 SCC OnLine P&H 6209; *High Court of P&H* v. *State (UT of Chandigarh)*, 2013 SCC OnLine P&H 26948; *High Court of P&H* v. *State (UT of Chandigarh)*, CWP No. 18253 of 2009, order dated 14-3-2011 (P&H); *High Court of P&H* v. *State (UT of Chandigarh)*, CWP No. 18253 of 2009, order dated 14-5-2012 (P&H); *Sarin Memorial Legal Aid Foundation* v. *State (UT of Chandigarh)*, (2020) 15 SCC 808; *B. Singh* v. *Union of India*, CWP No. 7649 of 2003, order dated 16-7-2004 (P&H), *referred to*

C. Environment Law — General Principles of Environmental Law — Sustainable Development — Meaning of — Principles summarised

— Held, sustainable development has come to be accepted as viable concept to eradicate poverty and improve quality of human life while living within carrying capacity of supporting ecosystems — It means development that meets the needs of the present without compromising ability of future generations to meet their own needs — It has been accepted part of customary international law as balancing concept between ecology and development even though its salient features are yet to be finalised — All human beings have fundamental right to healthy environment, commensurate with their well-being — It is coupled with corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as future generations are aware of them equally — Words and Phrases — "Sustainable development" — Constitution of India, Art. 21 (Paras 32 and 33)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647, *relied on*

Intellectuals Forum v. *State of A.P.*, (2006) 3 SCC 549, *affirmed*

D. Environment Law — General Principles of Environmental Law — Polluter pays principle — Meaning of — Enforcement of, under constitutional scheme — Power of courts — Summarised

— Held, polluter pays principle is widely accepted as a means of paying for cost of pollution and control — Wrongdoer, that is, polluter is under obligation to make good the damage caused to environment

— Arts. 48-A and 51-A(g) of the Constitution have to be considered in light of Art. 21 of the Constitution — Any disturbance of basic environment elements, namely, air, water, and soil, which are necessary for "life" would be hazardous to life within meaning of Art. 21 of the Constitution — While enforcing rights under Art. 21 of the Constitution, courts have also given effect to fundamental rights under Arts. 14 and 21 of the Constitution besides enforcing different provisions of Acts relating to environment — It has also been held that if those rights are violated by disturbing environment, courts can award damages not only for restoration of ecological balance, but also for victims who have suffered due to that disturbance — While awarding damages, polluter pays principle is also enforced — Words and Phrases — "Polluter pays principle" — Constitution of India, Arts. 21, 14, 48-A and 51-A(g) (Para 34)

M.C. Mehta v. *Kamal Nath*, (2000) 6 SCC 213, *affirmed*

Advocates who appeared in this case :

Shyam Divan, Senior Advocate (Manu Nair, Neelabh Shreesh, Ms Suvarna Kashyap and S.S. Shroff, Advocates), for the Appellant;

A.N.S. Nadkarni, Additional Solicitor General, Ashok Kr. Srivastava, P.S. Patwalia and Puneet Bali, Senior Advocates (Pranay Ranjan, Vijay Prakash, Gurmeet Singh Makker, Vijaya Prakash, Dhruv Sheoran, Gauravjit Singh Patwalia, Ashok K. Mahajan, Ms Natasha Dalmia, Karan Bharihoke, Raj Kamal, Siddhant Sharma, Aditya Soni, Navkiran Bolay, Ms Manmeet Arora, Ms Nidhi Mohan Parashar, Ms Samapika Biswal, Keshav, S. Shriram, Sangram S. Saron, Ms Vandana Rani, Rahul Gupta, Shubham Bhalla and Lalit Kumar, Advocates), for the Respondents.

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13. (1997) 3 SCC 715, *M.C. Mehta (Badkhal & Surajkund Lakes Matter)* v. *Union of India* 806*e-f*
14. (1997) 3 SCC 549, *Animal & Environment Legal Defence Fund* v. *Union of India* 800*f-g*
15. (1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath* 802*a*
16. (1996) 8 SCC 599, *Pradeep Krishen* v. *Union of India* 801*e-f*
17. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 803*e-f*
18. (1996) 5 SCC 281, *Indian Council For Enviro-Legal Action* v. *Union of India* 807*c-d*
19. 1988 SCC OnLine US SC 20 : 98 L Ed 2d 877 : 484 US 469 (1988), *Phillips Petroleum Co.* v. *Mississippi & Saga Petroleum U.S.* 803*c-d*, 803*d-e*
20. 658 P 2d 709 : 33 Cal 3d 419 (1983), *National Audubon Society* v. *Superior Court of Alpine County* 803*b*, 803*b-c*

The Judgment of the Court was delivered by

ARUN MISHRA, J.— The appellant has questioned the judgment and order dated 12-4-2017[1] passed by the High Court of Delhi, concerning the housing project, on the ground that the area in question falls within the catchment area of Sukhna Lake and is 123 m away from the boundary of Sukhna Wildlife Sanctuary. The Survey Map of India dated 21-9-2004,

1 *Sarin Memorial Legal Aid Foundation* v. *State of Punjab*, 2017 SCC OnLine Del 7822

demarcating the area of Sukhna Lake, is binding on the State of Punjab. The permission dated 5-7-2013, granted by the Nagar Panchayat, Naya Gaon to Tata Housing Development Company Ltd. ("Tata HDCL"), is invalid. The environmental clearance dated 17-9-2013 granted by State Level Environment Impact Assessment Authority ("SEIAA") for development of the project is not in conformity with the Notification dated 14-9-2006 of the Ministry of Environment and Forests ("MoEF"), has also been set aside. It has also been ordered that if the permission is granted by the State of Punjab in favour of the appellant if it so desires, it may apply to the Central Government for environmental clearance treating project Category 'A.'

2. Tata HDCL proposed to develop a project, namely, "CAMELOT" in the revenue estate of Village Kansal, Tehsil Kharar, District Mohali, State of Punjab. The total project area is 52.66 acres, out of which 41.54 acres is to be developed for group housing built-up area of 4,63,144.54 sq m. The parking facility is to be provided for 3645 ESS. The estimated population of the project area was about 9788. The proposed maximum height of the building was to be 92.65 m. Environmental clearance was required in terms of the Notification dated 14-9-2006 issued by MoEF, which mandates prior environmental clearance from the Central Government or by SEIAA. The notification has a statutory force having been issued under Sections 3(1) and 3(2)(*v*) of the Environment (Protection) Act, 1986 ("the EP Act") read with Rule 5(3)(*d*) of the Environment (Protection) Rules, 1996 ("the EP Rules"). Tata HDCL applied for environmental clearance from SEIAA, Punjab. The application was forwarded to the State Expert Appraisal Committee ("SEAC"). In the meeting dated 6-6-2009, the committee awarded "gold grading" to the proposed project and recommended to forward the project to SEIAA for grant of environmental clearance subject to the conditions specified therein. MoEF recommended for environmental clearance in its meeting held on 9-11-2010/10-11-2010. However, MoEF had called a report from Northern Regional Office, Chandigarh vide Letter dated 14-10-2010 regarding the proposed project. A team of officers inspected the project site, and, in the report, the distance of the housing-cum-retail project "CAMELOT" from Sukhna Wildlife Sanctuary is found to be 123 m on Northern side and 183 m on the Eastern side. Besides, the report stated that the project falls in the catchment area of Sukhna Lake as per the Survey of India Map.

3. On 12-1-2011, Tata HDCL addressed a letter to MoEF stating that the project site does not contribute to the catchment area of Sukhna Lake as physically the project area does not obstruct the natural flow of water towards Sukhna Lake.

4. In the meanwhile, CWP No. 20425 of 2010 titled "*Aalok Jagga* v. *Union of India*" was filed in the High Court of Punjab and Haryana at Chandigarh, challenging the project to be in violation of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 as well as the EP Act claiming that the project lies in the eco-sensitive and protected area, apart from falling within the catchment area of Sukhna Lake.

5. The SEIAA sought clarification from MoEF as to whether it is competent to consider the application since the Sukhna Wildlife Sanctuary is located at a distance of 123 m from the project site as per the report of Northern Regional Office of MoEF. The High Court vide order dated 26-3-2012[2] directed Tata HDCL to comply with the requirements of the EP Act and Wildlife (Protection) Act for obtaining grant of necessary clearances/sanctions/permissions from the competent authorities.

6. Sarin Memorial Legal Aid Foundation filed Writ Petition (Civil) No. 994 of 2013 in this Court on 9-11-2013, under Article 32 of the Constitution challenging the decision of SEIAA, Punjab dated 6-9-2013.

7. Order dated 21-8-2013[3] was passed by the High Court of Punjab and Haryana in which it was ordered that the project of Tata HDCL would not be affected by the orders passed on 14-3-2011[4] and 14-5-2012[5] in CWP No. 18253 of 2009. Sarin Memorial Legal Aid Foundation also questioned the said order in this Court. This Court vide order dated 22-4-2014[6] disposed of WP (C) No. 994 of 2013 and Civil Appeal No. 4848 of 2014 filed by Sarin Memorial Legal Aid Foundation. The order passed by the High Court of Punjab and Haryana on 26-3-2012[2] was set aside. The writ petition was restored; the matters were transferred for the decision to the High Court of Delhi.

8. Municipal Area of Naya Gaon was notified on 18-10-2006 as the "Local Planning Area" of Naya Gaon. "Existing Land Use Plan" and "Draft Master Plan" for Nagar Panchayat Naya Gaon were prepared. Nagar Panchayat Naya Gaon granted permission to raise the construction to Tata HDCL on 9-4-2012. Tata HDCL claimed, because of the permission granted, under Section 6(2) of the Periphery Control Act, 1952, and the environmental clearance granted under the EP Act, that they were entitled to proceed with the construction of the project in question. However, the petitioners as well as the Chandigarh Administration disputed the stand taken by the State of Punjab.

9. The Union Territory of Chandigarh has taken the stand that the area falls within the catchment area of Sukhna Lake as such no construction can be raised as per the Survey of India Map. It was adjacent to the wildlife sanctuary, and the distance was 123 m. There was a violation of the Periphery Control Act, and also clearance was not granted in terms of Notification dated 14-9-2006 of MoEF.

10. It is pointed out that under the order passed by this Court to specify the area as the eco-sensitive zone around wildlife sanctuary, the State of Punjab had forwarded a proposal to MoEF for permitting the construction beyond 100 m

2 *Aalok Jagga* v. *Union of India*, 2012 SCC OnLine P&H 6209
3 *High Court of P&H* v. *State (UT of Chandigarh)*, 2013 SCC OnLine P&H 26948
4 *High Court of P&H* v. *State (UT of Chandigarh)*, CWP No. 18253 of 2009, order dated 14-3-2011 (P&H)
5 *High Court of P&H* v. *State (UT of Chandigarh)*, CWP No. 18253 of 2009, order dated 14-5-2012 (P&H)
6 *Sarin Memorial Legal Aid Foundation* v. *State (UT of Chandigarh)*, (2020) 15 SCC 808

that has not been accepted by MoEF. It is also submitted that towards the other side of the Sukhna Wildlife Sanctuary Lake area of 2 km to 2.75 km has been declared as an eco-sensitive zone. MoEF had asked the State of Punjab to send a proposal for keeping the eco-sensitive zone within 1 km to which the State of Punjab has not responded for the reasons best known to it.

11. It is also the case set up that initially, the housing project was proposed for the "Punjab MLA Society" for construction of residential houses of MLAs of Punjab Legislature. Subsequently, the said land was sold to M/s Hash Builders (P) Ltd. with an understanding that each member of Punjab MLA Society would be allotted one flat. The impugned environmental clearance dated 17-9-2013 has also suffered from legal mala fides, and it amounts to colourable exercise of power since about 95 MLAs of the State of Punjab are the beneficiaries of the proposed project.

12. In WP (C) No. 2999 of 2014, it was submitted that the proposed project for extraneous considerations is illegal. The proposed project is located about 1500 m from Sukhna Lake and 123 m from the Wildlife Sanctuary. The project is zero km from the periphery of Chandigarh. The project would destroy the wildlife sanctuary and would cause a serious threat to Sukhna Lake. The High Court had banned all construction activities in the catchment area of Sukhna Lake in *B. Singh* v. *Union of India*[7]. The project would adversely affect the environment within Chandigarh and increase noise pollution by several manifolds, which would harm the wildlife present in the adjoining Sukhna Wildlife Sanctuary. Impact of a high-rise building having 28 storeys on the edict and norms of the city of Chandigarh has not been properly considered.

13. The State of Punjab has supported the case set up by Tata HDCL, the edict of Chandigarh is not applicable in the area in question. Survey of India Map regarding the catchment area of Sukhna Lake, is not conclusive since the objections are yet to be heard. SEIAA rightly considered the application since the nearest distance of Sukhna Wildlife Sanctuary from the project boundary on the Northern side is 123 m, as per the office memorandum dated 2-12-2009 of MoEF. Tata HDCL has to obtain clearance from the Standing Committee of the National Board for Wildlife before starting any work on the site.

