BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

INTERIM APPLICATIO NO. 38 OF 2023

IN

ORIGINAL APPLICATION NO. 108 OF 2022

IN THE MATTER BETWEEN

Nandakumar Waman Pawar & Anr. … Applicants

Versus

Maharashtra Industrial Development Corporation

& Ors. … Respondents

SHORT COMPILATION OF JUDGMENTS

Advocate for the Applicants 22.03.2023

3-Judge Bench
2019
March 5

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED .. Appellant;

Versus

FORWARD FOUNDATION AND OTHERS .. Respondents.

Civil Appeals No. 5016 of 2016† with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019

A. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of

— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT's direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government

— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10

— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)

[**Ed.**: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

† Arising from the Judgment and Order in *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)

B. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope**

— Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

— It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)

D. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

— Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)

E. **Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition**

— Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action of likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general 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 the 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. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. *Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution, 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 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. (Para 40)

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal

without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. *ESI Corpn.*, (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. 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. (Para 46)

Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*

Core Mind Software & Services (P) Ltd. v. *Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*

Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. *State of Karnataka*, 2015 SCC OnLine NGT 5, *affirmed*

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. *State of Karnataka*, 2016 SCC OnLine NGT 637, *referred to*

SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika

S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine NGT 1409, *Forward Foundation* v. *State of Karnataka* **(partly reversed)** 499*e*, 499*g*, 509*a*, 514*e*, 522*e-f*, 523*e-f*
2. 2016 SCC OnLine NGT 637, *Forward Foundation* v. *State of Karnataka* 508*e*
3. 2015 SCC OnLine SC 1778, *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation* 507*f-g*
4. 2015 SCC OnLine NGT 5, *Forward Foundation* v. *State of Karnataka* 499*e*, 505*e-f*, 508*c*, 520*a-b*, 521*a*, 522*a*
5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *Kishore Lal* v. *ESI Corpn.* 518*a*
6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.* 516*e-f*

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity "the NGT Act") challenging the judgment and order dated 7-5-2015[1] and 4-5-2016[2] respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short "the Tribunal").

2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as "Respondents 9 and 10"). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as "the applicants"). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short "the impleaded respondents").

3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016[2]. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016[2] insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from "protected zone" to "residential sensitive area" is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short "the 2010 Rules").

8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon'ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information

technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains

and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity

would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015[1] at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*[1], SCC Online NGT para 85)

> "*85.* ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:
>
> (*a*) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
>
> (*b*) CEO of the Lake Development Authority, Karnataka State.
>
> (*c*) Chief Town Planner of BBMP, Bangalore.
>
> (*d*) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

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(*e*) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(*f*) Dr Siddharth Kaul, former Advisor to MoEF.

(*g*) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes.

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question.

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies.

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters

dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area Development Board to Respondents 9 and 10 respectively.

(10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and waterbodies.

(11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby restrained from creating any third party interests or part with the possession of the property in question or any part thereof, in favour of any person.

(12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the waterbodies in the city of Bangalore.

(13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the waterbodies in and around of the area in question.

(14) For the reasons stated in the judgment Respondent 9 is liable and shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum of Rs 22.5 crores respectively being 5% of the project value, within two weeks from today. The said amount would be paid to KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the project proponent in that area, after taking approval of the Tribunal.

(15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of Direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorisedly."

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order dated 20-5-2015[3] passed the following order: [*Core Mind Software & Services (P) Ltd. case*[3], SCC OnLine SC paras 2-5]

"2. One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs 117.35 crores against the original Respondent 9 (the appellant in CA No. 4832 of

3 *Core Mind Software & Services (P) Ltd.* v. *Forward Foundation*, 2015 SCC OnLine SC 1778

2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

3. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment[1] can also be raised.

5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016[4] on these applications as under: (*Forward Foundation case*[4], SCC OnLine NGT)

"***MA No. 603 of 2015 and MA No. 596 of 2015***

These applications have been filed on behalf of Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of environmental compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions MA No. 603 of 2015 and MA No. 596 of 2015 stand disposed of without any order as to cost."

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned.

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4 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 637

The Tribunal after hearing the parties passed an order dated 4-5-2016[2] as under: (*Forward Foundation case*[2], SCC OnLine NGT)

a

"***General conditions or directions***

1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas,
b 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—

c

(*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

d (*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

e All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

f All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified
g by CPCB/MoEF.

3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

h

2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(*i*) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(*ii*) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

(*iii*) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

(*i*) Reclaimed area of the lake to the extent of 3 ac 10 guntas in Survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent 9 to the authorities concerned immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

(*ii*) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

(*iii*) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(*iv*) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by

SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

(*v*) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

(*vi*) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

(*vii*) In view of the heavy traffic load in the adjoining Sarjapur Road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

* * *

10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have provided rehearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent 9 calls for no variation and Respondent 9 should be called upon to pay the said amount of Rs 117.35 crores determined under the judgment prior to commencement of any project activity at the site. Respondent 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General directions

1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting environmental clearance, this judgment, notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both Respondents 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plant and the entire project may be revised in accordance with law.

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended environmental clearance.

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs." (emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short "the KIAD Act") declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012.

Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur Lake waterbody or to Bellandur Lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in

the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016[2] except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised 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 environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(*a*) of the NGT Act to provide relief

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and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(*b*) and 15(1)(*c*) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(*c*) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"). Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

> "**22.** ***Appeal to Supreme Court.***—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. & Mfg. Co. Ltd.*[5] This Court has laid down the test as under: (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 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."

38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to

5 1962 Supp (3) SCR 549 : AIR 1962 SC 1314

seek reappreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappreciation of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22. There cannot be fresh appreciation or reappreciation of facts and evidence in a statutory appeal under this provision.

39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

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 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.

41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(*a*) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Sections 15(1)(*b*) and 15(1)(*c*), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Sections 15(1)(*b*) and (*c*) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(*c*) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

Lal v. *ESI Corpn.*[6], para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(*c*) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions.

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, 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.

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

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been

6 (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1

granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well-settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee

constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed[1] as under: (*Forward Foundation case*[1], SCC OnLine NGT para 72)

> "*72.* In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:
>
> (1) The construction of both the projects had started prior to the grant to environmental clearance.
>
> (2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.
>
> (3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
>
> (4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
>
> (5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.
>
> (6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
>
> (7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*[1], SCC OnLine NGT para 81)

> "*81.* ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

54. In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the expert members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

55. We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

56. Shri R. Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to res judicata. According to him, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

57. The Tribunal has answered this issue in paras 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the genesis of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5

58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*[1], SCC OnLine NGT para 51)

> "*51.* ... For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of res judicata is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of reagitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The "cause of action" in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of "judicial propriety", because of the writ petitions pending before the Hon'ble High Court of Karnataka."

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by Respondents 9 and 10 do not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016[2]: (*Forward Foundation case*[2], SCC OnLine NGT)

> "*1.* In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
>
> > (*i*) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation* v. *State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

(*ii*) 50 m from the edge of the primary Rajkulewas.

(*iii*) 35 m from the edges in the case of secondary Rajkulewas.

(*iv*) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore." (emphasis in original)

61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016[2] is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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2 *Forward Foundation* v. *State of Karnataka*, 2016 SCC OnLine NGT 1409

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 222 OF 2014

IN THE MATTER OF:

1. The Forward Foundation
   A Charitable Trust
   Having its registered office at 24/B,
   Haralur Village, HSR Layout Post
   Bangalore 560102
   Through its Secretary

2. Praja RAAG,
   A Society registered under the Karnataka
   Societies Registration Act, 1960
   and having its Registered office at
   C-103, Mantri Classic, 4th Block,
   Koramangala, Bangalore 5600034
   Through its President

3. Bangalore Environment Trust,
   A registered office at A 1-Chartered
   Cottage, Langford Road,
   Bangalore 560025
   Through its Trustee

.....Applicants

Versus

1. State of Karnataka
   Vidhana Soudha
   Bangalore – 560001
   Through its Chief Secretary

2. Ministry of Environment and Forests Regional Office (SZ)
   Kendriya Sadan, IV Floor,
   E and F Wings, 17th Main Road,
   Koramangala II Block,
   Bangalore – 560034
   Through its Addl Principal Chief Conservator of Forests

3. State Level Environment Impact Assessment Authority
   Department of Ecology and Environment
   Room No. 709, 7th Floor,
   M S Building,
   Bangalore – 560001
   Through its Member Secretary

4. Karnataka State Pollution Control Board
Parisara Bhavan,
49, 4th & 5th Floor,
Church Street, Bangalore – 560001
Through its Chairman

5. Bangalore Water Supply and Sewerage Board
Cauvery Bhavan,
Bangalore – 560009
Through its Chairman

6. Lake Development Authority
Parisara Bhavan,
49, Second Floor,
Church Street, Bangalore–560001
Through its Chief Executive Officer

7. Karnataka Industrial Areas Development Board
14/3, 2nd Floor,
Rashtrothana Parishat Buildings,
Nrupathunga Road,
Bangalore – 560001
Through its Chief Executive Officer

8. Bangalore Development Authority
Chowdiah Road,
Bangalore – 560020
Through its Chairman/Commissioner

9. Mantri Techzone Private Limited
(formerly called Manipal ETA P Ltd.)
Having its registered office at
Mantri House, No. 41, Vittal Mallya Road,
Bangalore 560001
Represented by its Managing Director

10. Core Mind Software and Services Private Limited
4th Floor, Solarpuria Windsor,
3, Ulsoor Road,
Bangalore 560042
Represented by its Managing Director

11. Namma Bengaluru Foundation
A registered Public Charitable Trust,
Having its registered office at No. 3J,
NA Chambers, 7th 'C' Main 3rd Cross,
3rd Block, Koramangala,
Bangalore 560034
Represented by its Director Mahalakshmi P.

12. Citizens' Action Forum
A Society registered under the provisions of the Karnataka Societies Registration Act, 1960 and having its registered office at 372, 1st Floor, MK Puttalingaiah Road, Padmanabhanagar, Bangalore 560070
Represented by its authorized signatory Mr. Vijayan Menon

.....Respondents

Counsel for Applicant:

Mr. Raj Pajwani, Sr. Adv. Along with Ms. Megha Mehta Agrawal, Advocate

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5
Mr. B.R. Srinivasa G., Advocate for Respondent No. 7
Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9
Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10
Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice U.D. Salvi (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Professor A.R. Yousuf (Expert Member)

Reserved on: 27th January, 2015
Pronounced on: 7th May, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the

Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage. According to them, it is of alarming significance that the Project has encroached an Ecologically Sensitive Area, namely, the valley and the catchment area and *Rajakaluves* (Storm Water Drains) which drains rain water into the Bellandur Lake. Thus, in the interest of

environment and ecology, they have approached the Tribunal with the above prayers.

2. Shorn of any unnecessary details, the precise facts leading to the filing of this application are that, according to these applicants, the ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short the 'KIADB'), respondent no. 7 herein, to respondent nos. 9 & 10 vide Notifications dated 23rd April, 2004 and 7th May, 2004, respectively. This land was allotted for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. It is stated by the applicant that the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. The development projects in question sit right on the catchment and wetland areas which feeds the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. The project will thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The satellite digital images of the area from year 2000 to 2012 clearly show encroachment upon these *Rajakaluves*, as well as, the manner in which they are covered by this construction. The State Level Expert Appraisal Committee (for short the 'SEAC'), which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine

the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

3. It is the case of respondent no. 5 that such NOC was issued but it covers only an area of 17,404 sq mtr, whereas the total built-up area as noted by the SEAC is 13,50,454.98 sq mtr. It is alleged by the applicants that respondent no. 9 obtained NOC from respondent no. 5 by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. Respondent no. 9 had approached the Karnataka State Pollution Control Board (for short the 'KSPCB'), respondent no. 4 herein, for obtaining clearance which was granted on 4th September, 2012, subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. The applicant contends that the grant of consent by the KSPCB to respondent no. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent

Authority and no construction was to commence until such clearance was granted.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submits that the conversion of land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the *Rajakaluves*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the *Rajakaluves* have been violated. This has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is

submitted that SEIAA in its meeting dated 29th September, 2012, decided to close the file pertaining to respondent nos. 10 due to non-submission of requisite information and the application therefore was rejected in November, 2012. Despite the rejection, respondent no. 10 commenced construction on the project in full swing.

5. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A. T. Ramaswamy in the month of July, 2005, which stated that there were 262 water bodies in Bangalore city in 1961, which drastically came down because of trespass and encroachments. It was also affirmed that about 840 Kms of *Rajakaluves* have been encroached upon in several places and have become sewage channels.

6. The Hon'ble High Court of Karnataka in *Environment Support Group and Another v. State of Karnataka, Writ Petition No. 817/2008* appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest immediate remedial action in order to remove encroachments on the lake area and the *Rajakaluves* and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for Preservation, Restoration or otherwise of the existing tanks in Bangalore Metropolitan Area, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental

Information System (ENVIS), Centre for Ecological Science, Indian Institute of Sciences, Bangalore, in May 2013 on the Conservation of the Bellandur Wetlands obligation of Decision Makers is ensure Intergenerational Equity recommended restoration of wetlands and cessation of plan to set up the SEZ in the area. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas.

7. The applicants claim to have obtained the monitoring report of the project by respondent no. 2 through RTI on 21st August, 2013. The report dated 14th August, 2013 revealed that the Project Proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction or operational phase of the project. This breach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

8. The Lake Development Authority (for short 'the LDA'), respondent no. 6 herein, had initiated an inspection in the catchment area of the Bellandur Lake. The report dated 12th June, 2013 confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of respondent no. 7 vide letter dated 7th July, 2013. Respondent no. 6 has also opined that the land should be classified and maintained as Sensitive Area. Respondent no. 7 in furtherance thereto had called upon respondent no. 9 to comply with rules of Ecology and Environment Department and to obtain

necessary approval from respondent nos. 6 and 4. It is alleged that a vague reply had been submitted by respondent no. 9 making certain misrepresentations. Despite all this, respondent nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants also rely upon the fact that the revised Master Plan, 2013 issued by Respondent no. 8 specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the *Rajakaluves*. It is also the case pleaded by the applicant that Respondent no. 9 had obtained the NOC from Respondent no. 5 only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by the Respondent no.9 is based upon the said partial NOC issued by Respondent no. 5 which itself is a misrepresentation. The applicants have pleaded that the projects are bound to create water scarcity as the requirement of project of Respondent no. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what Respondent no. 5 supplies to the entire Agaram Ward. It is stated by the applicants that the construction of respective projects by respondents no.9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in topography of the area, posing potential threat of extinction of the Bellandur lake,

causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

The applicants have stated that they have filed the application against threat posed to the ecological balance from the ongoing commercial constructions project near Agara Lake and Bellandur Lake, and the same is continuing every day in violation of the law. With these allegations, the three applicants have instituted this application with prayers afore-noticed.

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replys, respondent no. 9 has submitted that the said respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same was approved by the government on 06th July, 2000. Before the State High Level Committee, the

Respondent had mentioned that it would require 110 acres of land, 25MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd, vide its communication dated 16th April, 2010, granted clearance for the

project construction. BWSSB, respondent no. 5 herein vide its communication dated 26th April, 2011 issued No Objection Certificate for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited also granted No Objection Certificate for arranging power supply to the proposed residential and commercial building in favour of the Respondent no. 10. Environmental Clearance was granted by SEIAA vide communication dated 17th February, 2012. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

Respondent no. 9 further states that after grant of the Environmental Clearance on 17th February, 2012, the same was published in the leading newspapers "Kannada Prabha" and the "Indian Express" on 12th and 14th March, 2012 respectively.