14. In the counter-affidavit filed by the Union Territory of Chandigarh, it is submitted that the area in question falls in the catchment area of Sukhna Lake and the heritage zone of the Capitol Complex, the project would have a direct impact on the existence of Sukhna Lake and the environs of Chandigarh City. The Northern side of Chandigarh, which is also the catchment area of Sukhna Lake, is an ecologically fragile area and substantial part thereof comprises of forest area that has been declared a wildlife sanctuary. The Chandigarh Administration is fully committed to saving the heritage of Chandigarh, its forest area, wildlife sanctuaries, and preserve Sukhna Lake. The Conservator of Forests of Chandigarh has written a letter to the Chief Architect, UT of Chandigarh, for the inclusion of the area proposed as Wildlife Corridor along with the approval accorded by the Planning Commission of India in the Master Plan of Chandigarh. It is also submitted that the project is located within

7 CWP No. 7649 of 2003, order dated 16-7-2004 (P&H)

the eco-sensitive zone and 10 km from Sukhna Wildlife Sanctuary, thus the prior clearance from the Standing Committee of National Board of Wildlife before seeking environmental clearance was required to be obtained. The High Court has passed the orders[2] for protection of Sukhna Lake and its catchment area that no housing, commercial, or industrial project can be allowed on the North of the Capitol Complex of Chandigarh. Thus, it is submitted that no construction may be permitted to the North of Chandigarh. The environmental clearance has been illegally granted. There was no jurisdiction to SEIAA, Punjab to grant environmental clearance as the project in question is Category 'A'. The High Court vide order dated 14-5-2012[5] has also noted that the Chandigarh Administration had adopted the Survey of India Map as a map of the catchment area of Sukhna Lake. The order was passed to give wide publicity to the general public that no construction is permitted in that area. In para 60 of the impugned judgment, in respect of Survey of India Map, the following finding has been recorded: (*Sarin Memorial case*[1], SCC OnLine Del)

> "*60.* * * *
>
> (*i*) The Survey of India Map dated 21-9-2004 is the only document available on record identifying and demarcating the catchment area of Sukhna Lake. Admittedly the said map was prepared under the directions of the High Court of Punjab and Haryana in *B. Singh* v. *Union of India*[7]. It is also not in dispute that the demarcation of boundaries of catchment area was made after carrying out a survey by Technical Experts and in due consultation with the State of Punjab, State of Haryana and UT Chandigarh."

15. The High Court has also referred to the joint inspection report made on 10-1-2011 by a team of officers from different departments along with Tata HDCL. The observations of the inspecting team are extracted hereinunder:

> "1. The nearest distance from the boundary of the project site was measured by the staff members of Forest Department of UT Administration Chandigarh using measuring tape at two points:
>
> (*i*) The nearest distance of Sukhna Wildlife Sanctuary from the project boundary on Northern side is 123 m.
>
> (*ii*) The distance of Sukhna Wildlife Sanctuary from the boundary of project area on Eastern side is 185 m.
>
> It is clarified that a part of the catchment area of Sukhna Lake has been declared as Sukhna Wildlife Sanctuary under Section 26-A of the Wildlife (Protection) Act, 1972 by the Chandigarh Administration vide Notification No. 694-HII(4)98/4519 dated 6-3-1998 (copy enclosed).

2 *Aalok Jagga* v. *Union of India*, 2012 SCC OnLine P&H 6209
5 *High Court of P&H* v. *State (UT of Chandigarh)*, CWP No. 18253 of 2009, order dated 14-5-2012 (P&H)
1 *Sarin Memorial Legal Aid Foundation* v. *State of Punjab*, 2017 SCC OnLine Del 7822
7 CWP No. 7649 of 2003, order dated 16-7-2004 (P&H)

The Tata Housing Project falls in the jurisdiction of Nagar Panchayat, Naya Gaon, District Mohali, State of Punjab, which is approximately 1500 m away from Sukhna Lake (aerial distance). Further, it also falls under the catchment area of Sukhna Lake as per the Survey of India Map.

2. It has been observed by the team that no construction activities have been started by the Project authorities at site. Only wire fencing has been done to demarcate the boundary of the acquired land area. In addition to it, solar light posts have been raised at different spots of the boundary, and a site office comprising three rooms has been constructed. It is stated by the project proponent that these offices were constructed by the Defence Services Cooperative Housing Building Society Ltd., and the Tata Housing Development Company has only renovated them for using as a site office. The photographs of different locations of the sites are attached to show that there is no construction activity at the site so far.

It is also mentioned here that there are existing houses and other constructed buildings in Kansal area, which are a part of Kansal Village in Punjab and other spontaneous construction.

During the inspection, it has been informed that any notification declaring eco-sensitive zones has not been issued by UT Chandigarh Administration and the State Government of Punjab till date.

The report is submitted to the Ministry of Environment and Forests for kind information and further necessary action."

16. The High Court has ultimately given the finding that the project site is found to be a part of the area of Sukhna Lake. The permission granted by Nagar Panchayat on 5-7-2013 to Tata HDCL has been set aside. Verification was sought from MoEF as Sukhna Wildlife Sanctuary was located at a distance of 123 m away from the proposed project. SEAC, Punjab, considered the matter on 18-4-2013. Pursuant to that, Tata HDCL filed a revised application on 8-5-2013 in Form I and Form IA. In Form I, the project was described as "Group Housing (CAMELOT) Project" and it falls under Item 8(*b*) of the Schedule. The plot area was shown as 52.66 acres, and the net plot area (after the surrender of area for services) was shown as 46.10 acres. The built-up area was shown as 4,63,144.54 sq m. Concerning the information as to whether the proposal involves approval/clearance under the Wildlife (Protection) Act, 1972, in the form it was stated:

"Clearance required from Standing Committee of National Wildlife Board, New Delhi being project within 10 km from the boundaries of Sukhna Wildlife Sanctuary, as on date eco-sensitive zone has not been declared around Sukhna Wildlife Sanctuary."

17. With respect to wildlife sanctuary, the High Court has made the following observations: (*Sarin Memorial case*[1], SCC OnLine Del paras 178 & 180)

1 *Sarin Memorial Legal Aid Foundation* v. *State of Punjab*, 2017 SCC OnLine Del 7822

"*178*. It is relevant to note that the consideration by EAC of MoEF, Government of India, was on the basis of Tata HDCL's first application dated 25-3-2009. In the light of the stand taken by SEIAA, Punjab in its counter-affidavit, it is clear that no EIA Report was prepared after the submission of the revised application dated 8-5-2013 by Tata HDCL. In the revised application dated 8-5-2013, it was for the first time admitted by Tata HDCL that its proposed project is situated within the prohibited distance of 10 km from Sukhna Wildlife Sanctuary. It was also admitted that the ariel distance from the proposed project and Sukhna Lake is 123 m (N) and 185 m (E).

* * *

180. Significantly, this is a case where the project in question is situated within 123 m from Sukhna Wildlife Sanctuary as recorded in the Site Inspection Report dated 10-1-2011 on the basis of the inspection of the project site conducted by a team of officers in the presence of the representatives of Tata HDCL in compliance with the direction of MoEF vide Letter dated 14-10-2010. Though Tata HDCL addressed a Letter dated 12-1-2011 to MoEF explaining that the project area does not obstruct the natural flow of water towards Sukhna Lake, the factum of location of Sukhna Wildlife Sanctuary within 123 m on Northern side and 183 m on the Eastern side of the project was not disputed. In the light of the said admitted fact, SEIAA, Punjab in its meeting dated 15-12-2011 decided to get a clarification from MoEF as to whether SEIAA, Punjab is competent to consider the application and accordingly addressed a letter to MoEF."

18. Concerning the declaration of the buffer zone around Wildlife Sanctuary, the following facts have been noted by the High Court: (*Sarin Memorial case*[1], SCC OnLine Del paras 188 & 190)

"*188*. Regarding the representation of UT Chandigarh dated 9-5-2013 under *Section 3 of the Environment (Protection) Act*, requesting to declare a buffer zone up to 2-2.75 km around all sanctuaries, including Sukhna Wildlife Sanctuary, it is submitted by the learned Senior Counsel that the State of Punjab by its proposal dated 18-9-2013 thought it fit to confine the buffer zone to 100 m only. It is also pointed out by the learned Senior Counsel that so far no notification has been issued by the Central Government under *Section 3 of the Environment (Protection) Act*. Thus, it is sought to be contended that there is no area earmarked as eco-sensitive zone around the Sukhna Wildlife Sanctuary nor a buffer zone has been declared as of today.

* * *

190. It is also pointed out by Sh. Gopal Subramaniam that in fact State of Punjab, had sent a proposal dated 18-9-2013 requesting the Union of India/MoEF to confine the buffer zone to 100 m only in the context of Section 3 of the *Environment (Protection) Act, 1986*."

1 *Sarin Memorial Legal Aid Foundation* v. *State of Punjab*, 2017 SCC OnLine Del 7822

19. The High Court has noted that after reserving the matter, a short affidavit dated 9-3-2017 has been filed on behalf of the Union Territory, Chandigarh, stating that the Ministry of Environment, Forests and Climate Change, in exercise of the powers conferred by Sections 3(2) and 3(3) of the EP Act read with Rule 5(3) of the EP Rules has notified an area of 1050 ha, to an extent varying from 2 km to 2.75 km from the boundary of Sukhna Wildlife Sanctuary in the Union Territory of Chandigarh, for that Notification dated 18-1-2017 has been issued. The High Court has also relied on the conditions of notification, which is extracted hereinunder: (*Sarin Memorial case*[1], SCC OnLine Del paras 192-193)

> "*192.* ... However, after reserving the judgment in the petitions, a short affidavit dated 9-3-2017 came to be filed on behalf of UT Chandigarh in WP (C) No. 2924 of 2014 stating that the Central Government, Ministry of Environment, Forests and Climate Change, in exercise of the powers conferred by Sections 3(2) and 3(3) of the Environment (Protection) Act, 1986 read with Rule 5(3) of the Environment (Protection) Rules, 1986 notified an area of 1050 ha, to an extent varying from 2.0 km to 2.75 km from the boundary of Sukhna Wildlife Sanctuary in the Union Territory of Chandigarh on the side of Chandigarh as the Sukhna Wildlife Sanctuary, eco-sensitive zone vide Notification dated 18-1-2017. A copy of the said Notification has also been produced and Para 4 thereof contains the list of activities prohibited or to be regulated within eco-sensitive zone. "Construction Activities" have been included in the said list under Part B "Regulated Activities". *Rule 4 to the extent it is relevant for the present case may be extracted hereunder*:
>
> '**4.** ***List of activities prohibited or to be regulated within eco-sensitive zone.***—All activities in the eco-sensitive zone shall be governed by the *provisions of the Environment (Protection) Act, 1986 (29 of 1986)* and the rules made thereunder and shall be regulated in the manner specified in the Table below, namely—
>
> TABLE
>
> **A. Prohibited Activities**
>
> * * *
>
> **B. Regulated Activities**
>
> 12. Construction activities:
>
> *No new commercial construction of any kind shall be permitted within 0.5 km (Zone-I) from the boundary of protected area or up to the boundary of the eco-sensitive zone whichever is nearer*:
>
> Provided that, local people shall be permitted to undertake construction in their land for their residential use including the activities listed in sub-paragraph (1) of paragraph 3.
>
> (*a*) *Construction of all types of new buildings and houses up to a distance of 0.5 km i.e. in the Zone-I shall be prohibited;*

1 *Sarin Memorial Legal Aid Foundation* v. *State of Punjab*, 2017 SCC OnLine Del 7822

from 0.5 km to 1.25 km from the boundary of Sukhna Wildlife Sanctuary, construction of low density (ground coverage less than half of the plot size) and low rise building (height up to 15 ft) can be allowed if permissible under the prescribed land use plan of the area; any construction will have to adhere to the Development Regulation applicable to the area and shall be regulated as per the eco-sensitive zone management plan; beyond 1.25 km construction of new buildings and houses shall be regulated as per existing Chandigarh Administration Building By-laws and Architectural Control/Zoning regulation of Union Territory Administration. Construction of basement in Zone-I of eco-sensitive zone shall not be allowed, however, reconstruction/repair of building in Zone-I shall be allowed subject to the restriction as above i.e. construction of low density (ground coverage less than half of the plot size) and low rise building (height up to 15 ft).

(*b*) The construction activity related to small scale industries not causing pollution shall be regulated and kept at the minimum, with the prior permission from the competent authority as per the applicable rules and regulations, if any.

(*c*) The further construction and augmentation of civic amenities shall be regulated as per the Zonal Master Plan'

193. As could be seen from Para 4 of the above notification, the construction activities in the eco-sensitive zone apart from being governed by the *provisions of the Environment (Protection) Act, 1986 and the Rules* made thereunder shall be regulated in the manner specified therein. Admittedly, the project in question is located at a distance of 123 m from Sukhna Wildlife Sanctuary. Therefore, the construction of the proposed project not only requires the environmental clearance as provided under the Notification dated 14-9-2006, but it is also subject to the regulations provided under Para 4 of the Notification dated 18-1-2017 issued by the Ministry of Environment, Forests and Climate Change." (emphasis supplied)

20. The notification makes it clear that no new commercial construction of any kind shall be permitted within 0.5 km from the boundary of protected area or up to the boundary of the eco-sensitive zone. Construction of all types of new buildings and houses up to a distance of 0.5 km in Zone-I shall be prohibited from 0.5 km to 1.2 km, construction of low density (ground coverage less than half of the plot size) and low rise building about 15 ft can be permitted.

21. Given the findings above, recorded by the High Court as to the distance from the Wildlife Sanctuary, we have heard the learned counsel for the parties on the issue at length. Whether housing activities are permissible within a short distance of 123 m from Sukhna Wildlife Sanctuary, such a project can be permitted to come up.

22. It is not in dispute that proposal, which was sent by the Government of Punjab to MoEF, to keep the buffer zone within 100 m from Sukhna Wildlife Sanctuary, had not been accepted and the direction was issued to resubmit the proposal for at least 1 km buffer zone has not been forwarded by the State of Punjab.

23. In *Goa Foundation* v. *Union of India*[8], order for the purpose of protection of wildlife sanctuary and eco-sensitive zone has been passed to the following effect: (SCC pp. 792-93, paras 1-6)

> "*1*. The order dated 16-10-2006[9] refers to a Letter dated 27-5-2005 which was addressed by the Ministry of Environment and Forests (MoEF) to the Chief Wildlife Wardens of all States/Union Territories requiring them to initiate measures for identification of suitable areas and submit detailed proposals at the earliest. The order passed on that date was that MoEF shall file an affidavit stating whether the proposals received pursuant to the letter of 27-5-2005 have been referred to the Standing Committee of the National Board for Wildlife under the Wildlife (Protection) Act, 1972 or not. It was further directed that such of the States/Union Territories who have not responded to the Letter dated 27-5-2005 shall do the needful within four weeks of the communication of the directions of this Court by the Ministry to them.
>
> *2*. It seems that despite the Letter dated 27-5-2005 and despite the Ministry having issued reminders and also bringing to the notice of the States/Union Territories the orders of this Court dated 16-10-2006[9], the States/Union Territories have not responded. However, we are told that the State of Goa alone has sent the proposal, but that too does not appear to be in full conformity with what was sought for in the Letter dated 27-5-2005.
>
> *3*. The order earlier passed on 30-1-2006[10] refers to the decision which was taken on 21-1-2002 to notify the areas within 10 km of the boundaries of national parks and sanctuaries as eco-sensitive areas. The Letter dated 27-5-2005 is a departure from the decision of 21-1-2002. For the present, in this case, we are not considering the correctness of this departure. That is being examined in another case separately. Be that as it may, it is evident that the States/Union Territories have not given the importance that is required to be given to most of the laws to protect environment made after Rio Declaration, 1992.
>
> *4. The Ministry is directed to give a final opportunity to all States/ Union Territories to respond to its Letter dated 27-5-2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said* to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear *that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have*

8 (2011) 15 SCC 791
9 *Goa Foundation* v. *Union of India*, (2020) 15 SCC 811
10 *Goa Foundation* v. *Union of India*, (2011) 15 SCC 793

to consider passing orders for implementation of the decision that was taken on 21-1-2002, namely, notification of the areas within 10 km of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

5. MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5-B and 5-C(2) of the Wildlife (Protection) Act, the cases where environmental clearance has already been granted where activities are within 10 km zone.

6. List the matter after eight weeks." (emphasis supplied)

24. It was incumbent upon the State of Punjab to send a proposal to MoEF, as required but it appears that it has not chosen to do so for a reason precious project concerning the MLAs is involved, and MoEF has not accepted its proposal for keeping buffer zone to 100 m. It has also been pointed out from the respondent side that Naya Gaon forms part of the Greater Mohali Region in the State of Punjab. In the statutory Greater Mohali Area Development Authority, Regional Plan for Greater Mohali Region in para 14.3.1, it has been mentioned that no development is possible within 5 km buffer distance from existing forest i.e. Sukhna Wildlife Sanctuary. Thus, apart from Shivalik there are several pockets of forests distributed all over the Greater Mohali Region. These have to be conserved, and the buffer zone recommended should be protected against urban development.

25. It is also clear that 2-2.75 km area has been ordered as eco-sensitive zone by MoEF and the Notification dated 18-1-2017 has been issued as to the adjacent area towards Chandigarh side of the Sukhna Wildlife Sanctuary.

26*. The most potent threat faced by the earth and human civilisation as a whole which it is confronted with, today, is environmental degradation and wildlife degeneration. The need to protect flora and fauna which constitutes a major portion of our ecosystem is immediate. Development and urbanisation coming at the cost of adversely affecting our natural surroundings will in turn impact and be the cause of human devastation as was seen in the 2013 floods in Uttarakhand and in 2018 in Kerala. The climate change is impacting wildlife by disrupting the timing of natural events. With warmer temperatures, flowering plants are blooming earlier in the year and migratory birds are returning from their wintering grounds earlier in the spring.** Wildlife conservation in India has a long history, dating back to the colonial period when it was rather very restrictive to only targeted species and that too in a defined geographical area. Then, the formation of the Wildlife Board at the national level and enactment of the Wildlife (Protection) Act in 1972 laid the foundation of present day "wildlife conservation" era in post-Independent India. Project Tiger in the 1970s and the Project Elephant in 1992—both with flagship species—attracted

* **Ed.**: Para 26 corrected vide Official Corrigendum No. F.3/Ed.B.J./109/2019 dated 16-11-2019.
** Source:https://www.nwf.org/Educational-Resources/Wildlife-Guide/Understanding-conservation

global attention. India then also became a member of all major international conservation treaties related to habitat, species and environment like Ramsar Convention, 1971; Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; Convention on Migratory Species, 1979; Convention on Biological Diversity, 1992, among others.***

27. Humans as well as the wildlife are completely dependent upon environment for their survival. Humans are is completely dependent on the environment. Like humans, the wildlife is also dependent on the environment for its survival and also gets affected by the environment. The relationship between humans and animals can be understood by the food-chain and food-web. The wildlife is affected by several reasons such as population, deforestation, urbanisation, high number of industries, chemical effluents, unplanned land-use policies, and reckless use of natural resources, etc.

28. The Directive Principles of State Policy provide that protection and improvement of environment, safeguarding forest and wildlife have been duly enjoined upon the Government. Those principles have found statutory expression in various enactments i.e. the Wildlife (Protection) Act, the EP Act, etc. which have been enforced by this Court in various decisions. The inaction of the State to constitutional and statutory duties cannot be permitted. The Court has to issue appropriate directions to fulfil the mandate. Article 51-A provides fundamental duty to protect and preserve environment, wildlife, etc.

29. Articles 48-A and 51-A(*g*) of the Constitution read as under:

> "**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.
>
> * * *
>
> **51-A.** ***Fundamental duties***.—It shall be the duty of every citizen of India—
>
> * * *
>
> (*g*) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;"

30. In *Animal & Environment Legal Defence Fund* v. *Union of India*[11], the Court in order to protect wildlife, forest, tiger reserve, fragile ecology, dealt with public trust doctrine thus: (SCC pp. 553-55, paras 11 & 15)

> "*11*. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood. In the present case it would have been far more desirable,

*** Source: "Down to Earth, Wildlife Conservation in India: are we really serious?" Article by A.K. Ghosh dated 19-9-2018.

11 (1997) 3 SCC 549

had the tribals been provided with other suitable fishing areas outside the National Park or had been given land for cultivation. Totladoh Dam where fishing is permitted is in the heart of the National Park area. There are other parts of the reservoir which extend to the borders of the National Park. We are not in a position to say whether these outlying parts of the reservoir are accessible or whether they are suitable for fishing, in the absence of any material being placed before us by the State of Madhya Pradesh or by the petitioner. Some attempts, however, seem to have been made by the State of Madhya Pradesh to contain the damage by imposing conditions on these fishing permits. The permissions which have been given are subject to the following conditions:

(1) The identified families will be given photo identity cards on the basis of which only fishing and transport will be permitted;

(2) During the rainy season (months: July to October) fishing will be totally banned;

(3) During the rest of the year, entry will be permitted in the water from 12 p.m. to 4 p.m. and transport of fish will be allowed before sunset;

(4) The photo identity card-holders will not be allowed to enter the National Park or the islands in the reservoir nor will they be allowed to make night halts;

(5) Transport of fish will be allowed only on Totladoh-Thuepani Road from Totladoh reservoir.

* * *

15. Since all the claims in respect of the National Park area in the State of Madhya Pradesh as notified under Section 35(1) have been taken care of, it is necessary that a final notification under Section 35(4) is issued by the State Government as expeditiously as possible. In *Pradeep Krishen* v. *Union of India*[12], this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of ⅓rd of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48-A of the Constitution keeping in mind the duty enshrined in Article 51-A(*g*). We, therefore, direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh."

12 (1996) 8 SCC 599

31. The doctrine of public trust has been considered by this Court in *M.C. Mehta* v. *Kamal Nath*[13]. This Court has made the following observations: (SCC pp. 407 & 412-13, paras 24-25 & 33)

"*24*. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bears a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullious*) or by everyone in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article "*Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention*", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the public trust doctrine as under:

> 'The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasised. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — "perpetual use was dedicated to the public", it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.'

25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters, and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for

13 (1997) 1 SCC 388

private ownership or commercial purposes. According to Professor Sax the public trust doctrine imposes the following restrictions on governmental authority:

* * *

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce, and fishing. But the American courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case*[14], clearly show the judicial concern in protecting all ecologically important lands, for example, freshwater, wetlands, or riparian forests. The observations of the Court in *Mono Lake case*[14] to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The courts in the United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co.* v. *Mississippi & Saga Petroleum U.S.*[15], the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*[15] assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources."

32. In *Vellore Citizens' Welfare Forum* v. *Union of India*[16], the Court considered the concept of sustainable development thus: (SCC pp. 657-58 & 660-61, paras 10 & 16)

"*10*. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the

14 *National Audubon Society* v. *Superior Court of Alpine County*, 658 P 2d 709 : 33 Cal 3d 419 (1983)
15 1988 SCC OnLine US SC 20 : 98 L Ed 2d 877 : 484 US 469 (1988)
16 (1996) 5 SCC 647

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

* * *

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

> 'Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, "*sic utere tuo, ut alienum non leadas*"; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.
>
> … With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain;

or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of "doing to others, as we would they should do unto ourselves".' "

33. In *Intellectuals Forum* v. *State of A.P.*[17], principle of sustainable development has been considered by this Court, which reads as under: (SCC p. 577, para 84)

"*84*. The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us to the conception of growth and development, which sustains from one generation to the next in order to secure "our common future". In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress". It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally."

34. In *M.C. Mehta* v. *Kamal Nath*[18], the Court evolved polluter pays principle and observed: (SCC pp. 219-20, paras 8-10)

"*8*. Apart from the above statutes and the rules made thereunder, Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(*g*) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely, air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.

17 (2006) 3 SCC 549
18 (2000) 6 SCC 213

9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries, etc., are all judgments which seek to protect the environment.

10. In the matter of enforcement of fundamental rights under Article 21, under public law domain, the court, in exercise of its powers under Article 32 of the Constitution, has awarded damages against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. The Court while awarding damages also enforces the "POLLUTER-PAYS PRINCIPLE" which is widely accepted as a means of paying for the cost of pollution and control. To put in other words, the wrongdoer, the polluter, is under an obligation to make good the damage caused to the environment."

35. In *M.C. Mehta (Badkhal & Surajkund Lakes Matter)* v. *Union of India*[19], this Court had observed: (SCC pp. 717-18, para 6)

"*6*. Mr Shanti Bhushan, the learned Senior Advocate, appearing for some of the builders had vehemently contended that banning construction within one km radius from Badkhal and Surajkund is arbitrary. According to him, it is not based on technical reasons. He has referred to the directions issued by the Government of India under the Environment (Protection) Act and has contended that the construction can at the most be banned within 200 to 500 m as was done by the Government of India in the coastal areas. He has also contended that restriction on construction only in the areas surrounding Surajkund and Badkhal Lakes is hit by Article 14 of the Constitution as it is not being extended to other lakes in the country. We do not agree with Mr Shanti Bhushan. The functioning of ecosystems and the status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund Lakes are popular tourist

19 (1997) 3 SCC 715

resorts almost next door to the capital city of Delhi. We have on record the Inspection Report in respect of these lakes by the National Environmental Engineering Research Institute (NEERI) dated 20-4-1996, indicating the surroundings, geological features, land use and soil types and archaeological significance of the areas surrounding the lakes. According to the report, Surajkund lake impounds water from rain and natural springs. Badkhal Lake is an impoundment formed due to the construction of an earthen dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types, as explained in the report, show that the Badkhal Lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large-scale construction in the vicinity of these tourist resorts may disturb the rainwater drains, which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed."

36. In *Indian Council For Enviro-Legal Action* v. *Union of India*[20], this Court has made the following observations: (SCC pp. 300-301, para 41)

"*41.* With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard of the mandatory provisions of law, some public-spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law."

20 (1996) 5 SCC 281

37. In the aforesaid facts and circumstances of the case, considering the distance of 123 m from the Northern side and 183 m from the Eastern side of the project in question from wildlife sanctuary, in our opinion, no such project can be allowed to come up in the area in question. The State of Punjab was required to act on the basis of doctrine of public trust. It has failed to do so. The origination of the project itself indicates that the State of Punjab was not acting in furtherance of doctrine of public trust as 95 MLAs were to be the recipients of the flats. It is clear why the Government has not been able to protect the eco-sensitive zone around a wildlife sanctuary and has permitted setting up of high-rise buildings up to 92 m in the area in question, which is not at all permissible.

38. Resultantly, we hold that such projects cannot be permitted to come up within such a short distance from the wildlife sanctuary. More so, in view of the notification issued with respect to the Sukhna Wildlife Sanctuary towards the side of Chandigarh Union Territory and also considering the fact that proposal made by the Punjab Government, confining the buffer zone to 100 m, has rightly not been accepted by MoEF, as the Government of Punjab as well as MoEF, cannot be the final arbiter in the matter. The Court has to perform its duty in such a scenario when the authorities have failed to protect the wildlife sanctuary eco-sensitive zone. The entire exercise of obtaining clearance relating to the project is quashed. We regret that such a scenario has emerged in the matter and that it involved a large number of MLAs of Punjab Legislative Assembly. The entire exercise smacks of arbitrariness on the part of the Government including functionaries.

39. Thus, we dismiss the appeals with the directions mentioned above.

2-Judge Bench
2014
April 22

[CITED ORDER (1)]

(2020) 15 Supreme Court Cases 808

(BEFORE R.M. LODHA AND M. YUSUF EQBAL, JJ.)