11. Respondent no. 9 later modified the building plan and the same was approved by Respondent no. 7 vide its letter dated 30th August, 2012, which was valid up to 10th August, 2014. It is further claimed that they started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. The respondent further submitted that he has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders. According to him, he has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. The allegation

with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that it has already spent a sum of Rs 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

12. It is specifically stated by this Respondent that certain print media had published articles stating that construction was unauthorized, illegal and that it was prejudicial to the environmental and ecological interest of that area. Not only this, Namma Bengaluru Foundation, Citizen's Action Forum, Koramangala Residents Association and others, on the basis of a report prepared by Professor T. V. Ramachandra, filed a Public Interest Litigation in the High Court of Karnataka (Writ Petition No. 36567-36574/2013). Besides making the above allegation, it was also alleged in those petitions that the project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court of Karnataka after hearing the parties issued notice, however, denied to pass any interim order of stay as prayed by the petitioners. The said petition is stated to be pending before the Hon'ble High Court.

In the meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the Hon'ble High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014in which the Hon'ble High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013. Another notice was also issued by respondent no. 7 directing stoppage of work on 2nd January, 2014, which was again challenged by the respondent no. 9 in Writ Petition No. 792 of 2014 before the same High Court and vide its order dated 7th January, 2014 the operation of the stay order was also stayed by the Hon'ble High Court. Replying respondent has taken up specific pleas with regard to the present application being barred by time because the Environmental Clearance was granted on 17th February, 2012 and even article in the newspapers were published on 3rd June, 2013 as such the present petition has been filed beyond the prescribed period of limitation and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicant. According to respondent no. 9, this Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010. Another objection raised by respondent no. 9 is that the

applicants are guilty of suppression and misrepresentation of material facts and have not approached the Tribunal with clean hands and also that the proceedings before the Tribunal ought to be dismissed in face of the proceedings pending before the Hon'ble High Court of Karnataka in the Writ Petitions afore-referred. If the dates as stated by the applicant are taken to be correct, even then the application should have been filed within 30 days of the constitution of the Tribunal i.e. 18th October, 2010 and in any case within 60 days thereafter, by showing that they were prevented by sufficient cause. Since the application has been filed much beyond the prescribed period, it is barred by time and suffers from the defect of latches.

13. Respondent no. 10 besides raising the same preliminary objection with regard to the maintainability of the application and jurisdiction of the Tribunal, as raised by respondent no. 9, has also stated that application of applicant is hit by the Principle of *Falsus in Uno, Falsus in Omnibus*. It is also averred that the present application is a cut-paste of the Public Interest Litigation filed before the Hon'ble High Court of Karnataka and that the allegations made therein and in the present application are similar. On merits it is contended that averments made in the application are factually incorrect.

According to respondent no. 10, crux of the dispute is with regard to the allocation of the land and its conversion from 'Protected Zone' to 'Residential Sensitive' in the Master Plan, without giving any reason, which does not fall within the

jurisdiction of the Tribunal. The applicants have raised multifarious proceedings against respondent no. 10 which is an abuse of the process of law and are *mala fide*. The applicant has not only stated identical facts in their application before the Tribunal, but have even submitted the same set of documents as were filed before the Hon'ble High Court of Karnataka, which clearly shows that the application before the Tribunal lacks *bona fides* and there is suppression and misrepresentation of material facts.

14. On merits respondent no. 10 has stated that the State of Karnataka has formulated a policy to invite investment in Karnataka and for that purpose the Karnataka Industries (Facilitation) Act, 2002 had been promulgated. Under this Act, State Level Single Window Clearance Committee and State High Level Clearance Committee were created to examine and clear the projects. All investment projects submitted to Karnataka Udyoga Mitra were forwarded to Single Window Agency, if it was less than the value of Rs 50.00 crores for necessary processing and clearance and for value above Rs 50.00 crores, is placed before the State High Level Clearance Committee for processing and approval. Respondent no. 10 had submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25 acres of land along the outer ring road in Bangalore to which the clearance certificate dated 27th March, 2004 was issued. Respondent no. 10 submitted a revised proposal in respect of the same project and to obtain fresh clearance on 31st August, 2007 and revised proposal was with the investment of Rs 179.22 crores.

The State High Level Committee had cleared the project which was communicated to Respondent no. 10 on 25th January, 2008. According to Respondent no. 10, properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drain and secondary storm water drains that exist in the above properties. The application by respondent no. 10 seeking sanction of development and building plan in respect of the above properties into a Software Technology Park, Hospitality, Commercial and Residential Complex was also allowed and as per the directive of respondent no. 7, respondent no. 10 has deposited a sum of Rs 1,28,56,830. Respondent no. 10 had also taken clearance from various authorities including Environmental Clearance and consent for establishment. The details of the same are as follows:

Sl. No	Date	Document No.	Nature of Document	Issued by	Annexure
1	17.3. 2011	ASC/CM(AO) /181/HAL: BG:58/2011	No Objection Certificate	Airport Services Centre, Hindustan Aeronautics Limited, Bangalore Complex	'R22'
2	30.07. 2011	AGM(TP)/S:6 /IX/2010-11	No Objection Certificate	Bharat Shanchar Nigal Ltd, CGM, Telecom, KTK Circle, Bangalore	'R23'
3	22.05. 2012	CEE(P&C)/SEE /(Plg)/EEE(plg) /K CO-95/F-46611/2012-13/R-50 (75)	No Objection Certificate	Karnataka Power Transmission Corporation Ltd, Chief Engineer, Electric City, Cauvery Bhavan, Bangalore	'R24'
4	03.08. 2012	GBC(1)478/ 2011	No Objection Certificate	Office of Director General,	'R25'

				Karnataka State Fire & Emergency Services	
5	04.04. 2013	BWSSB/EIC/ ACE ® /DCE(M) -II/TA(M)- II/137/2012-13	No Objection Certificate	Bangalore Water Supply & Sewerage Board, Cauvery Bhavan, Bangalore	'R26'
6	03.06. 2013	PCB/136/CNP/ 12/H321	No Objection Certificate	Karnataka State Pollution Control Board, Church Street, Bangalore	'R27'
7	30.09. 2013	SEIAA:37:CON: 2012	No Objection Certificate	State Level Environment Impact Assessment Authority, Karnataka	'R28'

Certain sections of the media had raised some queries to respondent no. 10 to furnish the copy of the Consent to Establish and Environmental Clearance certificate on 30th September, 2013. They had also expressed that the project had started without such clearances. However, upon issuance of Consent to Establish and Environmental Clearance dated 4th June, 2013 and 30th September, 2013 respectively, same were furnished to the reporter of newspaper 'The Hindu', vide letter dated 11th October, 2013. According to respondent no. 10, around this project, much development has already taken place, even around various lakes, but it has not caused any damage to the lakes and similarly, project of respondent no. 10 would also not cause any damage to the area and the lakes. Respondent no. 10 has also referred to the Writ Petition 36567-36574 of 2013, where relief of resumption of land from both the respondent nos. 9 and 10 was prayed. Notice dated

28th February, 2014 was issued by respondent no. 7 to respondent no. 10 containing direction to stop work/ construction activity against which respondent no. 10 had also filed a Writ Petition in the Hon'ble High Court of Karnataka, being Writ Petition No. 18119 of 2014. The Writ Petition was pending and Interim Order was passed. This Respondent claims that they are entitled to develop the projects, having received all clearances. It is specifically stated that the Bellandur Lake does not support any fishing activity or forms a source of water for domestic purpose nor is the agricultural activity carried out at the said area. There are no wetlands and none of the functional aspects of the wetland exist on the site in question. It is also denied that the project carried out by respondent no. 10 on the property belonging to it has any adverse impact on environment. Respondent no. 10 further states that the ENVIS report relied upon by the applicant is prepared by persons interested in opposing his project. In any case, the said report dated 14th August, 2013 stood superseded by the Environmental Clearance dated 30th September, 2013, wherein, respondent no. 3 has accorded consent to the project after considering the actual facts, after due application of mind and by subjecting respondent no. 10 to strict terms and conditions as mentioned in the clearance dated 30th September, 2013. On these averments, respondent no. 10 prays that the application should be dismissed and no relief should be granted by the Tribunal to the applicants.

15. Respondent no. 7 has filed a short reply. He submits that after the possession of the land was handed over to respondent no.

9 and 10, one year time was granted to implement the project, which was extended from time to time. According to respondent no. 7, the building drawings were approved on 4th July, 2007, modified building drawings were approved on 26th April, 2011 and 30th August, 2012 with specific conditions. In the meeting of the KIADB held on 16th July, 2013, it was resolved to inform respondent no. 9 to fully comply with the Ecology and Environment rules as well as to obtain approvals from the respondent no. 6, LDA and respondent no. 4, KSPCB. Respondent no. 6, LDA vide its letter dated 24th September, 2013, had informed respondent no. 7 that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake, with deleterious effects and asked the Respondent no. 7 to stop construction activity of respondent nos. 9 & 10, however, the validity of the building drawings was again extended up to 10th August, 2014. The Lokayukta on 17th December, 2013 had written a letter in respect of complaint filed by South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21st December, 2013 to keep in abeyance the approval accorded and even the revalidations of plans. This was also informed to respondent no. 9. The Board took a decision which was communicated to respondent no. 9 on 2nd January, 2014, wherein it asked the said respondent no. 9 to stop all construction activities on the allotted lands. It is admitted that the said communication was challenged by respondent no. 9 and on the stop work notice, stay was granted by the Hon'ble High Court of Karnataka. Stop

work notice issued by BBMP dated 23rd December, 2013 was also challenged before the Hon'ble High Court and operation of the said communication was stayed vide order dated 21st January, 2014. It is submitted by respondent no. 7 that the project of respondent nos. 9 and 10 had been approved by the Government. It is specifically submitted that the answering respondent had not acquired any *'Rajakaluves'* and the land allotted by respondent no. 7 to respondent no. 10 does not consist of the same. Respondent no. 7 further states that the Storm Water Drains are not always flowing in strict or permanent path and are prone to flow in different paths from time to time. Respondent no. 7 further states that it had allotted 17 acres 33½ guntas of land in favour of respondent no. 10 for the purpose of establishing Software Technology Park, Hospitality, Commercial and Residential Complex and has executed lease-cum-sale agreement on 20th March, 2008.

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and there was a change in the land use which in turn has directly affected the catchment of Bellandur

Lake. The wetland area of Agara Lake had also shrunk which originally formed the irrigation area for the adjoining agricultural lands. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, with certain conditions like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed; further, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by

respondent no. 7 would have adverse impacts on Bellandur Lake and Agara Lake.

17. Respondent nos. 1, 3 and 5 though have filed separate replies but they have taken up the stand that the projects have been granted, No Objections Certificates and Environmental Clearance by SEIAA, subject to the conditions noticed above. According to these respondents, if there is any breach, the same would be dealt with in accordance with law. According to respondent nos. 1 & 3, the file of respondent no. 10 was closed by SEIAA, Karnataka on 16th November, 2012 for non-submission of the required information but was later revived in the meeting held on 27th June, 2013 and Environmental Clearance was granted on 30th September, 2013. Both the projects are ongoing projects. The proposals have been considered in accordance with law.

18. Vide order dated 25th July, 2014 of the Tribunal, respondent nos. 11 and 12 were impleaded on their applications. Both these respondents are registered as charitable trust or a society. Replies by both these respondents have been filed wherein they have raised specific objections with regard to allotment of land in Ecologically Sensitive Area in the catchments of the Bellandur Lake for the construction of IT Park and related infrastructure, in flagrant violation of the applicable rules and regulations. According to respondent nos. 11 and 12, the allotment of this land is in contravention of the directions laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board vs. Sri. C. Kenchappa and Ors.*, (2006) 6 SCC 371. It is further

stated that the fact that these projects would essentially result in alteration of natural hydrology of the area and sloping pattern of the project site, clearly shows that there was no application of mind on the part of the concerned authority for granting approvals. The plans sanctioned in favour of respondent nos. 9 and 10 are replete with irregularities and illegalities and despite objections from respondent no. 6, the plans have been renewed contrary to law. For instance, respondent no. 9 had first represented that the project will have a built up area of 1.75 lakh sq. ft. while seeking approval from respondent no. 6, while in reality the built up area is 1.30 crore sq. ft./9.54 lakh sq. mtr., which is evidenced by respondent no. 9's own admission, and is not even disputed by him. The water requirement of the project would be nearly 135 million litres per month, which would exert excessive pressure over the wetland and would also lead to scarcity of water for the residents of the nearby areas. As already stated, the execution of the project will necessarily result in altering the hydrology of the area and the natural sloping pattern of the project site. Therefore, the conditions imposed in the Environmental Clearance are incapable of being complied with. According to these respondents, the Google satellite images that have been placed on record, reveal that the excavation work by respondent nos. 9 and 10 commenced much prior to obtaining approvals by them in 2012 & 2013 respectively, making the construction unauthorised and illegal. The matters before the Hon'ble High Court are stated to be restricted to the prayer for resumption of land and not connected with these proceedings

before the Tribunal. According to these respondents, the stop work orders for the construction of the project have been stayed in terms of the orders of the Hon'ble High Court of Karnataka and are subject to the result of the Writ Petition and the Project Proponents are entitled to claim their equities in the event they failed before the Hon'ble High Court. The Hon'ble High Court had granted the interim order staying the stop work orders primarily on the ground that BBMP did not have jurisdiction to issue such order. According to respondent nos. 11 and 12, respondent no. 10 obtained the Environmental Clearance on 30th September, 2013, but it still does not have the mandated clearance from the BDA which was one of the conditions imposed by the State High Level Clearance Committee on 25th January, 2008. The project consists of residential block and commercial block, among other constructed areas. It is averred that as of present, a very small part of the project has been completed and if the construction of the project is permitted to be completed in all respects, the environment and ecology of the area would suffer and residents and public at large would have to face severe and fatal environmental consequences. These adverse consequences would not only be limited to flooding, water shortage, geological instability but would also affect the Bellandur Lake, which is one of the largest lakes in Bangalore, gathering an area of 338.28 hectares, with catchment area, of approximately 171.17 square kms.

As already noticed, respondent nos. 11 and 12 were ordered to be impleaded as respondents in this case on the condition that they

would withdraw the Public Interest Litigation filed by them before the Hon'ble High Court of Karnataka. These Respondents had thus moved the Hon'ble High Court for withdrawal of the Writ Petitions. However, the Hon'ble High Court only permitted these two Respondents to withdraw themselves from the Writ Petitions in terms of the undertaking given by them before the Tribunal. The Petitioner before the Hon'ble High Court who had not given any undertaking before the Tribunal, their Writ Petitions are still continuing before the Hon'ble High Court. They have denied the allegation that any of them has committed violation of the order of the Tribunal or abused the process of law. It is also denied that the averments made and stand taken by them is false, incorrect and vexatious. Respondent no. 7 had first issued a letter dated 14th August, 2013 requiring respondent no. 9 to comply with the ecology and environmental rules and also to take necessary approval from the LDA, Bangalore and KSPCB before taking up any further activity of the project. Then, it issued the order dated 2nd January, 2014 informing the said respondent that the layout plan has been kept in abeyance and thus the Project Proponent should stop all construction activities in the allotted land until further orders. It is also the case of respondent nos. 11 and 12 that the report by Dr. T. V. Ramachandra is not a report by interested persons, but is part of scientist's social responsibility and the report published in May, 2013 gives the complete and correct position at site. It is their case that the cause of action has arisen on various dates, including first on 11th October, 2013 when respondent no. 7, despite objections

from various authorities, extended its approval of plan, on the conditions stated therein. They have, therefore, submitted that the application is neither barred by time nor can it be contended that it does not raise a specific question of environment within the ambit of the Scheduled Acts under the NGT Act, 2010.

19. From the above pleaded case of the respective parties and the submissions advanced on their behalf, the following questions fall for consideration and determination of the Tribunal:

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and / or constructive *res judicata*?
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

Discussion on Merits

1. **Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?**

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was

considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act**,** 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed–use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th

August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge

construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relatable to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant

could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

However, what needs to be deliberated upon is whether in terms of Section 14 of the NGT Act, 2010, the present application has been filed within the prescribed period of limitation or not. Section 14(3) mandates that no application for adjudication of dispute under Section 14(1) shall be entertained by the Tribunal unless it is made within the period of 6 months from the date on which the 'cause of action for such dispute first arose'. The jurisdiction of the Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. The dispute or questions that the Tribunal is required to settle must fall within the ambit and scope of Section 14(1) of the NGT Act. In other words, it must be a dispute raising a substantial question relating to environment.