SARIN MEMORIAL LEGAL AID FOUNDATION
THROUGH ITS PRESIDENT .. Appellant;

Versus

CHANDIGARH ADMINISTRATION AND OTHERS .. Respondents.

Civil Appeals No. 4847 of 2014† with No. 4848 of 2014‡ and
Writ Petition (C) No. 994 of 2013, Order dated April 22, 2014

Constitution of India — Arts. 139-A, 226 and 32 — Water Resources/ Bodies — Lake National Wildlife Sanctuary — Sukhna Lake — Housing project within catchment area of lake — Challenge to certain directions

† Arising out of SLP (C) No. 32659 of 2013. Arising from the Final impugned Order in *High Court of P&H* v. *State (UT of Chandigarh)*, 2013 SCC OnLine P&H 26948 [Punjab and Haryana High Court, CM No. 206 of 2012 in CWP No. 18253 of 2009 (O&M), dt. 21-8-2013]

‡ Arising out of SLP (C) No. 32660 of 2013

(2022) 13 Supreme Court Cases 401

(3J)

(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

MUNICIPAL CORPORATION OF GREATER MUMBAI . . Appellant;

Versus

ANKITA SINHA AND OTHERS . . Respondents.

Civil Appeals Nos. 12122-123 of 2018† with Nos. 86 of 2019‡, 5902 of 2019††, 6273, 6274, 6275, 6276, 6279 of 2021†‡, 6277-78, 6280-81 of 2021‡†, 2897 of 2021‡‡, 6282, 6283, 6284, 6285, 6286 of 2021††† and 6262 of 2021†††, decided on October 7, 2021

† Arising from the Judgment and Order in *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936 (National Green Tribunal, Original Application No. 510 of 2018, dt. 30-10-2018) and *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2018 SCC OnLine NGT 2923 (National Green Tribunal, Review Application No. 49 of 2018, dt. 5-12-2018)

‡ Arising from the Final Judgment and Order in *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2698 (National Green Tribunal, Original Application No. 510 of 2018, dt. 21-12-2018)

†† Arising from the Final Judgment and Order in *News Item Published in The Times of India Titled "Hanging Live Wire Kills 7 Jumbos in Odisha", In re*, 2019 SCC OnLine NGT 2917 (National Green Tribunal, Original Application No. 844 of 2018, dt. 16-5-2019)

†‡ Arising out of SLP (C) No. 6732, 5930, 6733, 16448 of 2021 (Diary No. 11655 of 2021) and 16451 of 2021 (Diary No. 13811 of 2021). Arising from the Final Judgment and Order in *Thomsun Aggregates* v. *State of Kerala* [Kerala High Court, WP (C) No. 19770 of 2020, dt. 21-12-2020] sub nom *V.K. Rocks (P) Ltd.* v. *State of Kerala* [Kerala High Court, WP (C) No. 15962 of 2020, dt. 21-12-2020], 2020 SCC OnLine Ker 25872

‡† Arising out of SLPs (C) Nos. 16449-450 of 2021 (Diary No. 13789 of 2021) and 16452-453 of 2021 (Diary No. 13890 of 2021). Arising from the Final Judgment and Order in *Thomsun Aggregates* v. *State of Kerala* [Kerala High Court, WP (C) No. 19770 of 2020, dt. 21-12-2020] sub nom and *Sachu Rajan Eapen* v. *State of Kerala*, 2021 SCC OnLine Ker 5036 [Kerala High Court, RP No. 1 of 2021 in WP (C) No. 17391 of 2020, dt. 28-1-2021]

‡‡ Arising from the Final Judgment and Order in *News Item Published in Times Now Titled "Karnataka : Six killed in Quarry Blast in Hirenagavalli, Chikkaballapur", In re*, 2021 SCC OnLine NGT 332 (National Green Tribunal, Original Application No. 59 of 2021, dt. 11-6-2021)

††† Arising out of SLPs (C) Nos. 11426, 11427, 11798, 12669 and 16454 of 2021 (Diary No. 19534 of 2021). Arising from the Final Judgment and Order in *P.K. Biju* v. *State of Kerala* [Kerala High Court, WA No. 250 of 2021, dt. 16-3-2021] sub nom *Sachu Rajan Eapen* v. *State of Kerala* (Kerala High Court, WA No. 255 of 2021, dt. 16-3-2021), 2021 SCC OnLine Ker 2641

†‡ Arising out of Diary No. 16948 of 2021. Arising from the Final Judgment and Order in *News Item Published in The Dinamalar Titled "If The Encroachments Are Removed Totally, Narayanapuram Lake Will Become Source of Drinking Water", In re*, 2021 SCC OnLine NGT 333 (National Green Tribunal, Original Application No. 98 of 2020, dt. 4-6-2021)

A. **Environment Law — National Green Tribunal — Forum complementary to constitutional courts to provide an alternative efficacious remedy for redressal of environmental exigencies in public interest concerning environmental justice, environmental equity and for protection of rights under Art. 21 of the Constitution**

— NGT whether can suo motu initiate action for discharging functions under National Green Tribunal Act, 2010 (NGT Act) — Nature and scope of such suo motu power, procedural safeguards and rationale for — Law clarified — Held, NGT is vested with suo motu power to discharge its functions under the NGT Act — Such suo motu action can be initiated on basis of a letter or communication or even on basis of matters published in media (as in present case)

— Suo motu powers of NGT are somewhat distinct from those exercised by constitutional courts — Constitutional courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments

— Exercise of suo motu jurisdiction does not mean eschewing the principles of natural justice and fair play — When such suo motu action is initiated, Registry of NGT should make an office report and send a notice to sender of such communication or author of news item to assist NGT in the course of hearing and to substantiate the factual matters — Party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders

— The rationale behind such an interpretation is in public interest to protect rights under Art. 21 of the Constitution and is evident from the legislative intent and provisions of NGT Act, the role and functions NGT, its sui generis characteristics and the visible impacts of climate change resulting in climatic emergencies

— (a) An affirmative role for NGT, beyond mere adjudication is certainly required for *serving the ends of environmental justice* — When adverse impact on environment is shocking, but community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord — Potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access

— (b) *Applying purposive interpretation,* NGT Act should be construed as giving authority to NGT to take suo motu cognizance of matters, for effective discharge of its mandate — S. 14(1) of the NGT Act conspicuously omits to specify that an application is necessary to trigger NGT into action — Provisions of NGT Act relating to jurisdiction, interim orders and payment of compensation and review do not require any application or appeal, for NGT to pass necessary orders

— (c) If NGT Act is not interpreted as giving NGT suo motu powers to initiate action, its functions might be hindered by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens — Another deterrence is the likelihood of polluters/violators being powerful entities

— (d) Court cannot validate an argument, which furthers uncertainty and would most assuredly result in injustice — While interpreting the NGT Act, the Court should not endorse an approach which would render NGT procedurally

shackled or incapacitated — Court must adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective — As NGT Act addresses wide ranging societal concerns, a holistic and purposive interpretation must be applied to declare that NGT has suo motu powers — NGT Act must be read in its entirety giving due meaning to each provision by comprehending the mischief it intends to remedy — Interpretation should eschew procedural impediment and accentuate the provisions dealing with rights under Art. 21 and regulations under environmental policy

— (e) The role of an institution like NGT cannot be mechanical or ornamental — Environmental justice and environmental equity are the pivotal threads of NGT's fabric — Hands-off mode for NGT, when faced with exigencies requiring an immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice

— (f) Jurisdictional jurisprudence should be moulded in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi — When substantive justice is elusive, for a perceived procedural lacuna, it furthers inequality, both economic and social

— (g) As many of the cases transferred to NGT emanated in the superior courts it would be appropriate to assume that similar power to initiate suo motu proceedings should also be available with NGT — NGT is the institutionalisation of the developments made by the Court in the field of Environment Law — When many of the sensitive environmental matters were transferred to NGT, it was expected to be as proactive as superior courts in dealing with such matters

— (h) There is a need for collective stratagem for addressing environmental concerns — Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court

— Relief and directions — Having answered the common legal questions, cases directed to be delinked to be heard separately — However, if the cases(s) emanate from same/common order of NGT, such case(s) should be heard together

— National Green Tribunal Act, 2010, Ss. 14 to 21 (Paras 22 to 101)

B. **Environment Law — Sustainable development — "Seventh Generation" sustainability principle, or the "Great Law of the Iroquois" — What is — Applicability of — Explained — Approach to be followed by courts and NGT — Clarifications issued by taking judicial notice of climate change, ecological imbalance and climate emergencies**

— Judicial notice taken of visible impacts such as uncertain rains, species extinction, loss of natural habitat, flooding and erosion and so on — Climate change also has the propensity to diminish freshwater resources, reduce agricultural yields and impact public health — Governmental assessment of India's increased vulnerability to such changes in the near future

— Present standards may not be able to handle unforeseen injustice of the future and long term irreparable environmental damage which are expected to be arrested by NGT — Thus there is a need to advert to "Seventh Generation"

sustainability principle, or the "Great Law of the Iroquois", which requires all decision-making to withstand for the benefit of seven generations down the line

— National Green Tribunal Act, 2010, Ss. 14 to 21 (Paras 90 to 101)

C. **Environment Law — National Green Tribunal — Alternative efficacious remedy through NGT — Backdrop of NGT and rationale behind its formation, stated**

— National Green Tribunal Act, 2010, Ss. 14 to 21

D. **Environment Law — National Green Tribunal Act, 2010 — Ss. 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Ch. III — Jurisdiction, powers, functions of NGT, its non-adjudicatory role, its *sui generis role, its uniqueness vis-à-vis other tribunals and its self-activating capability* — Explicated — Wide discretion and locus standi to preserve and protect the environment, clarified (Paras 22 to 101)**

E. **Environment Law — National Green Tribunal Act, 2010 — Ss. 2(1)(c), (m), 14 to 20, 25, 29 and 33 and Ch. III — Interpretation of term "*decision*", in addition to "*order*" and "*award*" in S. 20 of the NGT Act makes it clear that NGT has to apply the "*precautionary principle*" along with the principles of sustainable development and the polluter pays principle — Onus is cast upon the Tribunal to act with promptitude to deal with environmental exigencies — Pre-emptive functions of NGT as a sui generis body may be noted (Paras 71 to 74)**

F. **Environment Law — General Principles of Environmental Law — Environmental justice and equity, explained — Approach required by court, stated (Paras 75 to 80)**

G. **Environment Law — General Principles of Environmental Law — Environmental jurisprudence in India — Effect on the manner of interpretation of functions of NGT**

— National Green Tribunal Act, 2010, Ss. 14 to 21 (Paras 81 to 90)

Declaring that NGT is vested with suo motu power in discharge of its functions under the NGT Act, the Supreme Court

Held :

I. The backdrop of the National Green Tribunal

The Law Commission of India in its 186th Report dated 23-9-2003 was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on a permanent basis to assist them. Therefore, NGT was conceived as a complementary specialised forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court under their writ jurisdiction. (Paras 22 and 43)

Law Commission of India, 186th Report on Proposal to Constitute Environment Courts, *referred to*

It was explicitly noted that the creation of NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialised forum. (Para 23)

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before the High Courts and the Supreme Court and shift such issues to the domain of NGT. This is how the proposed forum was made free from the rules of evidence and NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. The observance of the principles of natural justice was however mandated. (Para 24)

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

Chapter IX, 186th Law Commission Report, *referred to*

II. The Preamble & Statement of Objects and Reasons

The National Environment Tribunal Act, 1995 ("NET") provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. The NET had a very limited and narrow mandate and jurisdiction. The Supreme Court had requested the Law Commission of India to consider the need for the constitution of specialised environmental courts. (Para 26)

The right to a healthy environment is a part of the right to life under Article 21 of the Constitution. NGT was expected *to achieve the objectives of Articles 21, 47, 48-A, 51-A(g) of the Constitution by means of a fair, fast and satisfactory judicial procedure*. An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction. (Para 27)

The mandate and jurisdiction of NGT is, therefore, conceived to be of the widest amplitude and it is in the nature of a sui generis forum. (Para 28)

The Preamble to the Act significantly emphasised on construing the right to healthy environment as a part of the right to life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. (Para 29)

The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of NGT. (Para 30)

III. The need for purposive interpretation

Adequate clarity is discernible in the phraseology and provisions of the NGT Act. NGT is intended to address wide-ranging societal concerns and these have prompted the Court to opt for purposive interpretation. The statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. (Para 31)

The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional courts flagging their environmental concerns. (Para 32)

Courts should interpret the NGT Act in such a way as to achieve the legislative purpose and intention. The interpretation should be forward looking and eschew procedural impediment. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects. (Para 36)

Bengal Immunity Co. Ltd. v. *State of Bihar*, 1955 SCC OnLine SC 2; *Heydon Case*, (1584) 3 Co Rep 7a : 76 ER 637; *Panama Refining Co.* v. *Ryan*, 1935 SCC OnLine US SC 3 (dissenting view of Justice Benjamin Cardozo, J.), *followed*

Sarah Mathew v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721; *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850, *referred to*

Justice G.P. Singh: *Interpretation of Statutes*; Francis Bennion: *Statutory Interpretation*; Justice Frankfurter of the US Supreme Court: "Some Reflections on the Reading of Statutes", (1947) 47 Columbia Law Review 527, *referred to*

IV. Salient statutory features of the NGT Act

Applying the purposive interpretation to the statutory layout of the NGT Act, Sections 2(1)(*c*), (*m*), 14 to 20, 25, 29 and 33 and Chapter III will require the Court's attention. (Para 37)

Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 makes it clear that NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto. (Para 38)