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action

for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention that the application could at best be filed by 16th August, 2012 and not thereafter.

23. 'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. *Shri Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511, *A.B.C Laminart Pvt Ltd. v. A.P. Agencies,* AIR 1989 SC 1239].

24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land *simplicitor* or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: *Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr.,* (2004) 9 SCC 512, *J. Mehta v. Union of India*, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, *Kehar Singh v. State of Haryana,* 2013 ALL (I) NGT REPORTER (DELHI) 556, *Goa Foundation v. Union of India,* 2013 ALL (I) NGT REPORTER DELHI 234].

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal*

Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

26. In the case of *State of Bihar v. Deokaran Nenshi and Anr.,* (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

> "5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj v. Commissioner of Income Tax, Delhi,* (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assesse does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd.,* 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury

which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr.,* (2011) 9 SCC 126, *Bal Krishna Savalram Pujari & Ors. v. Sh.*

Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, *G.C. Sharma v. Municipal Corporation of Delhi,* (1979) ILR 2 Delhi 771, *Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors.,* AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of

action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others,* (1995) 5 SCC 628, the Court held that:

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by

> him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.
>
> The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh v. Union of India and Ors.,* 2006 (91) DRJ 324,

M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts

which arise from the same event, may be at different stages. This expression would not *de bar* a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

33. The Environmental Clearance was granted to the project of Respondent no. 9 on 17th February, 2012 and to Respondent no. 10 on 30th September, 2013. Both these Environmental Clearances being appealable in terms of Section 16 of the NGT Act, 2010, their legality and correctness could be challenged within the prescribed period of limitation i.e. 30 days (or within the extended period of 60 days) which has not been done and as already noticed there is no challenge in this application to the grant of the Environmental Clearance. The applicants have primarily raised a challenge within the ambit and scope of Section 14 and 15 of the NGT Act. As already discussed, the application in so far as it prays for the relief of the restoration, it is within the period of limitation of 5 years. According to the applicants, the facts on record disclose violations of the condition of Environment Clearance and poses serious threat

to the environment and ecology because of the reckless construction in the catchment areas of the lakes. During the period of August, 2012 to January, 2014, various notices have been issued by different authorities in relation to the modification of building plans. These stop work notices/ orders and the inspection reports including report by LDA clearly demonstrates that the development project in the catchment area of Bellandur Lake as implemented would probably have adverse effect on the Bellandur Lake. The applicant may not challenge the grant of Environmental Clearance *per se* but upon commencement of the project and in view of their being definite documentary evidence supported by data, that the Project Proponent has committed breaches and implementation of the project is bound to have serious adverse impacts on ecology, environment and particularly the water bodies would give an independent 'cause of action' to him *de hors* the grant of Environmental Clearance. The averments in the application and the record fully satisfy the ingredients of Section 14 of the NGT Act. From those occurrences particularly of January, 2014, a fresh period of limitation has to be reckoned. The applicant may rely upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is a different issue. However, for the purpose of limitation, the dates of these reports, stop work orders and notices would be relevant dates, which would provide the 'recurring cause of action' to the applicant and thus, the application will be within the prescribed period of limitation. In addition to this, the applicant has also prayed for

taking action in accordance with law on the basis of the report dated 14th August, 2013, communication letter of LDA dated 23rd September, 2013, communication dated 12th December, 2013 by LDA to Respondent No. 9, stop work notice dated 23rd December, 2013 issued by BBMP to Respondent No. 9 and stop work notice issued dated 2nd January, 2014 by KIADP to Respondent No. 9. Thus, the application having been instituted on 13th March, 2014 is well within the period of limitation under Section 14 of the NGT Act and for the reasons afore-recorded, we find no merit in the plea of limitation raised on behalf of the Respondents.

2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?

34. It is a settled principle that while determining whether the application discloses a cause of action, which would squarely fall within the ambit and scope of the provisions of the NGT Act, the petition has to be read as a whole by the Court or the Tribunal. Thus, we have to examine the cumulative effect of the averments made in the application, read in conjunction with the prayer clause. If upon reading of the entire application together, such cause of action is disclosed, that would fall within the jurisdiction of this Tribunal, the Tribunal would be obliged to entertain and decide such pleas. In the case in hand, the applicant has made reference to various activities in general and illegal and unauthorised activities of respondent nos. 9 and 10 in particular, which are

having adverse effect on the water bodies as well as the water supply to the city of Bangalore. It is alleged that the construction activity that is being carried on by respondent no. 9 is in violation of all the stipulations of the Environmental Clearance. Rampant construction work is being carried on in the buffer zone as well as over and around the Rajakaluves. While pointing out the blatant irregularities, it is also averred that the project is in the midst of fragile wetland area and is bound to severely disturb and damage the Rajakaluves. In terms of the Environmental Clearance, a condition has been imposed that the project proponent shall not disturb the storm water drains, natural valleys, etc. and buffer zone area around the Rajakaluves was to be maintained. However, according to the applicant, the project area is located between two lakes and therefore, the construction is in violation of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. There has been violation of maintaining the buffer zone in accordance with the revised Master Plan of 2015. There has to be 30 meter buffer zone created around the lakes and 50 meter buffer zone created on either side of the Rajakaluves. This has also not been adhered to. Further, the consent had been granted to respondent no. 9 for residential units and not for other activities.

35. While referring the water shortage, the averment is that the project requires 4.5 million litres of water per day i.e. 135 million litre water per month. Such requirement of the project would be beyond the capacity of respondent no. 5, as the quantity of water required for the project would still be more than the water supply

being made by respondent no. 5 to the entire Agaram ward in Bangalore. The NOC issued by respondent no. 5 covers an area of only 17404 sq. meters whereas the total built up area of the construction is 13,50,454.98 sq. meters. Thus, the NOC was partial. Therefore, it is clear that even the Environmental Clearance had been obtained by respondent no. 9 without disclosure of correct facts. Further, the averments are that the construction activity has severely disturbed and damaged the Rajakaluves that run through the entire land and in fact is likely to result in disappearance of the Rajakaluves. Relying upon the two reports dated 12th June, 2013 and 14th August, 2013, it is averred that the project will have disastrous effect on the Agara Lake and the Bellandur Lake. If the construction is not stopped, the sensitive area and its ecology and environment would be at stake. Even the authorities had issued notices/stop work orders to the respondents for the breach of the conditions committed by them and for the construction activity being illegal.

On these averments, the two prayers that have been made is that the respondent - State of Karnataka - should take cognizance of the reports dated 12th June, 2013 and 14th August, 2013 and should take coercive and punitive actions against the respondents, as well as restore the ecology in the sensitive area. Further that, the Government should be directed to maintain the very land as a sensitive area and no development or construction activity should be allowed to be carried on, that would disturb the ecological balance of the area.

36. We have to examine whether on the facts afore-noticed, the prayers made would squarely fall within the scope of implementation of any of the Acts specified under Schedule I to the NGT Act. This Tribunal has three jurisdictions – original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. Section 15 of the NGT Act gives to the Tribunal jurisdiction to grant relief, compensation and restitution in the event there is a victim of pollution and other environmental damage arising under the enactment specified in Schedule I of the NGT Act, for restitution of property damage as well as for restitution of environment in such areas.

37. The definition of 'environment' under Section 2 (c) of the NGT Act again is widely framed. It is comprehensive enough to take within its ambit all matters in relation to environment. This definition practically covers every activity that will have water, air

and land and inter-relationship, which exists among and between these and the human being, other living creatures, plants, micro-organism and property. This definition is identical to the definition of 'environment' as provided under section 2(a) of the Act of 1986. In terms of the object and purpose of the Act of 1986, it has primarily been enacted to protect and improve the environment and for prevention of hazards to human being, other living creatures, plants and property.

Therefore, both protection and improvement of the environment are two very fundamental aspects of these legislations. Certainly, the applicant has not raised specific challenge to the Environmental Clearances dated 17th February, 2012 and 30th September, 2013 in the present appeal, but what is being questioned is the disappearance and further likelihood of complete extinction of the water bodies in the area in question in the city of Bangalore. Furthermore, since studies have shown serious adverse impacts upon the ecology and environment of the area, the authorities concerned, including the State Government, should take appropriate steps in accordance with law and the ecological degradation or damage should be directed to be restored. Once these reliefs are read in conjunction with the averments made in the record and examined within the domain of Order VII Rule 11 of the Code of Civil Procedure, 1908, then it is not possible to hold that the petition does not disclose a cause of action that would squarely fall within the ambit of the jurisdiction conferred upon the Tribunal in terms of Sections 14 and 15 of the NGT Act.

38. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas. It is a general provision and covers victims of the pollution generally. In contradistinction thereto, Section 17 is a specific provision relating to death or specific injury which has occurred to a person, to a property or environment. Such death or injury has to result from an accident or adverse impact of activity or operation or a process, under any enactment specified under Schedule I, then the person responsible shall be liable to pay such relief or compensation for death, injury or damage, in terms of all or any of the heads specified in Schedule II of the Act and as determined by the Tribunal. This provision is person-specific and relates to such injury which results from an activity, operation or process and imposes liability on the person responsible for that activity, operation or process. Furthermore, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both

these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Another contention raised before the Tribunal by the respondents is that as far as grant of restoration under Section 15 is concerned, the applicant has not made out a case invoking the said jurisdiction and furthermore, that Section 15 comes into play post event. This argument cannot be accepted. Firstly, we have already noticed in some detail that the factual matrix of the case as pleaded by the applicant brings out a case for invoking the jurisdiction of the Tribunal under Sections 14 and 15 both. Secondly, Section 15 when construed on its plain language does not mandate a jurisdiction which can be invoked only post event. We are persuaded to hold so because of the clear distinction in language of Sections 15 and 17 of the NGT Act. Section 17 specifically requires that there ought to have been death, injury to any person or damage to any property or environment from an accident or adverse impact of an activity or operation or process where on the liability of the person to pay such relief or

compensation shall be computed on the principle of no fault i.e. strict liability. In contradistinction thereto, Section 15 would operate both to a damage that has occurred as well as the damage which is likely to occur in relation to a property or environment. Of course, such damage will be to the victim of the pollution or other environmental damage arising under the enactments specified in Schedule I. Section 20 of the Act places an obligation on this Tribunal to apply the three principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle, in settlement of disputes before it. Since the precautionary principle will also be part of Section 15, its applicability in a likely damage to environment or property cannot be excluded. The legislature in its wisdom has enacted two different and distinct provisions. They have to operate in their respective fields, particularly, when their language is distinct and different. A clear distinction between two is that Section 17 would operate only for compensation while Section 15 would deal both with compensation and restitution.

40. The expression 'dispute' is relatable to a question which is a substantial question of environment and such question should arise out of the implementation of the scheduled enactments under the NGT Act. It is a term of wide connotation and once a fact is asserted by one party and disputed by the other it gives rise to a 'dispute'.

41. Wherever a dispute as afore-noticed would arise, it would certainly give rise to a cause of action and accrue a right to sue in favour of an applicant in order to invoke one or the other

jurisdictions of the Tribunal. At this stage it may be useful to refer to the decision of the Tribunal in the case of *Kehar Singh v. State of Haryana,* 2013 ALL (I) NGT REPORTER (DELHI) 556, wherein it was held:

> "16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts

but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: *Rajasthan High Court Advocates Asson. V. Union of India* [(2001) 2 SCC 294], *Sri Nasiruddin v. State Transport Appellate Tribunal* and *Ramai v. State of Uttar Pradesh* [(1975) 2 SCC 671]; *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited v. Sujbhash Himatlal Desai and Ors.* with *Bloom Dekor Limited and Anr. v. Arvind B. Sheth and Ors.* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair v. Narayanan Nair and Ors.* [(2004) 3 SCC 277]; *Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr.* [*(2004) 8 SCC 100]; Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I and Anr.* [(2004) 9 SCC 512]; *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd. and Ors. v. Owners and Parties, Vessel M.V. Fortune Express and Ors.* [(2006) 3 SCC 100].

17. Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for

> environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

42. The plea raised by the respondents that the application does not disclose any cause of action within the four corners of the statutory jurisdiction of the Tribunal is, therefore, liable to be rejected. The respondent can raise such plea only while on the assumption that the allegations made in the application are correct. In other words, such plea of rejection of plaint is a plea of demurer. Whether the applicant would ultimately be entitled to any relief or not, is a matter different from rejecting the application on the ground of non-disclosure of any cause of action.

43. Specific averments have been made in the application with regard to the construction activities being carried on in an irregular manner, in violation of Environmental Clearance conditions and its adverse impacts upon environment and ecology, particularly, the water bodies in the area. Furthermore, submissions have been made on the basis of reports that refer to the restitution of degraded and damaged ecology and environment, particularly with reference to the water bodies in the concerned areas. A general question with regard to adverse impacts on water supply and water bodies has been prominently raised. These averments have been denied by the project proponents. The authorities which had issued stop work notices to the project proponents have partly supported the case of the applicant, while some other respondents, including official respondents, have supported the project. Thus, these are the

matters which certainly raise a substantial question relating to environment and which arise in relation to implementation of the enactments specified in the Schedule to the NGT Act. Once, such disputes are raised which require determination by the Tribunal, it can hardly be contended that the application does not disclose any cause of action falling within the jurisdiction of the Tribunal.

44. Applicant can make a prayer of restitution of property damaged or of environment of such area under Section 15 of NGT Act. However, applicant has to show that it arises under the enactments specified under Schedule I. Thus, there is hardly any commonality in cause of action and ingredients thereto, required to be pleaded and proved and in the scope of jurisdiction exercisable by the Tribunal under sections 14 and 15 of the NGT Act. Therefore, these provisions are mutually exclusive and contentions of the Respondents that jurisdiction under Section 15 can only be invoked as a consequence of invocation of jurisdiction and orders of the Tribunal either under Section 14 or Section 16 of the Act is devoid of any merit.

45. The Learned Counsel appearing for the respondents, particularly the Project Proponents, while relying upon the judgement of the Hon'ble Supreme Court in the case of *T. Arivandandam v. T.V Satyapal & Ors.,* (1977) 4 SCC 467 and *ITC Ltd. v. Debt Recovery Tribunal,* (1998) 2 SCC 70, contended that the application before the Tribunal does not disclose a cause of action, is a vexatious litigation without merits and is cleverly drafted to create an illusion of a cause of action and therefore the application

should be rejected. In our considered opinion, the respondents cannot take any advantage from any of the judgements cited by them. Firstly, these were the judgements on their own peculiar facts. In the case of *T. Arivandandam* (supra), the Hon'ble Supreme Court was dealing with an appeal against the order of Hon'ble High Court of Karnataka dismissing the revision petition of the petitioner for granting injunction or stay on the order of the Trial Court directing vacation of premises. The Apex Court observed that it was an audacious attempt by the petitioner for seeking more and more time in vacating premises by filing these fake litigations. It was held by the Hon'ble Supreme Court that the plaint was manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and, therefore, the plaint should be rejected. On the other hand, in the case of *ITC Ltd.* (supra), the appeal was filed against the judgment of the Learned Single Judge of High Court of Karnataka, dismissing the Writ Petition filed by the appellant against the orders of the Debt Recovery Tribunal and Appellate Tribunal, rejecting the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court had therein observed that non-movement of goods can be for a variety of tenable or untenable reasons but that by itself will not give a reason to the plaintiff to use the word "fraud" in the plaint and cleverly get over any objections that may be raised by way of filing an application under Order VII Rule 11. In these circumstances, it was held that if the plaint in fact did not disclose a cause of action, clever drafting cannot create illusionary cause of

action. Hon'ble Supreme Court also stated that there was gross abuse of process of law repeatedly and observed that a plaint on a meaningful and not formal reading, should disclose the cause of action.

46. In the case in hand, as has already been held by us before, the litigation pending before the Hon'ble High Court of Karnataka and the Tribunal, fall under different jurisdictions. Even the Project Proponents themselves have filed Writ Petitions before the Hon'ble High Court of Karnataka challenging the stop work notices issued to them. In our considered view, on a meaningful reading of the application, particularly seen in light of the reports and other documents placed on record, the application does disclose a cause of action that would squarely fall within the ambit of jurisdiction of this Tribunal vested in it under Sections 14 and 15 of the NGT Act.

3. **Whether the present application is barred by the principle of *res judicata* and / or constructive *res judicata*?**

4. **Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?**

47. The Respondents have raised the plea that the present application of the applicant is barred by the Principles of *res judicata*, constructive *res judicata* and in any case principle analogous thereto. This plea is found on the averment that some

petitioners including Respondent Nos. 11 and 12 had filed a Writ Petition being Writ Petition No. 36567-574 of 2013, before the Hon'ble High Court of Karnataka with the following prayers:-

"PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

(a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;

(b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.

(c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule o the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/non-governmental associates and organizations without following the due process of law;

(d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;

(e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;

(f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.

INTERIM PRAYERS

Pending consideration of this writ petition, this Hon'ble Court be pleased to:

(a) Pass an order staying all construction activity under the project being carried out on the land in issue;

(b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule

to the Lease cum Sale Agreement at Annexures B and C, or creating any third party rights or encumbrances on the land in issue; and

(c) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case."

48. It is alleged that in the above mentioned Writ Petition, averments similar to that of present application had been made and in fact averments identical to the present petition were made in paragraphs 52 to 55 of the Writ Petition. Furthermore, the applicants did not disclose the factum of filing the Writ Petition before the Hon'ble High Court to this Tribunal. Also, the parties to both the proceedings to some extent are common.

It is also argued that respondent nos. 9 and 10 have also filed two Writ Petitions before the Hon'ble High Court of Karnataka being Writ Petition No. 792 of 2014 and Writ Petition No. 366-367 of 2014, challenging the stop work notices issued to the respective respondents on 23rd December, 2013 and 2nd January, 2014 and that the operation of these notices have been stayed by the Hon'ble High Court on 21st January, 2014.

Thus, it is contended that the issues in the present application are directly and substantially in issue before the Hon'ble High Court of Karnataka and therefore, the present proceedings are barred by the Principle of *res judicata* and/or constructive *res judicata*. Neither the applicant nor respondent nos. 11 and 12 have disputed the filing of these Writ Petitions before the Hon'ble High Court, but have vehemently contended that neither the parties are common nor the issues in both the applications are directly and substantially the same. According to them, there is no commonality

of cause of action or likelihood of a conflict between the judgments. It is therefore, their contention that the application is not liable to be rejected on that ground.

49. The pendency of the Writ Petitions before the Hon'ble High Court would not directly or incidentally render the proceedings before the Tribunal unsustainable. The scope of those Writ Petitions and the reliefs claimed therein are distinct and different. The matters relating to environment or the matters raising serious environmental issues are to be more appropriately tried before the Tribunal. We may at this stage refer to a recent judgment of the Supreme Court of India in the case of *Union of India and Others v. Shrikant Sharma and Others*, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015. The Supreme Court in that case was dealing with a question of law whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Tribunal with the leave granted by the Supreme Court against such orders, under Article 136 (2) of the Constitution of India will bar the jurisdiction of the High Court Under Article 226 of the Constitution of India. After discussing the various provisions of the Act and various judgments of the Supreme Court in relation to basic principle for exercising power under Article 226 of the Constitution stated:

> "34.
> (iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: ***Nivedita Sharma***).
> (iv) The High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the

> statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: ***Nivedita Sharma***).
> 36. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)*** this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.
> In ***Chhabil Dass Agrawal*** this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

> "37.
> …Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.
> 38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

> 39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court

and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the

proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

51. One of the tests in regard to the above is that a 'cause of action' should culminate into a judgment and lose its identity by merging into the result of the judgment. Once a 'cause of action' is culminated into the judgment, the general principle of *res judicata* or *constructive res judicata* bars re-agitating the same issue all over again. The object is to prevent abuse of process of law by re-agitating the same issues in different courts.

For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High

Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka.

In light of the above law enunciated by the Supreme Court of India, the contention raised on behalf of the applicant that this Tribunal should entertain and decide the application despite pendency of Writ Petitions before the High Court, deserves to be accepted.

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment

and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

53. One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water.

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and

marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

55. The Indian definition of a 'wetland' means "an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114 (E) dated the 19th February, 1991."

56. Wetlands are amongst the most productive ecosystems on the Earth, and provide many important services to human society. However, they are also ecologically sensitive and adaptive systems. "Free" services provided by wetlands are often taken for granted, but they can easily be lost as wetlands are altered or degraded in a watershed. Estimates of the per acre value of wetland services run as high as $370,000/acre in 1992 dollars (Heimlich *et al.* 1998). The exact value can be attributed to the type and location of the

wetland, the services it provides, and the economic methods and assumptions used.

57. Ecosystem goods provided by the wetlands mainly include: water for irrigation; fisheries; non-timber forest products; water supply; Pollutant removal, Flood attenuation, Groundwater recharge, Shoreline protection, Wildlife habitat and recreation. Major services include: carbon sequestration, flood control, groundwater recharge, nutrient removal, toxics retention and biodiversity maintenance (Turner et al., 2000).

58. Various services provided by wetlands include Carbon Cycle/ Carbon Sequestration: Swamps, mangroves, peat lands, mires and marshes play an important role in carbon cycle. Though wetlands contribute about 40% of the global methane (CH4) emissions, they have the highest carbon (C) density among terrestrial ecosystems and relatively greater capacities to sequester additional carbon dioxide (CO2). Wetlands provide for habitat for more aquatic, terrestrial, and avian species on an area basis than any other habitat type, making them one of the most ecologically and economically important ecosystems on earth. Thus, wetlands provide for soil life, habitat, biodiversity maintenance and recreation. Wetlands are a service provider to Nutrient Removal, Flood attenuation and Water supply and Ground water recharge and even are a source of employment [Ref: Pant *et. al,* 2003; Groffman and Crawford, 2003; Juliano and Simonovic, 1999; Olewiler, 2004; MFPED, 2004]. It is essential to provide an effective institutional framework to manage water bodies through

governmental and even non-governmental organizations.

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. *et al.,* 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (NitinBassi*et al.,* 2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of

Bellandur and Ulsoor lakes with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities. Analysis of Madivala and Bellandur drainage network revealed that encroachment and conversion has resulted in the loss of connectivity between Yelchenhallikere and Madivala. Similarly the drainage network between Bellandur and Ulsoor is lost due to conversion of Chelgatta tank into a golf course (Status of wetlands in Bangalore).

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality.* This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four sub-systems included Agara Lake System (Hulimavu, Doddabegur,

Madiwala, Puttenahalli; AgaraKere); Hebbal System (Narasipura I and II; DoddaBomassandra, HebbalKere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995-2000) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition, and others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

63. In late 2000, the Research and Development wing of KSPCB published its report on comprehensive monitoring of lakes in and around Bangalore Metropolitan area to assess the state of the water quality. This was an interesting report given the weight of the output carried after the first phase of the city's lakes restoration process. KSPCB's results as a result of water quality monitoring on 44 selected lakes (including all but 2 in the NLCP list) revealed that most lakes still remained highly polluted.

64. The LDA instituted in January 2002, identified about 60 lakes

for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

65. The wetland management program generally involves activities to protect, restore, manipulate, and provide for the functions and values emphasizing both quality and acreage by still advocating sustainable usage of them [Walters, C. 1986.]. Management of wetland ecosystems requires an intense monitoring, increased interaction and co-operation among the various agencies (state departments concerned with environment, soil, natural resource management, public interest groups, citizen groups, agriculture, forestry, urban planning and development, research institutions, government, policy makers, etc.). Such management goals should not only involve buffering wetlands from any direct human pressures that could affect the wetlands normal functions, but also in maintaining important natural processes that operate on them that may be altered by human activities. Wetland management has to be an integrated approach in terms of planning, execution and

monitoring requiring effective knowledge on a range of subjects from ecology, economics, watershed management, and planners and decision makers, etc. All this would help in understanding wetlands better and evolving a more comprehensive solution for long-term conservation and management strategies.

We have noticed the above studies on record to bring clarity in regard to the importance of these water bodies and need-oriented significance to maintain the wetlands and catchment areas in the interest of environment, ecology, biodiversity and hydrological balance. The merit or otherwise, of these cases have to be examined in light of these studies, which is a matter of record.

66. It is alleged that respondents 9 and 10 had started the construction activity of their projects without grant of Environmental Clearance and it is sought to be substantiated by placing the Google Images on record. However, it cannot be disputed that subsequently both these respondents obtained ECs for the projects in question on 17th February, 2012 and 30th September, 2013, respectively. After the grant of Environmental Clearance, the respondents were expected to carry on with the projects strictly as per the terms and conditions of the orders granting them Environmental Clearance. The allegation is that they have carried out the constructions in violation of the conditions of the Environmental Clearance and have encroached upon the wetlands and catchment areas of the lakes.

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had

carried out a study and submitted a report on the need for 'Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity'. This report had specifically dealt with the activity of the SEZ projects by Karnataka Industrial Area Development Board in six zones. It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands. Even the High Court of Karnataka in Writ Petition No. 817/2008 had directed that the lakes should be protected across Karnataka, prohibited dumping of garbage and sewage in lakes, removal of encroachments, plantation of trees in consultation with experts lake surroundings and to declare it a 'No Development Zone' around the lakes. The report also speaks of water shortage by stating that BWSSB had not given NOC to respondent no. 9 and had communicated inability to supply such huge quantity of water on regular basis, as these projects require 4,587 kilolitres water per day (4.58 MLD per day). In this report, the Institute did not approve of the decision of the authorities to go ahead with such huge project, but also made

reference to the ecological and environmental implications as follows: -

> "Ecological and Environmental Implications:
>
> - Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
> - Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
> - Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.
>
> The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.
>
> - Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
> - Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs 10500 per hectare per day (Ramachandra et al., 2005).

Decision makers need to learn from the similar historical blunder of plundering ecosystems as in the case of Black Swan event (http://blackswanevents.org /? page_id=26) of evacuating half of the city in 10 years due to water scarcity, contaminated water, etc. or abandoning of Fatehpur Sikhri and fading out of AdilShahi's Bijapur, or ecological disaster at Easter Island or Vijayanagara empire.

> It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of Bellandur wetlands by KIADB."

This report also highlighted the threats faced by the wetlands in Bengaluru with particular reference to SEZ Bellandur wetlands, which is the land in question. The report recorded as follows:

> "Greater Bangalore had 207 water bodies in 1973 (Figure 6), which declined to 93 (in 2010). The rapid development of urban sprawl has many potentially detrimental effects including the loss of valuable agricultural and eco-sensitive (e.g. wetlands, forests) lands, enhanced energy consumption and greenhouse gas emissions from increasing private vehicle use (Ramachandra and Shwetmala, 2009). Vegetation has decreased by 32% (during 1973 to 1992), 38% (1992 to 2002) and 63% (2002 to 2010).

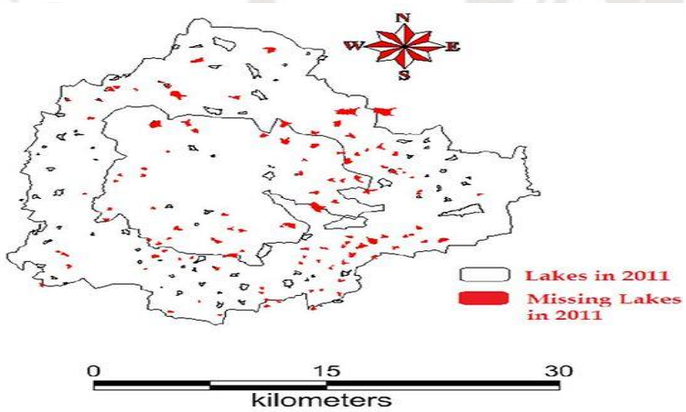

Figure 6: Lakes encroached by land mafia

> Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy

the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. Encroachment of rajakaluves / storm water drains and loss of interconnectivity;
3. Lake reclamation for infrastructure activities;
4. Topography alterations in lake catchment;
5. Unauthorised dumping of municipal solid waste and building debris;
6. Sustained inflow of untreated or partially treated sewage and industrial effluents;
7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

These anthropogenic activities particularly, indiscriminate disposal of industrial effluents and sewage wastes, dumping of building debris have altered the physical, chemical as well as biological integrity of the ecosystem. This has resulted in the ecological degradation, which is evident from the current ecosystem valuation of wetlands. Global valuation of coastal wetland ecosystem shows a total of 14,785/ha US$ annual economic value. Valuation of relatively pristine wetland in Bangalore shows the value of Rs. 10,435/ha/day while the polluted wetland shows the value of Rs.20/ha/day (Ramachandra et al., 2005). In contrast to this, Varthur, a sewage fed wetland has a value of Rs.118.9/ha/day (Ramachandra et al., 2011). The pollutants and subsequent contamination of the wetland has telling effects such as disappearance of native species, dominance of invasive exotic species (such as African catfish, water hyacinth, etc.), in addition to profuse breeding of disease vectors and pathogens. Water qualityanalyses revealed of high phosphates (4.22-5.76 ppm) levels in addition to the enhanced BOD (119-140 ppm) and decreased DO (0-1.06 ppm). The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits.

SEZ in Bellandur Wetlands: Irrational decision of setting up SEZ at Bellandur wetland would affect the lake. The Mixed Use Development Project - SEZ (figure 6) is proposed along Sarjapur Road in a wetland between Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99"E of Longitude and 12°55'24.98" N to 12°55'44.43" N of Latitude with an area of 33 hectare. The proposal of the project is to construct residential areas, offices, and retail and hotel buildings in this area.

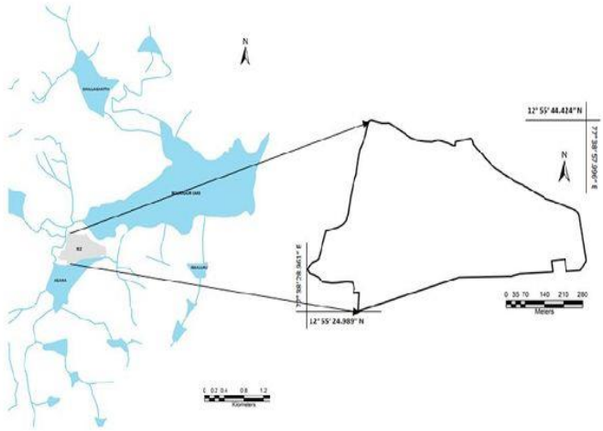

Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water requirement;
3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

Realizing these, BDA has aptly earmarked these regions in CDP 2005 for "ENVIRONMENT PROTECTION AND HERITAGE CONSERVATION". The masterplan includes the protection of valleys and tanks as part of the vision and enforcing the ban on construction over protected areas. CDP 2015: As per CDP 2015, valley region are "No Development Zone"

1. In case of water bodies a 30.0 m buffer of 'no development zone' is to be maintained around the lake (as per revenue records) with exception of activities associated with lake and this buffer may be taken into account for reservation of park while sanctioning plans.
2. If the valley portion is a part of the layout/ development plan, then that part of the valley zone could be taken into account for reservation of parks and open spaces both in development plan and under subdivision regulations subject to fulfilling section 17 of KTCP Act, 1961 and sec 32 of BDA Act, 1976.
3. Rajakaluve/ storm water drains categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer of 50, 25 and 15m (measured from the centre of the drain) respectively on either side. No activities shall be permitted in the buffer zone."

This technical report was prepared in the year 2013 when these projects had already commenced their constructions. Of course, as per the case of the project proponents themselves, the construction activity was not in full swing.

68. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondents no.9, which was sent to the Additional Principal Chief Conservator of Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent no.9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects are under initial stages, i.e. only levelling and excavation works are going on. It will

be useful to refer to some of the significant observations relating to the compliance of the conditions of the Environmental Clearance in relation to the project of Respondent no.9 in this Report. They read as follows:

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling / sub base work for roads, pavements, drains etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks / sumps and also will be reused for filing up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has

		been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (…….location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the ground water.	The project authorities assured that hazardous material will not be used in the site.
xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common	Agreed to comply.

	infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be maintained as it is to ensure natural flow of storm water.	Execution of the project will necessarily sloping pattern of the project site and the natural hydrology of the area and hence specific condition no xxxix cannot be complied.
xl)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of Bellandur lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC / SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/ SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.

xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate / run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

There does not appear to be any such similar report in relation to the project of respondent no.10. However, there are other general reports which deal with the project properties of respondent no.10.

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N. K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on

the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

70. The Hindu newspaper on 3rd June, 2013 had widely raised the issue of environmental degradation in the catchment area of the Bellandur Lake due to construction of mixed use development projects, as also undertaken by both the respondents no. 9 and 10. After this report, instructions were issued by the CEO of LDA on 4th June, 2013 to inspect the lake premises. Inspection was conducted by Shri S. R. Nagraj, EE, LDA and Sh. C. Nagesh Rao, AEE, LDA. After the inspection, a report dated on 12th June, 2013 was prepared which concluded as under:

> At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.
> As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is achcutland of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.
> Hence KIADB"s colossal "mixed – use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

The above conclusions suggest that these multi-purpose construction activities of huge dimensions could have adverse environmental and ecological impacts. Of course, the report submitted by the MoEF primarily deals with the construction activity and projects of respondent no.9 only. However, the other reports are of general nature which deals with the construction of multi-purpose projects and their adverse impacts on environment, ecology with particular reference to the water bodies like lakes etc.

71. In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case can be divided into two parts: First, what are the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 as stated to have been committed. Secondly, the likely impacts of these

projects upon the environment and ecology of the area in question, particularly on the water bodies.

Proposed Mixed Use Development Project is located at Agara Village and Jakkasandra Village, Begur Hobli, Bangalore South. Special Economic Zone (SEZ) is located between the Agara Lake & Bellandur lake. The Mixed Use Development Project – SEZ is proposed along Sarjapur Road in the catchment of lakes Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99" E of Longitude and 12°55'44.43" N of Latitude with an area of 33 hectare. Agara Lake is located at other side of 45 m wide road whereas Bellandur Lake is just 50 m away from the project boundary. Rajakaluve (Natural Drain) is running all along the project site.

Proposal envisages for construction of residential apartment with (Block-1 (Block A: 2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sqm. The total built-up area is 11,50,454.98 sq. m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores.

72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

1) The construction of both the projects had started prior to the grant to Environmental Clearance.

2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.

3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.

4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.

5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.

6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be

complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

73. There are four reports on record which are suggestive enough that there would be adverse impacts of these projects upon the environment and ecology of the area, particularly on the lakes and the wetlands. The report prepared by the Committee chaired by Justice N.K. Patil filed before the Tribunal states that the lakes and the wetlands should be protected in the city of Bangalore. Measures were required to be taken in that direction and to remove encroachment in lake area and *Rajakaluves*. The large construction activity was stated to be prejudicial to the environment in those areas. Contents of this report are neither denied nor admitted by respondent no. 9 who, in its reply, has required contents of the report to be proved by the applicants. On the other hand, respondent no. 10 has submitted that there are no *Rajakaluves* or canal in his property and thus the above recommendations are not applicable to respondent no. 10. The other report on record is prepared by ENVIS, Centre for Ecological Sciences, Indian Institute of Science, Bangalore. This report focuses on possible consequences for setting up SEZ in Bellandur Lake area and also recommends restoration of wetlands in that area. In this report, how the land use

changed from 2007 to 2012 was illustrated, stating that the wetlands have decreased from 32.80 ha to 5.95 ha, whereas the Open land (Conversion of Wetlands to SEZ Construction site) has increased from 0.6 ha to 27.46 ha. Noticing the major violations, it was recorded that development in wetland violates the CDP 2015, which would result into flooding in the vicinity due to encroachment of drains, alterations in topography, encroachment of lake-bed and encroachment of lake itself by dumping debris and filling up of same; there was violation of 30 metre buffer (lake floodplain); traffic congestion and filling of a portion of lake with building debris. While respondent no. 9 termed the report as speculative and based on presumptions, respondent no. 10 denied it as frivolous and baseless and termed it as tailor made to support the case of the applicants. At this stage, we may also notice that in the column of 'Acknowledgement' of this Report, the name of Koramangala Residents Association has been mentioned. It is contended that this Association had approached Dr. T.V. Ramachandran to prepare the Report. The said Resident Association is a party to one of the Writ Petitions before the Hon'ble High Court of Karnataka. Therefore, it is argued that the report stand vitiated because of the self-interest of Dr. T.V. Ramachandran who was a member of the Committee which prepared the said report. On the other hand, the contention of the applicant and respondent nos. 11 and 12 is that Dr. T.V. Ramachandran prepared the said Report as a part of scientists' social responsibility and that the observations and findings of the report by the scientists do not become invalid/*non est* merely

because the study was undertaken at the request of a concerned group of citizens.

74. The objection taken by the respondents does not appeal to us. This report was not prepared by an individual but by a team of scientists from a Government Institute. Apparently, it appears to be in discharge of his scientists' social responsibility that Dr. T.V. Ramachandran participated in preparing this report. However, this issue loses its significance, because it is the content of the report which is to be considered by the Tribunal and not the persons who have prepared the report. There is a vague denial to the contents of the report by the respondents, who have not placed any report on record to contradict the contents of this report, which itself is largely supported by three other reports placed on record.

75. Report which is placed on record by respondent no. 10 is prepared by a Private Consultant, which only mentions that there will be no adverse impacts on environment. This report does not aspire confidence, as it is not data based and in fact, does not meet any of the issues raised in the four reports placed by the applicant on record. The other two reports are the MoEF Monitoring Committee report and the inspection report prepared by the LDA, which we have already discussed in some detail above.

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and

natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

77. Lastly, it is the report of LDA, which as already noticed is the Society created by the Government of Karnataka with a specific purpose of protecting the lakes and the wetlands. This report had specifically recorded that the projects are bound to have adverse impacts on the catchment area of Ballendur Lake. This report has also been denied by the respondents stating that it is frivolous and according to respondent no. 10, there are no wetlands around Bellandur Lake.

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay

on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

79. The cumulative effect of the above discussion would be that there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development. It is the contention of the respondent nos. 9 and 10 that there are large numbers of other projects located around these lakes. If that be so, then we have no hesitation in observing that various regulatory authorities including SEIAA ought to have examined the cumulative Environmental Impact Assessment in these cases on the water bodies as the protection of the water bodies, the wetland and the catchment areas of the lakes is the obligation of these authorities.

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their

own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not

permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of

Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations. Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already

been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *M/s Sterlite Industries (India) Ltd. v. Tamil Nadu PCB & Ors*, JT 2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle

stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar & Ors. v. The Commissioner, Pune Municipal Corporation & Ors,* 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation v. Union of India and Ors.,* (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of ***Goa Foundation***, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh v. National Ganga River Basin Authority* 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It

may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 OF 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.

83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which

they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar and Ors. v. The Commissioner, Pune Municipal Corporation and Ors.* 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project,

issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further,

where the Tribunal should also apply the principles of law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue the following directions:

1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated herein after.

   a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.

   b) CEO of the Lake Development Authority, Karnataka State.

   c) Chief Town Planner of BBMP, Bangalore.

   d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.

   e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

   f) Dr. Siddharth Kaul, former Advisor to MoEF.

   g) An Senior Officer from the National Institute of Hydrology, Roorkee.

2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convenor of the Committee and would submit the final report to the Tribunal.

3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies, with particular reference to lakes.

4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of respondent nos. 9 and 10 or by any of the projects in the area in question.

5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages

and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.

10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent nos. 9 and 10 are hereby restrained from creating

any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

12) The committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.

13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.

14) For the reasons stated in the judgment respondent no. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent no. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non–compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto

the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Professor A.R. Yousuf
Expert Member

New Delhi
7th May, 2015

2015 SCC OnLine NGT 843

In the National Green Tribunal[†]

(BEFORE SWATANTER KUMAR, CHAIRPERSON AND M.S. NAMBIAR, MEMBER (JUDICIAL) AND DR. D.K. AGRAWAL, MEMBER (EXPERT) AND PROF. A.R. YOUSUF, MEMBER (EXPERT))

Original Application No. 87 of 2015 (M.A. No. 262 of 2015 & M.A. No. 528 of 2015)

Social Action for Forest and Environment (Safe) through its President Mr. Vikrant Tongad … Applicant;

Versus

Union of India, Through the Secretary Ministry of Environment, Forests & Climate Change and Others … Respondents.

And

Original Application No. 382 of 2015

Jaswinder Kaur … Applicant;

Versus

Union of India, Through the Secretary Ministry of Environment, Forests & Climate Change and Others … Respondents.

Original Application No. 87 of 2015, (M.A. No. 262 of 2015 & M.A. No. 528 of 2015) and Original Application No. 382 of 2015

Decided on December 10, 2015, [Reserved on : 24th September, 2015]

Advocates who appeared in this case:

Mr. Ritwick Dutta and Mr. Rahul Choudhary, Advocates and Mr. Raj Panjwani, Sr. Advocate with Mr. Abhyudai Singh, Advocate, Counsel for the Applicant;

Mr. Vishwendra Verma, Advocate for Respondent No. 1;

Mr. Ardhenumauli Kumar Prasad, Ms. Pryanka Swami, Advocates, for Respondent No. 2;

Mr. Rahul Verma, AAG for State of Uttarakhand, Mr. U.K. Uniyal, AG, Mr. Aditya Garg and Mr. Jiten Mehra, Advocates in Application No. 528/2015-For Respondent Nos. 3 to 5;

Mr. B.V. Niren, Advocate for CGSC.

The Judgment of the Court was delivered by

SWATANTER KUMAR, CHAIRPERSON:— The applicant through its president Vikrant Kumar Tongad has filed the present application being aggrieved by the haphazard and unregulated licensing of the river rafting camps operating in river Ganga from Shivpuri to Rishikesh on one hand which is a serious source of pollution of pristine river Ganga on one hand and encroachment and degrading of various areas on the other hand. The Applicant is an organization working in the field of environmental protection across the country and has raised various issues before different authorities with respect to protection of forest and environment. Vide resolution dated 16th September, 2013 the applicant organisation has empowered its president to file the present application.

2. The applicant has averred in the application that the Himalayas, stretching 3200 km along India's northern frontiers, cradle numerous rivers with slopes which drain them all year around. The abundance of mountains and rivers make these locations as white water destination with plenty of first descend and exploratory possibilities. The initial beach camps on Ganges were established during 1998 with permission by regulatory authority through Ministry of Environment and Forests (for short 'MoEF'). In

northern India rafting is commonly exercised on the river Ganges near Rishikesh and the Beas River in Himachal Pradesh. Every year after the rains, sand gets deposited to make clear and distinct formation of beaches on both banks of river Ganga. In recent times, the area has been denoted as eco-tourism zone namely Kaudiyala-Tapovan eco-tourism zone where various activities besides rafting and camping have been permitted.

According to the applicant, during their visit from Shivpuri to Rishikesh they noticed that all along the road there are about 35-40 camping sites and almost 800-1000 River rafting beach camps have been permitted by the State agencies by issuing licenses. Most of these camps were found in Shivpuri area. The camps are located and are operating in a forest area or the river bank. The camps were also found to have tampered with the banks of the river by flattening them.

3. It has been submitted by the Applicant that there are large number of camps in the form of beach camps or otherwise which are being permitted on 'first-come-first serve basis'. Large number of licenses have been issued by State agencies without appreciating or analyzing carrying capacity. This has caused excessive pressure on the river which the river is unable to bear over a period of time. These sites either do not have or have inadequate sewage and sanitation facilities. Either there are no toilet facilities, making people defecate in the open or where they exist they are in the nature of pit disposal. During monsoon, the discharge remains flow into the river, thereby causing pollution and interfering in the river eco-system. The tourists and rafters also throw polythene, wrappers and various kinds of bottles on the sites and on the river bed which ultimately flow into the river. Ganga is also polluted because of high use of detergents, soaps and shampoo. It is also submitted that the approach of the State Government is clearly violative of the doctrine of public trust as enunciated by the Supreme Court in the case of *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388 and *Centre for environment law* v. *Union of India*, (2013) 8 SCC 234.

4. As the camp sites and beach camps have even encroached upon the forest area, many trees have been cut and land is flattened for setting up of such camps. According to the applicant, the agencies are not acting in the interest of the environment on account of vested interest and many influential people who carry on the activities of these camping sites. The rafting camp sites are located upstream and rafters are taken to the camp site in diesel vehicles, creating noise and air pollution. Also, visitors park their vehicles on the camp site and as a consequence a large number of vehicles arrive at the camp sites every day. Owners and their employees serve food and even alcohol at the camp sites, the leftover of which, flows into the river, thereby causing pollution. The State Government and authorities do not have any mechanism in place for collecting the municipal waste and its disposal in accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000.

Another aspect that the applicant has emphasized is that these camps are also adversely affecting the wildlife to a great extent because of increased man animal conflict.

It is submitted on behalf of the applicant that since rafting camps are a 'non-forest activity', therefore it cannot be carried on without clearance from the competent authority under the Forest (Conservation) Act, 1980 (for short 'the Conservation Act').

5. Mushrooming of rafting camps cannot be termed as a sustainable development activity or a permissible eco-tourism activity. The applicant has relied upon certain articles and studies carried out from time to time to support his contention that undisruptive, haphazard and unregulated camping activity is a serious threat to environment, particularly the forest area and pollution of river Ganga. He has relied upon an article published in March 2008 titled, '*Environmental Socio-cultural Impacts of River Rafting and camping on river Ganga in Uttarakhand Himalaya*' which reported

that prior to 1996 there were just two river camping sites, one at Kaudiyala-Shivpuri and other at Vyasi. In 1997 there were 8 sites and they increased to 45 in 2006. The total area allotted for camping site is stated to be 183, 510 sq m on Ganga bed. This increased camping and rafting has already severely impacted the forest between Devpryag and Rishikesh and it included loss of vegetation, soil compaction, disturbance in existing water channel and other evidence of use. A definite reference has been made to the displacement of wildlife because of this activity. River flows alongside the Rajaji National Park giving it a higher sensitivity in relation to bio-diversity and ecology. Furthermore, the area falling on either side of the river is a forest area.

6. In 2011 another report titled '*Socio-environ impact of river rafting industry in Uttarakhand*' it was concluded that due to indiscriminate use of river beds and adjoining areas, vegetation and wildlife is facing threat. It recommended complete regulation of the activity in the interest of environment and that the entire process of redetermination of the manner in which licenses are to be issued and of site selection should be revisited. Wildlife Institute of India (for short WII') report recommended for not allowing camping and rafting activities on 13 sites along Rishikesh-Kaudiyala stretch of river Ganga. The study was done for assessing ecological implications of increasing camps and consequent impact on wildlife, identifying issues for triggering comprehensive and systematic study subsequently and providing some insight for officials of Uttarakhand State Forest Department to develop management responses for wildlife conservation and evolve environmental management guidelines for regulating adventure tourism. This report also reported that the camping activities in wilderness areas may create impediment for free movement of wildlife. It also questioned 13 out of 34 camping sites.