By choosing to employ a phrase of wide import i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses, inter alia, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be. (Para 39)

Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, NGT is conferred with the power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties. (Para 40)

Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organisation who may be interested in the subject-matter is permitted to approach NGT. (Paras 41 and 43)

The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by NGT, as was encapsulated in the 186th Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio de Janeiro Conventions towards the protection of the environmental rights under Article 21 of the Constitution. (Paras 42, 28 and 29)

V. Non-adjudicatory roles of NGT

Schedule I to the NGT Act is concerned with the implementation of few environmental related enactments such as the Water (Prevention and Control of Pollution) Act, 1974 ("the Water Act"), the Air (Prevention and Control of Pollution) Act, 1981 ("the Air Act"), the Environment (Protection) Act, 1986 ("the Environment Act"), the Forest (Conservation) Act, 1980 etc. As one looks at these enactments, an expanded role for NGT is clearly discernible. The activities of NGT are not only geared towards the protection of the environment but also to ensure

that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation. (Paras 44 and 43)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647; *M.C. Mehta (Taj Trapezium Matter)* v. *Union of India*, (1997) 2 SCC 353, *referred to*

For the environmental forum, tasked with the implementation of the statutes mentioned in Schedule I to the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or Government) disturbing the environment and the other one (could be an individual, a body or the Government itself), who has concern for the protection of the environment. Therefore, NGT is primarily concerned with the protection of the environment and also the preservation of natural resources. As the specialised forum, NGT would be expected to take preventive action, besides settling and adjudicating disputes and passing orders on all environment related questions. (Para 45)

NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report. (Para 46)

NGT is empowered to carry out restitutive exercises for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*. (Para 47)

With the constitution of NGT, many cases pending before the High Courts were transferred to NGT. Apprehending the possibility of conflict between the High Courts and NGT (in matters concerning the environment and the statutes mentioned in Schedule I to the NGT Act), the Court highlighted NGT's role in said context. The Court mandated the transfer of all cases concerning the statutes mentioned in Schedule I to the NGT Act to the specialised forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered suo motu by the courts. (Para 48)

Bhopal Gas Peedith Mahila Udyog Sangathan v. *Union of India*, (2012) 8 SCC 326, *relied on*

VI. Exercise of suo motu power by NGT

The suo motu powers of NGT is somewhat distinct from those exercised by the constitutional courts. The constitutional courts can foray into any issues under their constitutional mandate but NGT cannot naturally travel beyond its environmental domain in reference to the Scheduled enactments. However, as long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude. The interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Paras 49 to 52)

Mantri Techzone (P) Ltd. v. *Forward Foundation*, (2019) 18 SCC 494, *followed*

Rajeev Suri v. *DDA*, (2022) 11 SCC 1, *clarified* and *distinguished*

There is a need for an expert body with extensive functions and the sources of inspiration behind it. From the very inception, the role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are

preventative, ameliorative or remedial in nature. The functional capacity of NGT was intended to leverage wide powers to do full justice in its environmental mandate. (Para 53)

A.P. Pollution Control Board v. *M.V. Nayudu*, (1999) 2 SCC 718, *referred to*

VII. Uniqueness of NGT vis-à-vis other tribunals

While many tribunals are functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory tribunals were categorised to fall under four sub-heads: Administrative Tribunals under Article 323-A of the Constitution; Tribunals under Article 323-B; specialised sector tribunals and most prominently; tribunals to safeguard rights under Article 21. The duties of NGT bring it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute. (Para 54)

The idea was to create a fairly proactive and responsive institution which could step into varying roles, as the situation demanded. (Para 55)

NGT, unlike other tribunals, has a duty to do justice while exercising a "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute. (Para 56)

NGT has been recognised as one of the most progressive tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. (Para 57)

State of Meghalaya v. *All Dimasa Students Union*, (2019) 8 SCC 177, *affirmed*

L. Hirday Narain v. *ITO*, (1970) 2 SCC 355, *cited*

Gill, G.: "Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?", Asian Journal of Law and Society, 7(1), 85-126 (2020), *referred to*

VIII. The sui generis role of NGT

The powers conferred on NGT are both reflexive and preventive. It is *an expert regulatory body* which can also issue general directions within the statutory framework. (Para 59)

As many of the cases transferred to NGT emanated in the superior courts it would be appropriate to assume that similar power to initiate suo motu proceedings should also be available with NGT. (Para 60)

NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge the role of the supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialised body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise. (Paras 58 to 61)

NHAI v. *Aam Aadmi Lokmanch*, (2021) 11 SCC 566, *followed*

Paramjit Kaur v. *State of Punjab*, (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *affirmed*

IX. Authority with self-activating capability

Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its

domain and this should necessarily clothe it with the authority to take suo motu cognizance of matters, for effective discharge of its mandate. (Para 62)

Section 14 of the NGT Act is of great relevance. (Para 63)

The exercise of power by NGT is not circumscribed by receipt of the application by an aggrieved or interested party alone. Section 14(1) of the NGT Act, which deals with jurisdiction conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e. civil cases; involvement of substantial question of the environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. Thus, even in the absence of an application, NGT can self-ignite action either towards amelioration or towards prevention of harm. (Para 64)

Section 14(1) exists as a stand-alone feature, not constricted by the operational mechanism of the subsequent sub-sections. Section 14(2) functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise, Section 14(3) of the NGT Act refers to the period of limitation concerning applications, when they are addressed to NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention or maybe a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in a similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning. (Para 65)

Provisions of the NGT Act relating to jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum. (Para 66)

While dealing with contested cases, NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognised in *Aam Aadmi Lokmanch*, (2021) 11 SCC 566. (Para 67)

The duty to safeguard rights under Article 21 cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in the larger public interest. The specialised forum is bestowed with the responsibility to ensure the protection of the environment. To be effective in its domain, the Court needs to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. (Para 68)

State of Punjab v. *Shamlal Murari*, (1976) 1 SCC 719 : 1976 SCC (L&S) 118, *affirmed*

While discussing NGT's power and responsibility, it is essential to keep in mind Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e. access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being

powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional. (Para 69)

X. The Precautionary Principle

The origin of the *precautionary principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies. (Para 71)

Section 20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the "*precautionary principle*" along with the principles of sustainable development and the polluter pays principle. (Para 72)

The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "*decisions*" or "*orders*" to governmental authorities or polluters when they fail to "*anticipate, prevent and attack the causes of environmental degradation*". Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for a full flow of the forum's power within the environmental domain. (Para 73)

It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. The pre-emptive functions of NGT as a sui generis body can be noted. (Para 74)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647, *followed*

S. Jagannath v. *Union of India*, (1997) 2 SCC 87; *Karnataka Industrial Areas Development Board* v. *C. Kenchappa*, (2006) 6 SCC 371, *affirmed*

Scott LaFranchi: "Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool", 32 BC Envtl Aff L Rev 679 (2005); Ronnie Harding & Elizabeth Fisher: "Introducing the Precautionary Principle" in *Perspectives on the Precautionary Principle* (1999) at p. 4; Benjamin Cardozo: *The Nature of the Judicial Process*, *referred to*

XI. Environmental Justice and Environmental Equity

The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition. Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including the application of sustainable development principles. (Para 75)

There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people. (Para 77)

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "*equal footing*" conception may not, therefore, be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalised classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice. (Para 78)

The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which the Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach the heart of environmental concerns. Jurisdictional jurisprudence should be moulded in favour of larger societal interest, whether that be in the form of "public interest litigation" or widening the scope of locus standi. (Para 79)

In the backdrop of the above weighty concerns, the Court should advert to *the ideal of administering equal justice to everyone who comes to the courts, regardless of race, creed, or economic class.* The relevance of this concept is particularly apposite in the context of the inability of marginalised communities to access the legal machinery. (Para 80)

Schlosberg D.: *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2009); Jeff Todd: "A 'Sense of Equity' in Environmental Justice Litigation", 44 Harv Envtl L Rev 169, 193 (2020); Schiffer, L.J. & Dowling, T.J. (1997): "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-42, *referred to*

XII. Environmental Jurisprudence in India

NGT can be comfortably placed within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of the Court in establishing the legal connection between matters of environmental concern and fundamental rights of citizens has produced much academic literature. The field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by the Court; moving the concept of Environment Law from the realm of torts to interlink it with fundamental rights, liberalising the concept of locus standi in environmental matters, exercising suo motu powers to reign in polluters, using expert committees to monitor implementation of court orders, etc. (Para 81)

By expanding the scope of Articles 21, 32, 48-A, 51-A(*g*) of the Constitution, the Court has guaranteed the right to a pollution-free environment for a holistic existence. Most crucially, the expansion of the right to life under Article 21 by the Court has become a touchstone to determine many environmental concerns. (Para 82)

Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited

by those who may not have much concern for environmental degradation. The creation of the "*Absolute Liability Principle*" by the Court is a well-recognised testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of the Court's initiative. (Para 83)

It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly in developing a sui generis environmental discourse. There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the "*at risk*" nature of some populations. The creation of NGT itself was due in large part to the need expressed by the Supreme Court for such a forum. (Para 84)

The Court deliberated upon the larger societal concerns when dealing with environmental matters. (Para 85)

Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare-oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society-centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters stood transferred to NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior court was surely expected to be seen in the Tribunal's approach. (Para 86)

It is this environmental rule of law that has been encapsulated with NGT's creation at the Supreme Court's behest. (Para 88)

NGT is the institutionalisation of the developments made by the Court in the field of Environment Law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence. (Para 89)

H.P. Bus-Stand Management & Development Authority v. *Central Empowered Committee*, (2021) 4 SCC 309, *followed*

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395, *relied on*

Subhash Kumar v. *State of Bihar*, (1991) 1 SCC 598, *affirmed*

M.C. Mehta v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718; *A.P. Pollution Control Board (2)* v. *M.V. Nayudu*, (2001) 2 SCC 62; *Rural Litigation & Entitlement Kendra* v. *State of U.P.*, (1985) 2 SCC 431; *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577, *referred to*

Armin Rosencranz & Shyam Divan: Environmental Law and Policy in India; M.A.A. Baig: *Environmental Law and Justice* (1996); Domenico Amirante: "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India", 29 : 2 Pace Envtl L Rev 440 at p. 447 (2012); M.K. Ramesh: "Environmental Justice: Courts and Beyond", Indian Journal of Envtl Law 20 (2002); Maheshwara Swamy, N.: *Law Relating to Environmental Pollution and Protection*, India; *Thompson Reuters*, Vol. 1, Edn. 5; Justice T.S. Doabia: *Environmental & Pollution Laws in India*, 3rd Edn., Vol. 2 (2017); Domenico Amirante: "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India", 29 Pace Envtl L Rev 441 (2012); Rajamani, Lavanya: "Public Interest Environmental Litigation in India:

Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", Journal of Environmental Law (2007), *referred to*

XIII. Conclusion

The NGT Act, when read as a whole, gives much leeway to NGT to go beyond a mere adjudicatory role. Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of NGT's fabric. NGT must be seen as a sui generis institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of the Court. (Para 91)

The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish freshwater resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in the riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists with many countries declaring climate emergencies and many others being urged to follow suit. (Para 92)

Indian Network for Climate Change Assessment, Climate Change and India: A 4×4 Assessment — A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16-11-2010; Secretary General's remarks at the Climate Ambition Summit, United Nations. United Nations, 12-12-2020, *referred to*

Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long-term and very often irreparable environmental damage which are expected to be arrested by NGT, urge the Court to advert to what is termed as *the "Seventh Generation" sustainability principle*, or the "*Great Law of the Iroquois*" (as it originates from the Iroquois Tribe) which requires all decision-making to withstand for the benefit of seven generations down the line. (Para 93)

It is vital for the well-being of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter. (Para 94)

In circumstances where the adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*". Thus, an affirmative role, beyond mere adjudication at the instance of the applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of NGT. The Court cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice. (Para 95)

NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no one knocks on its door. The forum itself has correctly identified the need for a collective stratagem for addressing environmental concerns. Such a society-centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for NGT, when faced with exigencies requiring an immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice. (Para 96)

It would be procedural hair-splitting to argue (as it has been) that NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated. (Para 97)

When the Registry of NGT does indeed receive communication or letter, including matters published in media, it may cause to initiate suo motu action by inviting the attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist NGT in the course of the hearing and to substantiate the factual matters. It must also be said that the exercise of suo motu jurisdiction does not mean eschewing the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders. (Para 98)

One could admit to the argument of the danger of suo motu jurisdiction if NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedural safeguards clarified herein, the nature of the trigger itself viz. a letter or a "suo motu" initiation, cannot be the basis to curtail the role and responsibility of the specialised forum. (Para 99)

Institutions which are often addressing urgent concerns gain little from procedural nit-picking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. The Court must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective. (Para 100)

The National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. Thus it is declared that NGT is vested with suo motu power in the discharge of its functions under the NGT Act. (Para 101)

Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, the Court directs delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from the same/common order of NGT, such case(s) be heard together. The Registry may do the needful and post the matters on 25-10-2021 for direction and fixing date of hearing, before the Bench presided over by one of us (A.M. Khanwilkar, J.). For the purpose

of further hearing, the respective cases shall not be treated as part-heard before this Bench. (Para 102)

Standard Chartered Bank v. *Dharminder Bhohi*, (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243; *Transcore* v. *Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116; *Rajeev Hitendra Pathak* v. *Achyut Kashinath Karekar*, (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781, *impliedly distinguished*

T.N. Pollution Control Board v. *Sterlite Industries (I) Ltd.*, (2019) 19 SCC 479; *BSNL* v. *TRAI*, (2014) 3 SCC 222, *held, impliedly distinguished*