The applicant has also averred that he had submitted an application for certain information under the Right to Information Act, 2005 which was responded to partly by the concerned department from Uttarakhand Tourism Development Board on 16th December, 2014. As per the information provided, the forest department grants permission for river rafting camp if forest land is involved and revenue department grants permission for river rafting camp if revenue land is involved. The forest department did not provide information with respect to the grant of permission to use the forest land under Section 2 of the Forest Conservation Act. The applicant has placed on record, copies of various reports as well as the photographs of the camps which show semi concrete structures in the river bed.

On the above premises, the applicant claims the following reliefs:

"(i) Direct closer and removal of camps along the river Ganga from Shivpuri to Rishikesh in state of Uttarakhand and direct the State Government to frame proper policy for regulating such activities being carried out as recreation facilities for the tourists.

(ii) Direct that no camps be allowed to operate in areas which are part of forest land without specific approval under the Forest (Conservation) Act, 1980.

(iii) Direct that a carrying capacity be undertaken within a specified time frame in order to arrive at a sustainable number of rafting camps which can be allowed including the possibility of centralized rafting camps.

(iv) Direct that those camps which are located in non ecologically sensitive areas and not closed down are made to strictly comply with the conditions given for approval.

(v) Direct for restoration of the area and removal of garbage or any other wastes from the camping site at the cost of the camp owners in accordance with the Polluter Pay Principle.

(vi) Direct and restrict entry of private vehicles and prohibit parking of such

vehicles in and around the camp sites and allow only specific designated electric vehicles to ferry tourists from either their respective hostels or a specific starting points where proper parking and other facilities can be provided."

7. This application has been contested vehemently by the State of Uttarakhand and its various departments. During the pendency of this application, Indian Association of Professional Rafting Outfitters (for short 'IAPRO') filed a Miscellaneous Application bearing M.A. No. 528/2015 praying for modification of the order of the Tribunal dated 31st March, 2015 to the extent that they be given permission for running rafting camps and for rafting. In the meanwhile, another application was filed by Jaswant Kaur being Original Application No. 382/2015 titled as *Jaswinder Kaur* v. *Union of India*

8. Supporting the prayers in Original Application No. 87/2015 as well as making further prayer, all these main and miscellaneous applications thus, were heard together and are being dealt with by this common judgment. Before we proceed to notice the stand taken by the respective respondents and the rafting association, we may notice the case put forward by Jaswinder Kuar, applicant in Original Application No. 382/2015.

9. She has submitted that the large scale unregulated river rafting and camping activities is being operated for commercial purposes by various parties along river Ganga from Kaudiyala to Rishikesh, which is severely damaging the environment and river Ganga. According to her, this is essentially a commercial activity which is being allowed in the guise of eco-tourism. The licenses have been issued by the State Authorities without application of mind, proper verification of antecedents of such applicant and without following the requisite legal process. These camps are not only in violation of the Conservation Act but also of the Environmental (Protection) Act, 1986 (for short 'Act of 1986') and Water (Prevention and Control of Pollution) Act, 1974 (for short, "Water Act"). The statutory provisions in regard to addressing the environmental aspects can only be framed by MoEF/Ministry of Water Resources and they alone can formulate a policy for regulation of these activities under the Act of 1986.

10. While supporting the application under Original Application No. 87/2015, she has further averred that River Ganga is a trans-boundary river. It originates from snow glaciers in western Himalyas in Uttarakhand. After flowing approximately 250 kms. it emerges at Rishikesh and then flows South and East through Gangetic plains into Bangladesh and finally into Bay of Bengal. River Ganga besides being a sacred River provides a life line to millions of farmers, a habitat for animals residing in forest and is home to more than a hundred species of fishes and amphibians. Wild animals and birds are being affected by large scale camping activities conducted along river Ganga from Kaudiyala to Rishikesh.

11. Use of forest land for camping is in blatant violations of the Conservation Act and even violates the Constitutional protection available in relation to environment and ecology. Initial beach camps were established after specific permission was granted by MoEF. Subsequently, MoEF issued a clarification dated 28th August, 1998 where it was stated that the subject of camping sites does not fall within the purview of the Conservation Act because it is an 'eco-tourism activity'. According to the applicant this is an erroneous view, based on complete misunderstanding of the statutory provisions. It is a commercial and non-forest activity in a forest area and in any case after issuance of this clarification, the activity has increased manifold.

12. As per information provided by Conservator of Forest, Bhagirathi circle there were over 2441 tents across 37 river rafting beach camps in 210,043.05 sq m area for 2014-15 in Narendra Nagar wildlife division alone. Number of registered river rafting operators has multiplied several folds from 70 in 2008 to 140 till April 2014. Most of the rafting camp operations are carried out in blatant violation of the conditions

accompanying grant of license. According to her, even the sites and permissions are being misused.

13. It is the case of the applicant that under provisions of Section 3 of the Act of 1986, the Central Government is empowered to formulate Rules and Regulations for governing activities which involve significant implications to the environment. Further, Rule 24 of Uttarakhand River Rafting/Kayaking Rules, 2014 (for short 'Rules of 2014') is without authority and is incompetent. Grant of permit by State Government amounts to grant of license for use of forest land for establishment of camping sites and therefore the order or issuance of permit by State Government without obtaining prior approval of Central Government is in clear violation of provisions of the Conservation Act.

14. The mushrooming of camps in an unregulated manner is blatantly flouting applicable norms and is a serious environmental hazard. The clarification issued by MoEF dated 28th August, 1998 is not in conformity with the Conservation Act. Allowing camps in the present manner has adverse impact on environment, flora, fauna and river Ganga.

15. MA 923/2015 was filed by this applicant to amend the prayer clause on the same facts. This application was allowed vide order of the Tribunal dated 4th September, 2015 and disposed of. The amended prayer by this applicant in this application are as follows:

In view of the aforementioned facts and circumstances, it is most humbly prayed that this Hon'ble Tribunal may be pleased to pass orders:

(a) To declare that the clarification issued by the Ministry of Environment Forest and Climate Change dated 28.08.1998 bearing reference number D.O. No. 6-5/89-WB-I, is ultra vires the provisions of the Forest Conservation Act, 1980 and to quash the same;

(b) To declare that the Uttarakhand Tourism Development Board does not have the authority to frame Rules in respect of forest areas governed by the provisions of the Forest Conservation Act, 1980 and to quash the Uttarakhand River Rafting/Kayaking Rules, 2014, notified on January 24, 2014 by the way of notification bearing number No. 160/VI/2013-01(03)/2013;

(c) To command the Respondent No. 1 in conjunction with Respondent No. 2 and 3 to ensure strict compliance of Section 2 of the Forest Conservation Act, 1980 in its letter and spirit with regard to the permitting of camp centres on the banks of the river Ganga from and particularly the Kaudiyala to Rishikesh stretch and, inter alia, declare that the camp centres which have been allowed on forest land by the Respondent no. 3(though Respondent No. 4 to Respondent No. 6) without seeking prior approval of the Central Government under section 2 of the Forest Conservation Act, 1980 are illegal, viod ab initio and therefore unauthorized.

(d) To declare that no camping sites, which partake the commercial activities are legal and permissible having regard to use of forest land and impact on environment on the banks of river Ganga from Kaudiyala to Rishikesh in particular;

(e) The Hon'ble Tribunal may further be pleased to command the Respondents to stop and remove the camp sites and order their removal from the forest land permanently and to prohibit and close down the camps both on forest and revenue land which being run in derogation of the environment. The **I** restoration. Reforestation of such sites should further be undertaken at the cost of the camp.

(f) To direct the Respondent No. 1 in consultation with the Respondent No. 2 and Respondent No. 3 to frame comprehensive, proper and adequate and strict framework in exercise of statutory duties and powers under the Environmental

Protection Act, 1986 within a time bound manner; and

(g) Pass such other Order(s), as this Hon'ble Tribunal deems fits in the facts and circumstances of the case.

16. MoEF had filed a detailed reply in M.A 528/2015 and adopted the same as a reply to the main application as well. During the course of arguments, MoEF, while primarily denying the averments made in the M.A. took the stand that Section 2 of the Conservation Act as amended provides that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of Central Government any order as contemplated under those provisions. The relevant portion of this section reads as under:—

(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) That any forest land or any portion thereof may be used for any non-forest purpose;

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

17. For the purposes of this provision, "non-forest purposes" is the basic consideration. MoEF refers to the judgment of the Supreme Court dated 12th December, 1996 passed in Writ Petition No. 202/1995 in the matter of *T.N. Godavarman Thirumulpad* v. *Union of India* which had directed as under:

> "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 of forests and for matters connected threrewith, 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 recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The terms "forest land", occurring in section 2, will not only include "forest" as understood in dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."

18. In view of the above, MoEF considered the question whether river rafting requires prior approval under the Forest Conservation Act or not and this was examined in the year 1998 when MoEF formed the following opinion:

> ".....the subject does not fall in the purview of the Forest Conservation Act, because it is basically an eco-tourism activity. However, it has to be ensured that the Camping sites are selected according to a management plan approved for the concerned protected area/forest area. Due precautions are also to be taken to ensure that the permission for Camping does not lead ot littering the protected areas/forest areas with non biodegradable waste. Approporiate steps (for) disposal of liquid waste are also taken to prevent pollution in areas in which rafting is done or in the rivers along with which camping is done. No mechanized boats have to be used and adequate measures for safety of the wildlife and the rafter themselves have to be taken. No permanent or pacca structures should be allowed at the camping sites."

19. The above extract has been taken from the letter of MoEF dated 28th August, 1998 addressed to Additional Inspector General of Forests (Wildlife), Principal

Secretary, Department of Forests, Uttar Pradesh. Further, according to MoEF a doubt regarding applicability of the Conservation Act to river rafting arose due to the fact that it requires temporary use of forest land for a limited period of time in a year. This matter was again considered by MoEF in 2014 and at that time it formed and communicated the following opinion.

> "Temporary work in forest land which does not involve breaking up or clearing of forest land or portion thereof, or assigning by way of lease or otherwise to the firm, person or organization using such forest land temporarily; and does not create any right on such forest land of such firm, person or organization, will not require prior approval of Central Government under the FC Act. State Governments and Union Territory Administrations may authorize Officers of an appropriate rank, preferably the Divisional Forest Officer having jurisdiction over the forest land proposed to be utilized temporarily, to accord permission for such temporary activity."

20. The Government of Odisha in their letter dated 20th January, 2015 had requested MoEF to clarify the kind of temporary work to be taken up on the forest land with prior permission of the Divisional Forest Officer of the MoEF. MoEF vide their letter dated 27th March, 2015 finally expressed their view in the following terms.

Annexure : R-1/4

Copy
F. No. 11-306/2014-FC (pt.)
Government of India
Ministry of Environment, Forests and Climate Change
(Forest Conservation Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003
Dated : 27th March, 2015

To,
The Principal Secretary (Forests)
Government of Odisha
Bhubaneswar

Sub : Guidelines for diversion of forest land for non-forest purpose under FC Act - Exemption from the requirement of obtaining prior approval of Central Government under FC Act for execution of Temporary Work in forest land.

Sir,

I am directed to refer to the Government of Odisha's letter No. 10F (Cons) 37/2013 (pt.) 1347 dated 20th January 2015 on the above mentioned subject where this ministry was requested to specify in details regarding the types of work to be considered to be utilizing forest land temporarily and duration of such temporary use, and to say as below:

(i) It may not be feasible to prepare an exhaustive list of temporary works/activities which may be exempted from the requirement of obtaining prior approval of Central Government under the Forest (Conservation) Act, 1980.

(ii) An activity shall be treated as temporary activity for the purpose of afore-mentioned guidelines only if -(i) it does not involve breaking up or clearing of forest land or portion thereof; (ii) it does not involve assigning by way of lease or otherwise in favour of firms/organization/person using such forest land temporarily; (iii) it does not create any right on such, forest land temporarily; and (iv) use of such forest land is limited to a period less than a fortnight.

(iii) In case of a doubt whether an activity is to be treated as a Temporary Activity or not, State Governments may seek clarification from the Ministry, on case to case basis, by giving full details of the activity.

Yours faithfully,
(H.C. Chaudhary)
Director

21. In view of the above letter, MoEF in their reply have stated that it also needed to consult the State Government in relation to applicability of the Conservation Act and finalize their statement.

22. Rafting and Beach camping activities in the State of Uttarakhand is governed by different Government Orders 28th October, 1993, March-April 94, 25th September, 1999, Rules of 2014. Though, these Regulations provide strict conditions to be followed by camp operators, however, as per clarifications issued vide MoEF's letter dated 28th August 1998, camping for the purposes of river rafting does not fall within the purview of the Conservation Act because it is an 'eco-tourism activity'.

23. The State of Uttarakhand submitted that there are about 37 beach camps on the reserved forest land of Narendra Nagar Forest Division, 51 beaches in revenue land of Tehri and few beaches in revenue land of Pauri. The camp operators are permitted only to set up temporary tents along the river where there is a natural clearing at specified places. They are always inspected at regular intervals by forest and revenue officials and any violation can result in cancellation of beach camping and rafting permit and the operator will not be eligible for renewal of their permit. It amounts to no new/fresh license is being issued for beach camping in the area.

24. It is also submitted that flattening of any part of the camp area is prohibited. There is an absolute prohibition against cutting or clearing of any trees or plants for setting beach camp sites. Only such sites are selected for beach camps which have a natural clearing free from foliage.

25. Most beach camps on river Ganga are located off Rishikesh-Badrinath National Highway and vehicles being plied are required to comply with all requisite pollution clearances and certificates prescribed under law.

26. The State further submitted that beach camp operators are prohibited from using firewood for cooking. None of the camp operators in the forest area are allowed to serve/offer alcohol and consumption of any intoxicant is strictly prohibited. At the end of rafting season in May the beach is first inspected by forest department and NOC is issued. In case any camp operator fails to receive NOC from the forest/revenue department, the authorities cancel their permit and the operator is not eligible for renewal of the permit.

27. Tourism and Forest Departments have established Rules and procedures regarding setting up and operation of rafting and beach camping. It was submitted by the State that the applicant has concealed material information as bare perusal of the RTI response dated 16th December, 2014 reveals that it pertains to Uttarakhand Tourism Development Board and not to forest or revenue department. It was also submitted that the Articles and publications placed on record must be read as a whole. The violation, if any, must be dealt with by the State Government, in accordance with law.

28. An inter-departmental meeting of State of Uttarakhand under the Chairmanship of Chief Secretary was conducted on 8th September, 2010 on Rapid Impact Assessment Report of WII which was released in June 2010. In the meeting, it was decided that the Rapid Impact Assessment Report shall not be used as basis of beach allocation and allocation will be done as per previous years.

Further, the Principle Chief Conservator of Forests shall get a study conducted by

WII as per determined and demarcated criterion and indicators.

29. It has been submitted by the State that the tourism department grants rafting permit, whereas relevant revenue or forest authorities grant beach camping permit. Thus, there is nothing for any re determination of the manner in which the licenses are to be issued. The suggestions made by the applicant are without any foundation, they do not reflect the correct position and there are sufficient Rules and Regulations in place to protect and preserve natural resources.

30. In the subsequent affidavit filed on behalf of the State it has also been averred that about 37 beach camps in the reserved forest area operating on regular basis and the permission for same is being granted by Uttarakhand government for September to June every year.

31. Beach camping is governed by Government Order bearing no. 7077/14-2-99-944/88 dated 25th September, 1999 and rafting is governed by Rules of 2014.

32. Process of allotment of fresh permission starts with application from concerned company/firm, applied area is verified by the forest guard and forester along with applicant and Site Inspection Report (for short, "SIR") is sent to Range officer of the area. Range officer then sends recommendation for allotment of beach area through sub-divisional forest officer. Based on recommendation of Range Officer, sub divisional Forest Officer and Divisional Forest Officer, issues NOC for allotment of beach camps. Based on the NOC, conservator of forest gives the permission for beach camping for next season.