Techi Tagi Tara v. *Rajendra Singh Bhandari*, (2018) 11 SCC 734, *impliedly overruled*

Ankita Sinha v. *State of Maharashtra*, 2018 SCC OnLine NGT 2937; *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936; *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2093; *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2094, *referred to*

Prabhakar v. *Sericulture Deptt.*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149; *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21; *Wilfred J.* v. *Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860, *cited*

Samuel Beckett: *Waiting for Godot*: *A Tragicomedy in Two Acts* (Grove Press Inc., New York 1954); *Halsbury's Law of England*, 3rd Edn., Vol. 9 at p. 349; *Black's Law Dictionary*, 5th Edn., p. 424, *referred to*

SS-D/68416/S

Advocates who appeared in this case :

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Sanjay Parikh, Nidhesh Gupta, Anand Grover and Gopal Sankaranarayanan, Senior Advocates [Gurmeet Singh Makker (Advocate-on-Record), Md. Shahid Anwar (Advocate-on-Record), C.K. Sasi (Advocate-on-Record), Mukesh Verma, Yash Pal Dhingra (Advocate-on-Record), S.J. Amith, Purushottam Sharma Tripathi (Advocate-on-Record), Mukesh Kr. Singh, Tahir Ashraf Siddiqui (Advocate-on-Record), Jogy Scaria (Advocate-on-Record), Ms Beena Victor, Ms M. Priya, Ravi Lomod, K. Parameshwar (Advocate-on-Record), Jobi Jose Kondody, Aex M. Scaria, Ms Usha Nandini V. (Advocate-on-Record), Biju P. Raman, Ms Saritha Thomas, James P. Thomas (Advocate-on-Record), Boby Thomas, Abhimanue Shrestha (Advocate-on-Record), Satwik Parikh, Divyansh Khurana, Zulfiker Ali P.S. (Advocate-on-Record), Faisal M. Aboobacker, Ms Lakshmi Sree P, Ms Sadiya Shakeel, Vanshdeep Dalmia, Ms Nishtha Kumar (Advocate-on-Record), Harish Vasudevan, Ms Japneet Kaur, Ms Vriti Gujral, Ms Pallavi Singh, Ms Astha Sharma (Advocate-on-Record), Ms Mantika Haryani, Simranjeet Singh Rekhi, Suvidutt M.S. (Advocate-on-Record), Ms Anu B., Ms Dhanya C., Ms Vijayalakshmi Raju, Advocates], for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2022) 11 SCC 1, *Rajeev Suri* v. *DDA* 432*e-f*, 433*a*
2. (2021) 11 SCC 566, *NHAI* v. *Aam Aadmi Lokmanch* 435*b*, 437*e-f*
3. (2021) 4 SCC 309, *H.P. Bus-Stand Management & Development Authority* v. *Central Empowered Committee* 443*c*
4. (2019) 19 SCC 479, *T.N. Pollution Control Board* v. *Sterlite Industries (I) Ltd.* 421*a-b*
5. (2019) 18 SCC 494, *Mantri Techzone (P) Ltd.* v. *Forward Foundation* 431*g*, 432*c-d*
6. (2019) 8 SCC 177, *State of Meghalaya* v. *All Dimasa Students Union* 433*f-g*, 434*d-e*
7. 2019 SCC OnLine SC 2094, *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha* 418*f*
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16. (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243, *Standard Chartered Bank* v. *Dharminder Bhohi* 419*d*
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19. (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia* 427*f-g*
20. (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116, *Transcore* v. *Union of India* 419*e-f*
21. (2006) 6 SCC 371, *Karnataka Industrial Areas Development Board* v. *C. Kenchappa* 439*a-b*
22. (2001) 2 SCC 62, *A.P. Pollution Control Board (2)* v. *M.V. Nayudu* 442*d*
23. (1999) 2 SCC 718, *A.P. Pollution Control Board* v. *M.V. Nayudu* 433*b*, 442*d*
24. (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *Paramjit Kaur* v. *State of Punjab* 434*g*
25. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *L. Chandra Kumar* v. *Union of India* 423*g*
26. (1997) 2 SCC 353, *M.C. Mehta (Taj Trapezium Matter)* v. *Union of India* 429*g*
27. (1997) 2 SCC 87, *S. Jagannath* v. *Union of India* 439*a-b*
28. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 429*f-g*, 439*a-b*
29. (1996) 3 SCC 212, *Indian Council For Enviro-Legal Action* v. *Union of India* 442*d*
30. (1995) 2 SCC 577, *Virender Gaur* v. *State of Haryana* 441*d*
31. (1991) 1 SCC 598, *Subhash Kumar* v. *State of Bihar* 441*e-f*
32. (1990) 1 SCC 613, *Charan Lal Sahu* v. *Union of India* 441*d*
33. (1987) 1 SCC 395, *M.C. Mehta* v. *Union of India* 442*a*
34. (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *M.C. Mehta* v. *Union of India* 442*d*

35. (1985) 2 SCC 431, *Rural Litigation & Entitlement Kendra* v. *State of U.P.* 441*d*
36. (1976) 1 SCC 719 : 1976 SCC (L&S) 118, *State of Punjab* v. *Shamlal Murari* 437*g-h*
37. (1970) 2 SCC 355, *L. Hirday Narain* v. *ITO* 434*a*
38. 1964 SCC OnLine SC 21, *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964* 421*e-f*
39. 1955 SCC OnLine SC 2, *Bengal Immunity Co. Ltd.* v. *State of Bihar* 426*g-h*
40. 1935 SCC OnLine US SC 3 (dissenting), *Panama Refining Co.* v. *Ryan* 427*e*
41. (1584) 3 Co Rep 7a : 76 ER 637, *Heydon Case* 426*g*, 427*a-b*

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.—

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

2. Leave granted in the special leave petitions. The consideration to be made in these matters is whether the National Green Tribunal (for short "NGT") has the power to exercise suo motu jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short "the NGT Act, 2010").

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

4. NGT took suo motu cognizance of the above article vide order dated 7-8-2018[2] and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at NGT's instance. Thereafter, steps were taken for inspection of the Deonar dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, NGT vide order dated 30-10-2018[3] noted that "*damage to the environment and public health is self-evident*" and ordered MCGM to pay compensation to the tune of Rs 5 crores.

1 Samuel Beckett, *Waiting for Godot*: *A Tragicomedy in Two Acts* (Grove Press Inc., New York 1954).
2 *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2937
3 *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936

5. This Court while entertaining Civil Appeal No. 86 of 2019 of MCGM, ordered[4] stay on the operation of the order[3] passed by NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether NGT has the power to exercise suo motu jurisdiction.

6. Mr Mukul Rohatgi, Mr Dushyant Dave, Mr Jaideep Gupta, Mr Dhruv Mehta, Mr Atmaram Nadkarni, Mr Krishnan Venugopal, Mr V. Giri, Mr Sajan Poovayya and Mr Sidhartha Dave, the learned Senior Counsel together with Mr E.M.S Anam, Ms Amrita Sharma, Mr S. Thananjayan have taken a common stand. They have argued that NGT is a tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act suo motu, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed.

7. The learned counsel also argue that NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, NGT by acting suo motu cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with NGT (which is available with superior courts) is highlighted to keep away suo motu power from NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in the latter part of this order.

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

9. Mr Anand Grover, the learned Senior Counsel was appointed[5] as the Amicus Curiae to assist the Court and he was heard at length. The counsel acknowledges NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr Grover is of the view that NGT is incapable of triggering action on its own. In other words, NGT cannot act suo motu without someone moving the forum as otherwise the forum then would be perceived to be judging its own cause. Since suo motu power is not conferred under the NGT Act, the specialised tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe NGT with power to take action is the concessional submission of Mr Grover.

4 *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2093
3 *Ankita Sinha* v. *State of Maharashtra*, 2018 SCC OnLine NGT 2936
5 *Municipal Corpn. of Greater Mumbai* v. *Ankita Sinha*, 2019 SCC OnLine SC 2094

10. Representing the Central Government, Ms Aishwarya Bhati, the learned Additional Solicitor General of India submitted that suo motu power is not exercisable by NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as "the NET Act").

11. The counsel refers to the provisions of the NGT Act and submits that the concept of locus standi was expanded for NGT's intervention under Section 18(2)(*e*) but the tribunal is not vested with suo motu power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by NGT, the ASG is on the same page as the Amicus Curiae but as earlier noted both the counsel argue for keeping away the suo motu power from NGT.

12. Having summarised the positions taken by the respective counsel, we may now refer to the specific grounds of challenge to keep away suo motu power from NGT. The counsel concerned project that NGT is a creature of the statute and just like other such statutory tribunals, NGT is also bound within statutory confines. They have relied upon *Standard Chartered Bank* v. *Dharminder Bhohi*[6] wherein, the provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debts Recovery Tribunal and Appellate Tribunal. From the analysis of Dipak Misra, J. (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

13. Similarly, S.H. Kapadia, J. (as his Lordship then was) in *Transcore* v. *Union of India*[7], opined on behalf of a Division Bench that: (SCC p. 163, para 67)

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

14. The counsel also projects that in the context of Consumer Forums, Dalveer Bhandari, J. (as his Lordship then was) speaking for a three-Judge Bench in *Rajeev Hitendra Pathak* v. *Achyut Kashinath Karekar*[8], observed as under: (SCC p. 550, para 34)

> "*34.* On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State

6 (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243
7 (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116
8 (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781

Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

15. The second limb of contention is that the Act is applicable to "*disputes*" as, necessarily referring to a lis between two parties. The counsel has relied upon *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[9] wherein the term "*substantial question relating to environment*" was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by NGT.

16. In the cited case the proposition is articulated in the following fashion: (*Rajendra Singh Bhandari case*[9], SCC pp. 749-50, paras 19-20)

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

20. … In *Prabhakar* v. *Sericulture Deptt.*[10] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)

'*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:

" "*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;"

35. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:

"*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined." ' "

17. The Amicus Curiae has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

9 (2018) 11 SCC 734
10 (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149

18. Thirdly, the lack of general power of judicial review has been argued to show legislative intent to curb suo motu powers. The counsel have stated that NGT, as a tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of writ courts as under Article 226 and Article 32 of the Constitution of India.

19. In the relied upon judgment *T.N. Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[11] R.F. Nariman, J. speaking about NGT for a Division Bench of this Court has observed the following: (SCC pp. 520 & 523-24, paras 41 & 43)

> "*41.* … Suffice it to say that NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act. …
>
> * * *
>
> *43.* … In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*[12], made in the following words: (SCR p. 499 : AIR p. 789, para 138)
>
> > '*138.* We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > "Prima facie", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court[13]".'

11 (2019) 19 SCC 479
12 1964 SCC OnLine SC 21 : (1965) 1 SCR 413 : AIR 1965 SC 745
13 *Halsbury's Law of England*, 3rd Edn., Vol. 9, p. 349.

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by NGT. Following the judgment in *BSNL*[14], we are of the view that 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 NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests*[15] 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."

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

I. ***The backdrop of the National Green Tribunal***

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

21. The precursor to the NGT Act was the 186th Report* of the Law Commission of India dated 23-9-2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialised court to deal with environmental issues:

"It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Article 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene

14 *BSNL* v. *TRAI*, (2014) 3 SCC 222
15 2014 SCC OnLine NGT 6860
* **Ed.**: Law Commission of India, 186th Report on Proposal to Constitute Environment Courts (September 2003)

on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Article 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert Commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

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

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

"Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Article 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a civil court, in the Environmental Courts. If we vest powers of judicial review as under Article 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar* v. *Union of India*[16].

No doubt, the Environment Court exercising powers of a civil court or as an appellate court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on

16 (1997) 3 SCC 261 : 1997 SCC (L&S) 577

the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[17]

24. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of NGT. This is how the proposed forum was made free from the rules of evidence and NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts, etc. The observance of the principles of natural justice was however mandated.

II. *The Preamble & Statement of Objects and Reasons*

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

> "**2.** India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.
>
> **3.** The right to healthy environment has been construed as a part of the right to life under Article 21 of the Constitution in the judicial pronouncement in India.
>
> **4.** The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.
>
> **5.** Taking into account the large number of environmental cases pending in higher courts and the involvement of multi-disciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the

17 Chapter IX, 186th Law Commission Report.

need for constitution of specialised environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to Environment Law.

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

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

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

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

29. The United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble to the Act significantly emphasised on construing the right to healthy environment as a part of the right to life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National

Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

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

III. ***The need for purposive interpretation***

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

> "When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by Viscount Simonds: a "compelling rule" by Lord Somervell of Harrow; and a "settled rule" by B.K. Mukherjea, J. "I agree" said Lord Halsbury, "that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it"."

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

33. The application of *Heydon*[18] rule could adequately aid us here as the rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by S.R. Das, J. for a seven-Judge Bench in *Bengal Immunity Co. Ltd.* v. *State of Bihar*[19],

18 *Heydon Case*, (1584) 3 Co Rep 7a : 76 ER 637
19 1955 SCC OnLine SC 2 : (1955) 2 SCR 603 : AIR 1955 SC 661

"*22.* … '4th. … the office of all the Judges is to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.'*"

34. Francis Bennion in his book *Statutory Interpretation* described "purposive interpretation" as under:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by—

(*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

(*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose."

35. Justice Frankfurter of the US Supreme Court in "Some Reflections on the Reading of Statutes"[20], has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner:

"The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.

* * *

Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."

Eventually, Justice Frankfurter relied upon Benjamin Cardozo, J.'s phraseology in *Panama Refining Co.* v. *Ryan*[21], and the same is taken as a lodestar in our quest: (SCC OnLine US SC para 50)

"*50.* … the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view".