33. Similarly, there is a procedure of such permissions for renewal. The staff regularly inspects the beach areas for any violation. Right from 2005-06 to 2013-14 in Shivpuri range number of cases for violations were noticed and compounding fine was imposed. In fact, one case under Wildlife Protection Act, 1972 against three staffs of Himalyan River Runner was also registered. In 2014-15 three beach camps violated certain conditions against which cognizance has been taken by local forest guards and in those cases even renewal has been withheld. Range case no 3/Shivpuri/2015-16 dated 23rd April, 2015 in matter of illegal possession and use of firearms in reserved forests was noticed and case was registered. However, these respondents pray that the Tribunal should not interfere and the application should be dismissed.

34. The State of Uttarakhand has stated that they would not grant any permission for rafting camps till the orders of the Tribunal. The interim order of the Tribunal dated 31st March, 2015 has continued till date and had not been varied by the Tribunal by amendment or otherwise. However, IAPRO has submitted that it consists of 70 rafting and camp operators in Uttarakhand and there are approximately 94 rafting camp operators in Kaudilyala to Rishikesh. It is averred by them that incomplete and incorrect facts have been stated and material information has been withheld from the Tribunal.

35. Rafting season in Kaudilyala to Rishikesh lasts from September to June every year. Rafting camp operators only set up temporary pegged tents which operate without electricity or generators, without running water for showers or toilets and use only dry pit toilet. Rafting and camping industry contributes immensely to local economy thereby, reducing threats on local biodiversity. Rafting camps upon the end of the season are completely removed and sites are inspected by the officers.

36. White water rafting first began in India in 1980s on river Ganga and its tributaries around the Rishikesh Kaudiyala stretch. In 1990 the Directorate of Tourism UP Hills, Dehradun issued rafting licenses to the rafting operators permitting them to carry on their rafting and camping activities as per norms.

37. IAPRO also relies upon different Government Orders issued by the State of Uttar Pradesh and then by Uttarakhand. It is submitted that IAPRO and its members always brought any threat to the environment to the notice of proper authorities realizing that

future of riverside camping as sustainable tourist activity was intrinsically linked with conservation and protection of surrounding ecology. No mechanized boats have been allowed and adequate measures for safety of wildlife are being observed.

38. It is submitted by IAPRO that WII recommendations in the Ecological Impact Assessment conducted in July, 1999 were duly incorporated in the Government Order dated 25th September, 1999. Camping permits for five years were issued by the Forest Department by 2004. Thereafter, yearly permits are being issued. Due procedure is being followed for granting permission and permit for camping. The rafters have to pay Rs. 20,000 per raft/canoe/kayak and environmental fee to Forest Department as per Rules of 2014. Camp operators are charged per square meter rate by forest/revenue department depending on size of each camp site for every camping season. The National Tourism Policy 2002 and the National Environment Policy 2006 also seeks to promote eco tourism activities in India.

39. It is submitted by IAPRO that the dry pit toilets have been found to be a sustainable and eco-friendly method of composting human waste. The dry pit toilet tents are located at a safe distance from the river say 50-60 meters.

40. It is averred by the Association that the Rapid Impact Assessment Report by WII released in June 2010 was conducted in a hurried, partisan and haphazard manner. It should not be made the basis for arriving at any appropriate decision. According to IAPRO this Report has been rejected by the Government of Uttarakhand. The rafting camp operators have accepted bookings for the months of September and October 2015 but as they have been shut down, it is causing them great hardship.

41. It is also submitted that large number of Indian and foreign tourists come to this part particularly for rafting and camping. Tourism is a significant contributor to the GDP of India. However, at the same time there is an urgent need to develop these industries in order to ensure minimum impact on nature and environment. According to these applications, the most important aspects for eco-tourism activity are considered to be that (i) the activity must be non-consumptive/non-extractive; (ii) it must create an ecological conscience; (iii) the activity must hold eco-centric values and ethics in relation to nature; (iv) the activity must take place in low impact facilities which have minimum consumptive requirement; (v) The activity should provide a positive experience for both visitors and hosts; (vi) it should produce direct financial benefits for conservation; (vii) it must generate financial benefits for both local people and private industry; (viii) it should deliver memorable interpretative experiences to visitors that help raise sensitivity to host countries/regions political environmental, and social climates.

42. It is submitted that in 2014-2015, 57,546 number of people visited rafting camps in the area of Kaudiyala - Rishikesh out of which 3,346 were foreign visitors. The clients at site are given proper briefing in relation to do's and don'ts by camp guides. There is no environmental and ecological threat, most of the camp operators often act as environmental stewards in instilling a sense of appreciation for nature and conservation in the visitors. The rafting camps at Shivpuri have also played host to numerous international and national championships such as the Asian Whitewater Championship (2003), National River Rafting Championship (2003), The Foursquare Whitewater Rafting Challenge Etc. The Rafting and camping activities are separated it would be reduced to joy-ride down the river. It is the case of *IAPRO* that the rafting camps are providing direct and indirect employment to roughly 60,000 people in the state of Uttarakhand. The major source of pollution of River Ganga are inflow of untreated sewage, cremation, ritual bathing and submerging offerings, road widening along the river Ganga, lack of facilities to handle solid waste in the towns and cities and rampant mushrooming of hotels and ashrams in the state of Uttarakhand. In these circumstances they submitted that the camping and rafting activities should be

permitted as it is going on from the past.

43. From the above pleaded case of the respective parties to this *lis*, in our considered view, the following questions fall for determination of the Tribunal:

1. Whether the application is barred by limitation in terms of proviso to Section 14 of the National Green Tribunal Act, 2010?
2. Whether setting up of temporary camps, particularly in the declared forest area amounts to non-forest activity and requires approval of the Central Government as contemplated in terms of Section 2 of the Conservation Act?
3. Whether in the facts and circumstances of the present case, permitting establishment of camps for a major part of the year and year after year amounts to temporary assignment by way of lease or otherwise to a private person of any forest land or portion thereof, in terms of sub-section (iii) of Section 2 of the Conservation Act attracts restriction contemplated under Section 2 of the Conservation Act?
4. Whether it was permissible for the State of Uttarakhand to cover regulation of forests under the Rules of 2014 which were formed under clause (a) and (b) of sub-section 2 of Section 8 of Uttarakhand Tourism Development Board Act, 2001 (for short 'Act of 2001') when the field was already covered under the Central legislation, i.e., the Conservation Act?
5. Whether eco-tourism in the forest area would squarely fall within the ambit and scope of the provisions of the Conservation Act and the letter dated 28th August, 1998 issued by MoEF is liable to be quashed?
6. Whether camping site is a purely commercial activity and cannot be permitted in the forest land or on the banks of river Ganga, keeping its impact on environment in mind and should be barred?
7. If question no. 6 is answered in the negative, what should be the regulatory regime governing carrying on of such rafting and camping activities?
8. What is the relevancy for determining the conduct of the State Government, private parties and the incidents of violation reported before the Tribunal?
9. What directions should be issued by the Tribunal?

Discussion on the merits of the points of determination referred above.

DISCUSSION ON ISSUE NO. 1

1. Whether the application is barred by limitation in terms of proviso to Section 14 of the National Green Tribunal Act, 2010?

44. None of the respondents have taken up the objection in relation to limitation in their respective replies and that the application of the applicant is barred by time. However, the Learned AAG appearing for the State of Uttarakhand during the course of his arguments raised the plea of limitation. It was contended that the application of the applicant has been filed much beyond the period of 6 months from the date when cause of action first arose and as such the application is not maintainable. Reliance was placed in that regard upon Section 14 of the National Green Tribunal Act, 2010 (for short, "NGT Act"). On behalf of the applicant, it was contended that the application is based upon recurring cause of action and is within time. It was every issuance and/or renewal of river rafting or camp licence which gives a fresh cause of action. Even according to Rules of 2014 every permit would be a new and distinct cause of action and reliance was placed on judgments of the Tribunal in the cases of *The Forward Foundation, A Charitable Trust* v. *State of Karnataka*, 2015 ALL (I) NGT Reporter (2) (Delhi) 81 and *Goa Foundation* v. *Union of India*, 2013 ALL (1) REPORTER NGT REPORTER (DELHI) 234 and the Tribunal in the case of *Forward Foundation* (supra) held as under:—

"24. The expression 'cause of action' as normally understood in civil

jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref : *Liverpool and London S.P. and I Asson. Ltd.* v. *M.V. Sea Success I*, (2004) 9 SCC 512, *J. Mehta* v. *Union of India*, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, *Goa Foundation* v. *Union of India*, 2013 ALL (I) NGT REPORTER DELHI 234].

24.1 Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798.

26. In the case of *State of Bihar* v. *Deokaran Nenshi*, (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence

continues. The Hon'ble Supreme Court held as under:"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act oromission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj* v. *Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd.* v. *Hb Leasing and Finances Co. Ltd.*, (2013) 199 DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law. 27.1. Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref : *Khatri Hotels Private Limited* v. *Union*

of India (UOI), (2011) 9 SCC 126, *Bal Krishna Savalram Pujari* v. *Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798, *G.C. Sharma* v. *Municipal Corporation of Delhi*, ILR (1979) 2 Del 771, *Kuchibotha Kanakamma* v. *Tadepalli Ptanga Rao*, AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action. To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between

continuing and recurring cause of action with some finesse in the case of *M.R. Gupta* v. *Union of India*, (1995) 5 SCC 628, the Court held that:

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that it the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.
>
> The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao* v. *Mattapalli, Raju*, 1949 SCC OnLine FC 20 : AIR 1950 FC 1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref : *Ex. Sep. Roop Singh* v. *Union of India*, 2006 SCC OnLine Del 1004 : (2006) 91 DRJ 324, *Bengal Waterproof Limited* v. *Bombay Waterproof Manufacturing Company*, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence

made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose."

45. We do not find any merit in the objections raised on behalf of the State of Uttarakhand. Under Section 14 of the NGT Act, the Tribunal has the jurisdiction to entertain and decide all civil cases where substantial question arises to environment (including enforcement of any legal right relating to environment) is involved and such question arising out of the implementation of the enactments specified in Schedule-I of the NGT Act. Such application is required to be filed within a period of six months from the date on which cause of action or such dispute first arose. The Tribunal would entertain such an application beyond that period but not exceeding 60 days if it is shown that the applicant was prevented by a sufficient cause from filing the application. The 'cause of action first arose' would have to be understood in reference to continuing cause of action, where the cause of action is recurring and is distinct or is a new cause of action. It would be a fresh cause of action giving rise to period of six months from such date in such cases. Rafting and camping is an activity which has been carried on for years now. The Rules were framed in 2014 by the State of Uttarakhand under which permission and licenses for rafting and camping respectively are to be granted. According to the affidavit filed on behalf of the State, it is an annual feature and permission/license are granted from September to June every year. Thus, every year it is a fresh cause of action. Furthermore, the application even for deciding the question of limitation has to be read and construed in its entirety. In the application, documents and affidavits filed thereto, it has been argued that in the recent years there has been a tremendous increase in rafting and camping authorities leading to pollution of the river, degradation of the forest and generation of large quantity of waste. A larger Bench of the Tribunal in the above referred cases has clearly stated the principle of law that when the application is based on recurring cause of action then fresh cause of action would not be hit by the language of Section 14 of the NGT Act and each fresh event would give a fresh cause of action and consequently the period of limitation of six months.

46. Present application has been filed raising the substantial question of environment as well as enforcement of legal rights arising under the Conservation Act as well as the Rules of 2014. Rule 5, 7 and 8 of the Rules of 2014 specifically provide the period for which permits would be granted. Applications are expected to be moved between 1st April to 30th April. The maximum period for granting permit would be 5 years and the permit will be required to be renewed every year. This is indicative that

every renewal and grant would be a fresh cause of action or a recurring cause of action and not a continuing cause of action. According to the applicant there is indiscriminate, unregulated rafting and camp activity which is allowed by the State authorities without any proper application of mind. There is a continuous violation by polluting river Ganga and its banks. An application under R.T.I had been filed by the applicant to which reply was received from Uttarakhand Tourist Development Board giving details thereof for that year, which is the very foundation of this application. The application was filed before the Tribunal on 26th March, 2015 within the period of six months.

47. Furthermore, the applicant claims and has rightly invoked Precautionary Principle in terms of Section 20 of the NGT Act. The Precautionary Principle can be safely applied to protect and prevent the environment and ecology. The prayer of the applicant is for proper regulation of rafting and camping activity to prevent damage, degradation and pollution being caused in relation to the forest area, river bank and river Ganga. Such an action would not be hit by limitation. Thus, in these circumstances we have no hesitation in holding that the present application has been filed within time.

DISCUSSION ON ISSUE NO. 2 AND 3

2. Whether setting up of temporary camps, particularly in the declared forest area amounts to non-forest activity and requires or not approval of the Central Government as contemplated in terms of Section 2 of the Conservation Act?

3. Whether in the facts and circumstances of the present case, permitting establishment of camps for a major part of the year and year after year amounts to temporary assignment by way of lease or otherwise to a private person of any forest land or portion thereof, in terms of sub-section (iii) of Section 2 of the Conservation Act attracts restriction contemplated under Section 2 of the Conservation Act?

48. The study of WII in 2010 categorised the stretch between Kaudiyala and Rishikesh as sub-tropical broad leaf forest. In the case of *Lafarge Umiam Mining Pvt Ltd.* v. *Union of India*, (2011) 7 SCC 338 while referring to Section 2 of the Conservation Act the Supreme Court held that this is how the concept of prior approval from the Central Government comes into picture and thus prior determination of what constitute forest land is required to be done. Referring to the directions in the case of *T.N. Godavarman Thirumulkpad* (supra) the Court further directed that the requirements of submitting the approval for forest diversion is exclusively the obligation of the State Government. Restrictions were on the reservation of forest land or use of the forest land for non-forest purposes. Every State Government was expected to identify areas which are forests irrespective of whether they are notified, reserved or cultivated under any law and also identify areas which were earlier forest but stand degraded, denuded or cleared. Every State has been directed to identify and declare the forest land irrespective of ownership. It appears that State of Uttarakhand has not finalised and issued notification for the entire State in terms of the directions of the Hon'ble Supreme Court of India as yet. The stretch from Kaudiyala to Rishikesh would be a deemed forest and would be subject to the provisions of the Conservation Act. According to the applicant the State has taken a categorical stand that for the purposes of camping that the areas that fall within the forest area are issued permits/licenses by the Forest Department of the State while for the other areas falling in the revenue land, the Revenue Department issues the license. The rafting permission is issued by Department of Tourism and this would clearly mean that State has camps located in both forest as well as revenue lands. One undisputed fact is that all these camps are located within the flood plain or river bed of Ganga. It is on record

that there are more than 37 forest area sites for camping and there are nearly 2,463 tents and 51 beaches on the revenue land of Tehri and few beaches on the revenue land of Pauri. Though, according to the applicant the camps are keeping area much in excess of 1500 to 2000 sq. M. per camp and have more than 150 to 200 tents each. It is sufficient to indicate the extent of rafting and camp activity that is being carried on the banks of river Ganga.