36. The laudatory objectives for creation of NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfils the object of the Act.[22] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

* **Ed.**: As observed in *Heydon case*, (1584) 3 Co Rep 7a (V).

20 (1947) 47 Columbia Law Review 527

21 1935 SCC OnLine US SC 3 : 79 L Ed 446 : 293 US 388 (1935) (dissenting)

22 *Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850

IV. ***Salient statutory features of the NGT Act***

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention:

37.1. Section 2(1)(*c*) of the NGT Act defines the term "environment"; Section 2(1)(*m*) defines "substantial question relating to environment".

37.2. Chapter III relates to jurisdiction, power and proceedings of the Tribunal. Section 14 gives original jurisdiction to NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments.

37.3. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, by Section 18(2)(*e*) "*any person aggrieved including any representative body/organisation*" and the locus standi is not limited only to the aggrieved party.

37.4. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in CPC and shall be bound by the principles of natural justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders.

37.5. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the civil court and for that purpose shall have all the powers of a civil court. Section 29 bars the jurisdiction of the civil court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

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

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

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

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

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

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

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

V. *Non-adjudicatory roles of NGT*

43. As can be seen, Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *Union of India*[23]; *M.C. Mehta (Taj Trapezium Matter)* v. *Union of India*[24], etc.]

44. Schedule I to the NGT Act is concerned with implementation of few environment related enactments such as the Water Act, the Air Act, the Environment Act, the Forest (Conservation) Act, etc. As one looks at these enactments, an expanded role for NGT is clearly discernible. The activities of NGT are not only geared towards the protection of the environment but also to

23 (1996) 5 SCC 647
24 (1997) 2 SCC 353

ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

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

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

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

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

48. With the constitution of NGT, many cases pending before the High Courts were transferred to NGT. Apprehending the possibility of conflict between the High Courts and NGT (in matters concerning environment and the statutes mentioned in Schedule I to "the NGT Act"), Swatanter Kumar, J. speaking for the three-Judge Bench in *Bhopal Gas Peedith Mahila Udyog*

Sangathan v. *Union of India*[25], highlighted NGT's role in the context, in the following words: (SCC p. 347, paras 40-41)

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

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

VI. *Exercise of suo motu power by NGT*

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

50. Explaining the purpose for constituting the Special Court to deal with environmental issues, in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[26], S. Abdul Nazeer, J. writing for the three-Judge Bench, made the following pertinent observations on the status of NGT: (SCC p. 517, para 40)

25 (2012) 8 SCC 326
26 (2019) 18 SCC 494

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

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

51. Elaborating further, in paras 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that: (*Mantri Techzone case*[26], SCC p. 518, para 46)

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

52. Such being the wide contour of NGT's powers, the exposition in *Rajeev Suri* v. *DDA*[27] was not to constrict the suo motu powers of NGT. To appreciate the implication of the ratio in *Rajeev Suri*[27], it must be noticed that it was in the specific context of "*Merits Review*" and NGT transgressing beyond its environmental mandate. This is why, one of us, A.M. Khanwilkar, J. observed that: (SCC p. 276, para 516)

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

26 *Mantri Techzone (P) Ltd.* v. *Forward Foundation*, (2019) 18 SCC 494
27 (2022) 11 SCC 1

Thus, the ratio in *Rajeev Suri*[27] to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for NGT. In its own domain, as crystalised by the statute, the role of NGT is clearly discernible.

53. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *A.P. Pollution Control Board* v. *M.V. Nayudu*[28] where M. Jagannadha Rao, J. speaking for a Division Bench referred to a comparable court in Australia and noted the following: (SCC p. 736, para 44)

> "*44*. The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

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

VII. *Uniqueness of NGT vis-à-vis other tribunals*

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

55. The ideal was to create a fairly proactive and responsive institution which could step into varying roles, as the situation demanded. Commenting on the specialised and unique role of NGT, Ashok Bhushan, J. in *State of Meghalaya* v. *All Dimasa Students Union*[29], fittingly observed thus: (SCC p. 262, para 163)

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

27 *Rajeev Suri* v. *DDA*, (2022) 11 SCC 1
28 (1999) 2 SCC 718
29 (2019) 8 SCC 177

before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *ITO*[30], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 13: (SCC p. 359)

> '*13.* … The High Court observed that under Section 35 of the Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen.' "

56. Reflecting on the expanded role of NGT unlike other tribunals, this Court so appositely observed in *All Dimasa Students Union case*[29] that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

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

> "NGT is an example of a specialised court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[31]

VIII. *The sui generis role of NGT*

58. NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution. The structure of sui generis institutions was explained in *Paramjit Kaur* v. *State of Punjab*[32], wherein S. Saghir Ahmad, J. spoke thus for a Division Bench: (SCC p. 137, para 14)

30 (1970) 2 SCC 355
29 *State of Meghalaya* v. *All Dimasa Students Union*, (2019) 8 SCC 177
31 Gill, G., "Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall?", Asian Journal of Law and Society, 7(1), 85-126 (2020).
32 (1999) 2 SCC 131 : 1999 SCC (Cri) 109

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

59. In *NHAI* v. *Aam Aadmi Lokmanch*[33], S. Ravindra Bhat, J. commenting on the sui generis role of NGT, so appropriately stated as follows: (SCC pp. 605 & 629, paras 37 & 73-74)

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

* * *

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

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

In that case, this Court repelled the argument for a restricted jurisdiction for NGT, and fittingly observed in para 73 that the powers conferred on NGT are both reflexive and preventive and the role of NGT was recognised in para 74 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

60. The above discussion would advise us to say that NGT was conceived as a specialised forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts

33 (2021) 11 SCC 566

and the Supreme Court. Many of those cases transferred to NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate suo motu proceedings should also be available with NGT.

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

IX. *Authority with self-activating capability*

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

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

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

64. Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e. civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application. When substantial

questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I to the Act, NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

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

66. The other pertinent provisions relating to, inter alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

67. It may also be relevant to bear in mind that while dealing with contested cases, NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognised in *NHAI*[33].

68. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialised forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, V.R. Krishna Iyer, J. speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[34] has so correctly prioritised the substantive rights and observed succinctly: (SCC p. 722, para 8)

33 *NHAI* v. *Aam Aadmi Lokmanch*, (2021) 11 SCC 566
34 (1976) 1 SCC 719 : 1976 SCC (L&S) 118

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

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

X. *The Precautionary Principle*

70. Tracing the origin of the *precautionary principle*, Scott Lafranchi in his treatise[35] has expounded on the proactive role of the authorities in the following passage:

"Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long-term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."[36] The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies"."

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

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

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

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

36 *See*, Ronnie Harding & Elizabeth Fisher, "Introducing the Precautionary Principle" in *Perspectives on the Precautionary Principle* (1999) at p. 4.

73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "*decisions*" or "*orders*" to governmental authorities or polluters, when they fail to "*to anticipate, prevent and attack the causes of environmental degradation*"[37]. Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

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

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

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

XI. *Environmental Justice and Environmental Equity*

75. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[38] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalised groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

76. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer [then Assistant Attorney General, Environment and Natural Resources Division ("ENRD"), US Department of Justice] and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role*

37 *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647, *S. Jagannath* v. *Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board* v. *C. Kenchappa*, (2006) 6 SCC 371.

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

of the Courts in Environmental Law, wrote the following evocative passage on the concept of environmental justice:

> "Environmental justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[39]

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

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school", whereas the people who reside there do little or nothing to harm their community."[40]

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

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

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in

39 Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-342.

40 Jeff Todd, "A 'Sense of Equity' in Environmental Justice Litigation", 44 Harv Envtl L Rev 169, 193 (2020).

minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[39]

80. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the "*Blindfold of Lady Justice*", which symbolises "*the ideal of administering equal justice to everyone who comes to our courts, regardless of race, creed, or economic class*".[39] The relevance of this concept is particularly apposite when we consider the inability of most marginalised communities, to access the legal machinery.

IX. *Environmental Jurisprudence in India*

81. Proceeding with the above understating, we can comfortably place NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing—*Environmental Law and Policy in India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environment Law from the realm of torts to interlink it with fundamental rights[41], liberalising the concept of locus standi in environmental matters, exercising suo motu powers to rein in polluters, using expert committees to monitor implementation of court orders, etc.[42]

82. By expanding the scope of Articles 21, 32, 48-A, 51-A(*g*), this Court has guaranteed the right to a pollution-free environment for a holistic existence.[43] Most crucially, the expansion of right to life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar* v. *State of Bihar*[44], this Court explicitly held the following: (SCC p. 604, para 7)

> "*7.* … Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life."

83. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be

39 Schiffer, L.J. & Dowling, T.J. (1997), "Reflections on the Role of the Courts in Environmental Law", 27(2) Environmental Law 327-342.

41 *Rural Litigation & Entitlement Kendra* v. *State of U.P.*, (1985) 2 SCC 431 : AIR 1985 SC 652, *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577

42 *See* M.A.A. Baig, *Environmental Law and Justice* (1996). Domenico Amirante, "Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India" 29:2 Pace Envtl L Rev 440 at p. 447 (2012). M.K. Ramesh, "Environmental Justice: Courts and Beyond", Indian Journal of Envtl Law 20 (2002).

43 Maheshwara Swamy, N., *Law Relating to Environmental Pollution and Protection*. India, Thompson Reuters, Vol. I, Edn. 5.

44 (1991) 1 SCC 598

exploited by those who may not have much concern for environmental degradation. Creation of the "*Absolute Liability Principle*"[45] by this Court is a well-recognised testament for this. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative:

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment.…The right was recognised as part of the right to life in 1991.…The Court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[46]

84. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a sui generis environmental discourse.[31] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the "*at risk*" nature of some populations. The creation of NGT itself was due in large part to the need expressed by this Court for such a forum.[47]

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

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> … The courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."[48]

45 *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395

46 Rajamani, Lavanya, "Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability", Journal of Environmental Law (2007).

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

47 *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *Indian Council For Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board (2)* v. *M.V. Nayudu*, (2001) 2 SCC 62

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

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

87. Analysing the concept of the functioning of NGT and its role within the broader concept of the environmental rule of law, D.Y. Chandrachud, J. speaking for a three-Judge Bench in *H.P. Bus-Stand Management & Development Authority* v. *Central Empowered Committee*[49] so succinctly said that: (SCC pp. 335-36, para 49)

> "*49.* The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

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

> "With reference to the judicial enforcement of environmental law — which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order — the National Green Tribunal of India

49 (2021) 4 SCC 309

seems to be the most comprehensive and promising among the specialised environmental courts created in Asia over the last decade."[50]

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

X. *Conclusion*

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

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

92. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[51] with many countries declaring climate emergencies and many others being urged to follow suit[52].

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

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

51 Indian Network for Climate Change Assessment, Climate Change and India: A 4×4 Assessment — A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16-11-2010.

52 Secretary General's remarks at the Climate Ambition Summit, United Nations. United Nations, 12-12-2020.

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

95. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[35] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

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

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

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

99. One could admit to the argument of danger of suo motu jurisdiction, if NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards

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

clarified above in play, the nature of the trigger itself viz. a letter or a "suo motu" initiation, cannot be the basis to curtail the role and responsibility of the specialised forum.

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

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

102. Having answered the common legal issue involved in all these cases regarding the suo motu jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25-10-2021 for direction and fixing date of hearing, before the Bench presided over by one of us (A.M. Khanwilkar, J.). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

POLLUTION INDEX SCORE OF SOME MAJOR INDUSTRIES COVERED UNDER THE EIA NOTIFICATION.

S. No.	Industries covered under the EIA Notification along with relevant serial numbers assigned in the EIA Notification.	PI Score	Category
1.	Mining of minerals [1(a)], Mineral beneficiation [2(b)].	75	Red
2.	Offshore and onshore oil and gas exploration, development & production. [1(b)]	83	Red
3.	Thermal Power Plants [1(d)]	85	Red
4.	Nuclear Power projects and processing of nuclear fuel. [1(e)]	75	Red
5.	Coal Washeries [2(a)]	50	Orange
6.	Cement Plants [3(b)]	75	Red
7.	Petroleum Refining Industry [4(a)]	95	Red
8.	Coke Oven Plants [4(b)]	70	Red
9.	Asbestos milling and asbestos based products. [4(c)]	75	Red
10.	Chlor- Alkali Industry [4(d)]	80	Red
11.	Chemical Fertilisers (All projects) [5(a)] **Note:** Fertilizer (excluding formulation)- PI score is 90 (Red). Fertilizer (granulation/formulation/blending only)- PI score is 50 (Orange).	90	Red
12.	Pesticides Industry and pesticide specific intermediates (excluding formulations). [5(b)]	75	Red
13.	Petro chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics) [5(c)]	95	Red
14.	Manmade fibres manufacturing/Rayon [5(d)]	85	Red
15.	Petrochemical based processing (processes other than cracking and reformation and not covered under the complexes) [5(e)]	95	Red
16.	Synthetic Organic Chemicals Industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates) [5(f)]	70 Dye- 75 Rubber-55	Red Dye- Red Rubber- Orange
17.	Distilleries [5(g)]	100	Red
18.	Integrated Paint Industry [5(h)]	Manufacturing – 70 Paint blending/mixing - 50	Manufacturing – Red Paint blending/mixing - Orange
19.	Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp without bleaching. [5(i)]	95	Red
20.	Sugar Industry [5(j)]	65	Red
21.	Induction/arc furnaces/cupola furnaces 5TPH or more. [5(k)]	50	Orange
22.	Oil & gas transportation pipe line (crude and refinery/petrochemical products); passing through	37.5	Green

	national parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal. [6(a)]		
23.	Isolated Storage & Handling hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 and 3 of MSIHC Rules 1989 amended 2000).	-	Red
24.	Airports [7(a)]	75	Red
25.	All ship breaking yards including ship breaking units. [7(b)]	80	Red
26.	Ports, Harbours. [7(e)]	85	Red
27.	Highways [7(f)]	50	Orange
28.	Building and Construction Projects [8(a)]	50	Orange

***PI Score of Slaughterhouses/meat processing units is 87.5 (Red category).**

2024 INSC 399

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 4603-4604 of 2024

Tapas Guha & Ors … **Appellants**

Versus

Union of India & Ors … **Respondents**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

1. Application for intervention is allowed.

2. These Appeals arise from an order dated 25 January 2024 of the Eastern Zone Bench of the National Green Tribunal.

3. The Ministry of Civil Aviation of the Union Government decided to build a commercial Airport at Silchar in Assam since the existing defence airport is not suitable for domestic civilian operations.

4. Three tea estates, namely, (i) Doloo; (ii) Khoreel; and (iii) Silcoorie were identified by the Government of Assam for the sites of the airport. The Airport Authority of India[1] conducted a feasibility study and chose Doloo as the site for a new Greenfield Airport on

[1] "AAI"

land admeasuring approximately 335 hectares. AAI made a request for additional land, following which an adjacent area in the same tea estate admeasuring 69 hectares was identified. About 173 dwelling units are situated on the additional area of 69 hectares. The total land area thus admeasures 404 hectares.

5. The appellants moved the National Green Tribunal with the grievance that though in terms of the Notification dated 14 September 2006 of the Ministry of Environment and Forests, an Environmental Clearance is required for the construction of an airport, the site has been cleared of shade trees and tea bushes despite the absence of such a clearance. The Appellant raised concerns regarding:

   (i) extensive eviction leading to uprooting of 41,95,909 tea bushes, over 10,000 shade trees, and land acquisition in two divisions of the Tea Estate;

   (ii) ongoing site clearance of 325 hectares with massive uprooting and felling;

   (iii) imposition of Section 144 CrPC during eviction, utilizing 1050 bulldozers and excavators to clear 2500 bighas for the airport;

   (iv) the airport project being Category-A, with site clearance already underway without prior Environmental Clearance, violating EIA Notification, 2006. Additionally, the proposed Airport falls under Category 'A', necessitating scoping, public consultation as per EIA Notification, 2006; however, post-eviction, no "public" remains for consultation in affected areas.

6. The National Green Tribunal[2], by its order dated 25 January 2024, dismissed the OA. The NGT held that an Environmental Impact Assessment Report was awaited and the Environmental Clearance for the airport has not been granted. Yet it held that the

[2] NGT

plea of the appellants for an order of restraint on the grant of site clearances and in principle approvals was without merit at that stage. The NGT also observed that the mere inclusion of a clause under the head 'Environment Clearances' in the form of said Notification does not deem the same to be mandatory for purposes of the EIA assessment study.

7. The Appeals were taken up by this Court on 22 April 2024. The Petitioners have been represented by Mr Prashant Bhushan. Mr Tushar Mehta, Solicitor General appears for the respondents. Mr Gopal Sankaranarayan, senior counsel has appeared for the intervenors. It is an admitted position that an Environmental Clearance is required for the project of setting up the airport and no such clearance has been issued. Paragraph 2 of the Notification dated 14 September 2006 is in the following terms:

> "**2. Requirements of prior Environmental Clearance (EC)**: The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities listed in the Schedule to this notification;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

The construction of airports in item 7(a) of the Schedule.

8. By the order of this Court dated 22 April 2024, the Secretary of the District Legal Services Authority, Cachar was directed to visit the site and submit a report to this Court on:

   (i) Whether any felling of shade trees had taken place;

   (ii) Whether any eviction at the site had taken place; and

   (iii) The nature of the activities which have been carried out at the site.

9. At this stage, it would be material to note that contrary to the assertions of the appellants, on 22 April 2024, an affidavit was filed by the Joint Secretary to the Government of Assam in the General Administration Department stating that:

   (i) there has been no felling of shade trees at the site in question;

   (ii) no eviction of individuals or households had taken place from the land under consideration since the tract was not inhabited; and

   (iii) removal of tea bushes "occurs routinely even as part of regular tea cultivation" for which no environmental clearance is required.

Annexed to the affidavit is a letter dated 22 April 2024 (issued on the same date as the affidavit) by the Member Secretary of the State Environment Impact Assessment Authority, Assam to the Member Secretary, SEIAA, Assam in the following terms :

"Inviting reference to the subject cited above, this is to inform you that the matter has been referred by the Special Chief

> Secretary (Environment & Forest), Govt. of Assam, inviting comments / opinion as to the requirement of prior Environmental Clearance (EC) for clearance of Tea bushes, uprooting /removal of shade / cover crops in respect of Doloo Tea Estate. On careful perusal of the averments made in the instant petition, it is to be stated herein that cultivation of Tea in Assam is falling within the category of ***Special Cultivation*** for which the Govt. of Assam / District Commissioner allot land within the ambit of Rules under the Assam Land and Revenue Regulation, 1886.
>
> It is pertinent to point out here that in a tea garden, tea bushes and shade trees are removed and uprooted in regular intervals once the trees grow old and there is loss of production of tea. Generally, ***Siris*** tree species (***Albizia lebbeck/albizzia procera***) which are fast growing indigenous species of trees in Assam, are planted as shade trees/cover crops and primarily used to meet the requirement of fuel wood for workers in the tea gardens.
>
> As per the Assam Tea Garden Act / Policy, clearing of tea bushes and shade trees are permissible. Moreover, tea bushes are considered as agricultural crops (***Special Cultivation***) and uprooting activity of such tea bushes and shade trees do not fall under any of the project / activity to the Schedule of the **EIA Notification S.O. 1533(E) Dated 14.09.2006**.
>
> This is submitted for favour of your kind perusal and needful action."

10. In pursuance of the directions of this Court, Ms Salma Sultana, a judge in the district judiciary in the State of Assam, posted as Secretary to the District Legal Services Authority Kachar submitted a report dated 27 April 2024. The report, *inter alia*, indicates that 89 shade trees were found to be cut. Ms Sultana has also stated that "the entire area is mostly a dense forest, therefore, other possible cut down shade trees were not visible due to dense forest and thick bushes". The report also indicates that according to the statement of the Circle Officer, Shri Arunjyoti Das, 41,95,909 tea bushes have been uprooted.

11. The Secretary of the District Legal Services Authority recorded statements on oath of witnesses who were tea garden workers, the Garden Manager, Circle Officer and

Patwari among other persons. Several witnesses who were examined by the officer appointed by this Court have stated that:

(i) tea bushes were uprooted from Doloo Tea Estate Airport site with the help of JCBs in the month of May 2022;

(ii) the entire operation took place over three days and involved the use of about 200 to 250 JCBs 'day and night';

(iii) shade trees were cut and uprooted; and

(iv) during the operation the inhabitants were prevented from moving out of their homes.

12. The Court must take cognizance of the fact that the statements of these witnesses have not been tested on the anvil of cross-examination. At the same time, at this stage, it would *prima facie* appear that these statements would match with the statement of the Circle Officer to the effect that 41,95,909 tea bushes have been uprooted.

13. The contention of the State Government in the affidavit, which was tendered before this Court on 22 April 2024, was that tea bushes are removed routinely "even as a part of regular tea cultivation" for which no prior Environmental Clearance is required. To support this submission, reliance was placed on the communication of the Member Secretary of the SEAC in Assam which also records that in a tea garden tea bushes and shade trees are removed and uprooted at regular intervals once the trees grow old and there is a loss of production of tea. The letter dated 22 April 2024 is a self-serving document prepared on the same date as the affidavit.

14. What warrants attention, however, is that in the present case, the clearance of the site cannot be unequivocally attributed to the cultivation activities of the tea estate. The clearance was evidently not a part of the regular maintenance of the tea estate but to facilitate the proposed new airport. The Solicitor General sought to urge that the possession of the site was handed over in June 2022 and hence the destruction of the vegetation in May 2022 was not by the respondents but likely by the inhabitants. It is inconceivable that an organized operation involving over 200-250 JCBs was done at the behest of the tea garden workers. Moreover, it has emerged that on 11 May 2022 orders were issued by the District Magistrate under Section 144 CrPC. This was a prelude to the organized activities which took place in the month of May 2022, as recorded in the statements appended to the report of the DLSA. The affidavit of the Joint Secretary to the State government has been rather liberal with the truth by suppressing the actual state of facts.

15. Paragraph 2 of the notification dated 14 September 2006 requires prior Environmental Clearance "before any construction work or preparation of land by the project management is carried out except for the securing of land". The nature of the activities which were carried out at the site was evidently of an extensive nature and is in breach of paragraph 2 of the notification.

16. There was a complete abdication of adjudicatory duties by the NGT to verify the authenticity of the grievance of the appellants. As an expert body which has been formed under a statute enacted by the Parliament, in the interest of the preservation of the environment, it was first and foremost the duty of the Tribunal to verify the authenticity of the grievance of the appellants.

17. The Tribunal, however, simply dismissed the OA having come to the conclusion that no Environmental Clearance had been issued. If the Tribunal were to enquire into the matter even on a *prima facie* assessment, the facts which have emerged before this Court would have come on the record. The perfunctory dismissal of the case by the NGT not only reflects a lack of due diligence but also demonstrates a disregard for the gravity of the environmental concerns raised by the appellants. This casual, if not callous, approach to adjudication not only undermines the integrity of the judicial process but also compromises the very purpose for which the NGT was established – to safeguard the environment, ensure sustainable development and facilitate the effective and expeditious disposal of cases related to the protection and conservation of the environment, forests, and other natural resources. Such negligence on the part of the Tribunal sets a concerning precedent, eroding public trust in the efficacy of environmental governance mechanisms.

18. The State Government has filed an application for directions before this Court seeking the initiation of proceedings against the appellants allegedly for having misled this Court into passing of the order dated 22 April 2024. During the course of the hearing, the Solicitor General has stated that the application is not being pressed.

19. From the material which has been placed on the record, we are clearly of the view that the authorities, in the present case, have acted in violation of the provisions contained in Para 2 of the notification dated 14 September 2006 by carrying out an extensive clearance at the site even in the absence of an Environmental Clearance.

20. The State Government has emphasised the need for establishing a civilian airport at Silchar which has led to the proposal to set up a Greenfield Airport on land

admeasuring 335 hectares to which an additional component of 69 hectares has been added. The decision on whether an airport is situated at a particular place is a matter of policy. However, when the law prescribes specific norms for carrying out activities requiring an Environmental Clearance, those provisions have to be strictly complied with.

21. Environmental regulations are in place precisely to ensure that developmental projects, such as the establishment of airports, are undertaken in a manner that minimizes adverse ecological impacts and safeguards the well-being of both the environment and local communities. While acknowledging the importance of infrastructure development, it is paramount that such projects proceed in harmony with environmental laws to prevent irreparable damage to ecosystems and biodiversity. The requirement for Environmental Clearance serves as a crucial safeguard against unchecked exploitation of natural resources and helps uphold the principles of sustainable development- which safeguards the interests of both present and future generations. Therefore, while the decision to establish an airport may serve broader policy objectives, it must be executed within the confines of legal frameworks designed to protect the environment and ensure responsible resource management. Failure to adhere to these norms not only undermines the integrity of environmental governance but also risks long-term environmental degradation and societal discord.

22. Setting up an airport is specifically within the ambit of Entry 7 of the Schedule to the notification dated 14 September 2006. Admittedly, no Environmental clearance has been issued till date. Development has to be in conformity with environmental

standards prescribed by the law.

23. In consequence, there shall be a direction that absolutely no activity shall be carried out in breach of the provisions of the Notification dated 14 September 2006 at the site of the proposed greenfield airport at Silchar.

24. In the event that any application for the grant of Environmental Clearance has been filed or is filed hereafter, the processing of the application shall take place on the basis of the condition of the site as it existed prior to the date on which the illegal clearance of the tea bushes and shade trees took place in the proposed site of the greenfield airport.

25. In the above view of the matter, we allow the Appeals and set aside the impugned order of the National Green Tribunal dated 25 January 2024.

26. Pending applications, if any, stand disposed of.

…….CJI.
[Dr Dhananjaya Y Chandrachud]

…….J.
[J B Pardiwala]

…….J.
[Manoj Misra]

New Delhi;
May 06, 2024
GKA

Gmail Shaalini Agrawal <shaaliniagrawal04@gmail.com>

Service of summary Reply being filed by the Original Applicant in OA No. 879/2022

Esha Dutta <eshadutta7@gmail.com> 27 January 2025 at 13:57
To: secy-moef@nic.in, mscb.cpcb@nic.in, animalwelfareboard@gmail.com, abhinav@chambersofabhinavmishra.in, admin@chambersofabhinavmishra.in, "info@aimlea.com" <info@aimlea.com>, Gauri Maulekhi <gaurimaulekhi@gmail.com>
Cc: Shaalini Agrawal <shaaliniagrawal04@gmail.com>, Siddharth Pandey <siddharth.pandey17@gmail.com>

Dear Sir,
Please find attached a summary Reply on behalf of Original Applicant in OA No. 879/2022 to the Additional Affidavit dated 26.11.2024 filed by the Respondent No.4/ AIMLEA before the Hon'ble National Green Tribunal.
This is for your kind information, necessary action and record and constitutes service.
Thanking you,
Yours faithfully,
Esha Dutta
Advocate

Final Reply R4 for service.pdf
24282K