49. There is a basic dispute between the parties. According to the applicant, the activity is unregulated, haphazard and polluting river Ganga while according to the State, the activity is completely regulated, non-polluting and is under constant vigilance of the authorities concerned. Keeping in view the rival contentions, when the matter was taken up for hearing on 7th August, 2015 after hearing the Learned Counsel appearing for the parties, the Tribunal raised certain specific queries in regard to the manner and methodology of issuance of such permits as well as the extent to which the activities were to be regulated. In response to the queries made, the State of Uttarakhand filed a detailed affidavit before the Tribunal on 18th August, 2015. Rather than referring to the contents thereto it is appropriate to reproduce the following part of the said affidavit:

> 3. That thereafter the matter was listed before the Hon'ble Tribunal on 7th August, 2015, the Hon'ble Tribunal heard the matter and made specific queries regarding:—
>
> (i) Whether any inspection was done by the respondents on the beach camping sites prior to granting of permissions for beach camping?
>
> (ii) Whether any survey was done regarding these rafting camps, and after inspection any rafting camp is found violating the terms and conditions or not?
>
> (iii) Whether the persons found violating the conditions are penalized or not, whether any fine has been imposed on them, any violater's permit is cancalled or not, and what action has been taken by the respondents-State against the said violaters [if any]?
>
> (iv) Whether any study or survey has been done before identifying the beach camping sites by the forest department and other concerned respondents?
>
> (v) 'Whether rapid Impact Assessment report prepared by the Wildlife Institute of India is considered for allocation of the beaches and new beach camping sites?
>
> (ii) the first formal permission for the establishment of temporary beach camps in the reserve forest area along the river
>
> Ganga was given by the Government of Uttar Pradesh in 1993(vide letters 6713/14-2-93-944/1988 dated 28th October 1993 and 7429/14-2-93-944/1988 dated 4th April 1994 with certain conditions.
>
> The Principal Secretary, UP Government forwarded a representation to the Ministry of Environment and Forests (MoEF) requesting a reconsideration of its stand on the beach camps on the river bank. The MoEF in its reply expressed the opinion vide D.O. letter no. 6-5/89-WL.I Dated 28th August 1998 that rafting and beach camping activities do not come under the purview of the Forest Conservation Act as it is an ecotourism activity. The letter further stated that it is necessary to have a Management Plan for this area to lay down guidelines to regulate camping. The Wildlife Institute of India conducted an Ecological Impact Assessment of the rafting camps based on a one week field based impact assessment study in the year 1999 and recommended for river banks to be used as beach camps with various conditions.
>
> (iv) At present, beach camping in the above area is governed by G.O. No. 7077/14-2-99-944/88 dated 25th September 1999 and rafting is governed by

Uttarakhand River Rafting/Kayaking Rules 2014.

8. That the point wise reply to the abovementioned five queries as raiseg by this Hon'ble Tribunal are under:

(i) The procedure for granting fresh permission for beaching camping is laid down as under:

A. The process of allotment of fresh permission starts with the application for the same from the concerned company/firm.

B. The applied area is verified by the forest guard and the forester along with the applicant and the site inspection report(SIR) is sent to the range officer of the area.

C. The Range officer then sends his recommendation for allotment of beach area through the sub divisional forest officer.

D. Based on the recommendation of the range officer and sub divisional forest officer, divisional forest officer issues NOC for the allotment of beach camp to the concerned person/company.

E. Based on the above NOC, the Conservator of Forests gives the permission for beach camping for the next season. Copy of the application, SIR of Forest Guard and Forester, recommendation of Range Officer and Sub Divisional Forest Officer, NOC given by DFO and permission given by Conservator of Forests with regards to Shri Dharmendra Singh Negi c/o Him Ganga Adventure, Kailash Gate is annexed as ANNEXURE A1 to the present affidavit for kind perusal of this Hon'ble Tribunal.

The procedure for renewal for old permission for beaching camping is laid down as under:

A. The season for Rafting/Kayaking in the river Ganges is from 15th September to 15th June every year. Beach camps areas in Narendra Nagar Forest Division are parts of the reserve forest area of Nirgarh, Bramhapuri, Shivpuri, Kaudiala and Singtali forest blocks under Shivpuri range of the division.

B. The forest blocks/compartments are directly monitored and inspected by concerned forest guards and foresters. The forest guards and foresters areauthorised to inspect and take iegai action in cases OT violations under Indian Forest Act 1927 amended in 2001.

C. The process of renewal of permission of beach camp area starts before the start of the monsoon season, when the beach camp operators leave the area before the start of the Monsoon. The regular inspection of the beach camp areas is made by the local forest guard and forester of the area for the whole season to ensure the compliance of the conditions stipulated in the permission. The Beach camp operator informs the forest department before leaving the beach. In this the camp operator provides various information in prescribed format and applies for the No objection certificate for the next season.

D. Based on the above application and information provided by the beach camp operator, the forest guard and the forester of the area inspects in beach camp and reports to the Range officer about the general compliance of the conditions stipulated in the permission granted by the Conservator of Forests.

E. The Range officer sends his report through Sub divisional forest officer to Divisional Forest Officer(DFO).

F. Based on the recommendation of the Sub divisional forest Officer, UFO issues the No-objection Certificate to the concerned person/company.

G. Based on the above NOC, the Conservator of Forests gives the permission for beach camping for the next season. Copy of application for NOC for renewal,

information in given formats, SIR by Forest Guard and Forester, recommendation of Range Officer and Sub Divisional Forest Officer, NOC of Divisional forest officer and permission given by conservator of forests with regards to Ms. Log out at work, Mussorie is annexed as ANNEXURE A-2 to the present affidavit for kind perusal of this Hon'ble Tribunal.

III. That the Range officer and the other staff of the area regularly inspect the allotted beach areas as part of their regular duty and takes cognizance of any violation of any condition stipulated in the permission. As per the records of the Shivpuri range, in year 2005-06, six cases of violations were reported in which a total of Rs. 47288 was recovered as compounding amount under Indian Forest Act 1927 (IFA); in year 06-07, four forest offences were reported. All the cases were compounded under IFA with a total compounding fine of Rs. 9000. In 2007-08, five cases were reported. which were Compounded with a total fine of Rs. 27000. In 2008-09, one case was reported which was compounded with a fine of Rs. 10000. In 2009-10, 15 cases were reported. Which were compounded with a total compounding amount of Rs. 15000. In 2010-11, two cases were reported which were compounded with compounding fine of Rs. 6800. In 2012-13, one case was reported which was compounded with fine of Rs. 5000. In 2013-14, four cases were reported which were compounded with compounding fine of Rs. 20000. In 2006-07, one case under Wildlife Protection Act 1972, was registered against three staff of Himalayan River Runner. The case is under trial at District court, Tehri.

In the year 2014-15, 3 beach camps have violated certain conditions and against the said violations cognizance have been taken by the local forest guards. The details of the forest offences registered are:

(a) Range case no. 3/Shivpuri/2015-16 dated 23-04-2015 against Mr. Yogesh Bahuguna c/o Ms. Garhwal Adventure, Kailash Gate, in matter of illegal possession and use of fire arms in reserve forests.

(b) Range case no. 4/Shivpuri/2015-16 dated 05-06-2015 against Ms. Pratima Shah c/o Ms. River wild in matter of encroachment in the reserve forests

(c) Range case no. 5/Shivpuri/2015-16 dated 06-06-2015 against Ms. Shiv Ganga adventure, Dhalwala in the matter of unauthorised use and intention of encroachment of the beach area.

Forest offence have been registered in all the above three cases of violations. The detailed enquiry is in progress in all the cases and due penal action will be taken under Indian Forest Act 1927 as amended in 2001. Appropriate action regarding cancellation of the beach permits will be taken by the forest department at the time of allotment of beach camps for the season 2015-16 for the above violations. At present the [No objection certificate] has been withheld by the Divisional office pertaining to all the above three cases of violations.

VI. Each year, after the monsoon season beach camp sites located in the reserve forest area of the abovementioned forest blocks are identified by the field staff of the forest department and intimated to the higher officers. No separate study or survey is conducted by any other authority other thanforest department. However, detailed study of the area was done by Wild life Institute of India, Dehradun in 1999 regarding the beach camping in the area.

VII That in the civil areas of District Tehri and Pauri, the permits are given by the concerned District Magistrate

VII An inter departmental meeting of the State of Uttarakhand under the Chairmanship of Chief Secretary was conducted on 08.09.2010 on the rapid impact assessment report of the Wildlife Institute of India released in June, 2010 in the meeting it was decided that the Rapid Impact Assessment report shall not be used as the basis for the beach allocation and the allocation of the

beaches will be done as per the previous years. Accordingly the beaches are allotted to the rafting permit holders who were allotted beaches in the earlier years. The Principal Chief Conservator of Forests shall get a study conducted by the Wildlife Institute of India as per some determined and demarcated criterion and indicators and appropriate decision shall then be taken in this regard.

10. That in view of the abovementioned facts, the respondent Nos. 3 to 4 [State of Uttarakhand] is very serious pertaining to the issue involved in the present matter, with regard to protection of environment and it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to dismiss the present original application.

50. From the above affidavit it is clear that efforts are being made to regulate and channelize the procedure for grant of permits for establishment of camps and regulate the activities. There are serious violations committed by different parties. The State of Uttarakhand had issued permissions to carry on the non-forest activity in the reserved forest area under the provisions of relevant laws. It had also made a reference to MoEF vide its letter dated 31st July, 1998. This letter was responded by MoEF vide letter dated 24th August, 1998. MoéF expressed the view that camps on sandy stretch of river banks for rafting does not fall under the provision of Conservation Act and it is basically an eco tourism activity. However, it had to be assured that camping is according to the Management plan approved for the concerned area/forest area. Besides stating other restrictions and precautions that the State of Uttarakhand would take, it was specifically stated that no permanent or Pakka structure would be allowed at the camping sites. Thereafter, MoEF vide its letter dated 7th October, 2014 issued guidelines for diversion of forest land for non-forest purposes or execution of temporary work in the forest land. This was a letter generally issued by MoEF as it had received representation from different quarters. Vide this letter it clarified that the work which does not involve any tree cutting, is a temporary work and the approval as contemplated under Section 2 of the Conservation Act is not required. However, it clarified that temporary work in the forest land which does not involve breaking up or clearing of any forest land or portion thereof assigned by way of lease or otherwise to any person or using forest land does not create any right on such forest land or such will not require prior approval.

51. Principally, it was on the strength of these two letters issued by MoEF that the State of Uttarakhand had been issuing permits and do not insist upon approval from the Central Government in terms of Section 2 of the Conservation Act. Interestingly, both these letters had been issued by the Additional Inspector General (Wildlife) and the Director, MoEF respectively. However, much prior thereof on 23rd May, 1990 MoEF had written to the State of Uttar Pradesh that camping on sandy stretch of the river would be source of pollution and threat to the forest on the river bank. After lapse of 8 years on 31st July, 1998 the State of Uttar Pradesh upon receiving letter from the Rafting Company requested that the camps may be allowed on the sandy stretch of the river Ganga. The letter dated 31st July, 1998 reads as follows:

No. 4790/14/14-2-98-944/88

Geroge Joseph
I.A.S
Principal Secretary

Phone : 0522288244

Fax : 238010
Forest Department
U.P. Government

Lucknow

Dated : July 31, 1998

The Secretary,
Environment and Forest,
Govt. of India,
New Delhi.

Subject : Camping on sandy stretches by river rafting teams

Sir,

Please refer to the Ministry's letter No. 11-2/90-FC dated May 23, 1990, which says as follows:"Camping on sandy stretches of the river would be a source of pollution and a threat to the forest on the river bank. If rafters have to make night halts, this would be on the habitations on the roadside where food and fuel is available.

Rafters have represented to the State Government that Ganges, as in their view, it does not cause any pollution.]

I am forwarding the representation from a rafting company. You may like to reconsider the issue and permit camping on the river banks.

I will be grateful if a quick decision is taken in the matter as the season for rafting is approaching fast.

Yours faithfully,
Sd/- illegible
(P. George Joseph)
Principal Secretary"

52. From the above correspondence of MoEF it is clear that till 1998 the view of MoEF was that camping should not be permitted in the sandy banks of the river and the forest area. However, the letter dated 28th August, 1998 made some variations as already stated above.

53. The letter of the Ministry of 27th March, 2015 which we have already reproduced above gives a final stand of the Ministry. According to this letter, the approval of the Central Government would not be necessary in terms of Section 2 of the Conservation Act only if it satisfies the conditions stated in that letter. Temporary utilisation of the forest area, though could not be stated with exactitude. Still, it was clarified that temporary use could be where it was a temporary activity and did not involve breaking up or clearing of any forest land or portion thereof and does not involve assignment by way of lease or otherwise in favour of third party. It does not create any right on such forest land for using forest land temporarily and use of such forest land is limited to a period less than fortnight. MoEF further cautioned the State Government that it should seek clarification from MoEF if there were any doubts in that regard. MoEF, of course, denied preparing an exhaustive list for temporary work or activity which could be exempted.

54. From the above correspondence between the State Government and MoEF, it is clear that prior approval is required in regard to the diversion of the forest land for non -forest activity for temporary purposes. However they have submitted that detailed consultations with State Government of Uttarakhand are required to check whether this would apply to carrying on of camping activity at the river bank and in the adjacent forest areas or not. Even while issuing the letter dated 27th March, 2015 itself anticipated doubts from the State Governments particularly in relation to the activity to be treated as temporary activity.

55. Now, we may refer to the statutory provision under the Forest Conservation Act, Section 2 of the Conservation Act deals with restrictions on de-reservation of forests or use of forest land for non-forest purpose. This Act had been enacted to provide for

conservation of forest and for matter communicated there-under or ancillary thereto. The framers were impressed by the reasoning that de-reservation causes ecological imbalance and leads to environmental deterioration. Use of forest land for non-forest activities was one of the major concern and reasons stated in the objects of the Act. In the case of *Ambica Quarry Works* v. *State of Gujarat*, (1987) 1 SCC 213 and *Nature Lovers Movement* v. *State of Kerala*, (2009) 5 SCC 373 it was clearly held that primary purpose of the Act is to prevent further de-reservation and ecological imbalance. Further that the State Government cannot suo-moto de-reserve or reserve the forest land and permit the use for non-forest purpose without obtaining prior approval of the Central Government.

56. The language of the section 2 of the Conservation Act opens with a non obstante clause, which not only provides precedence to the law against the law enforced in the State and completely mandate the State Government or any other authority to take permission from Central Government to permit de-reservation of forest or use of forest land for non-forest purpose. All reserved forests or any portion thereto were covered under this restrictions. It would be clear that there are two different aspects covered under this provision. One relates to de-reservation of the reserved forest while the other is with regard to use of the forest land for non-forest purposes. In other words it is not only the de-reservation of the forest i.e. conversion of the forest area which would mean like deforestation of an area for a permanent project like establishment of the industry or construction of Hydro power projects or other projects. Without the act of de-reservation, using the existing forest for a non-forest purpose would also fall within the restrictions contemplated under Section 2 of the Conservation Act. In either of this event, the State Government or the authority would not be in a position to issue any permission without prior approval of the Central Government. The other class of cases where these restrictions would operate are where any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or any authority, cooperation, agency or any other association etc. not owned, managed or controlled by the State Government. The legislature has gone to the extent of specificaly explaining what non-forest purpose would mean for the purpose of Section 2. The legislature has further taken the action of removing ambiguity in the language of this provision by adding an explanation. It is a settled principle that the explanation is an appendix to the section to explain the meaning of the words contained in it. It becomes a part and parcel of the enactment; the meaning to be given to the explanation mostly would depend upon its terminology. The explanation shows a purpose and a construction consistent with that purpose can reasonably be placed upon it. That construction will be as against any other construction which fits in with the description or the avowed purpose of explanation. (refer *Dattatraya Govind Mahajan* v. *State of Maharashtra*, (1977) 2 SCC 548). As explanation is to illustrate the main provision, it should be read in harmony and clarify ambiguity in the section. Explanation is not a substantive provision by itself, it is entitled to explain meaning of the words provided in the main provision of the section and normally it should not widen the ambit of the Section.

57. The explanation to Section 2 of the Conservation Act is intended to elucidate what is non-forest purpose. It is stated to mean breaking up or clearing of any forest land or portion thereof for cultivation, any purpose other than re-fore station but would not include any work relating or ancillary to conservation, development and management of forest and wildlife as stated in the explanation. Thus, the explanation on the one hand provides what is non-forest purpose while on the other specifically excludes what is not to be treated as a non-forest purpose. Forest purpose is primarily to ensure conservation, development and management of the forest and that the activity which does not falls within the ambit and scope of this work would and should be taken as non-forest activity and/or user for non-forest purpose.

58. The Learned Counsel Mr. Sibal appearing for IAPRO vehemently contended that the provisions of Section 2 of the Conservation Act are not attracted when the activity of camping is carried on. It is neither assignment of the forest area nor a non-forest activity. According to him there is no breaking of the forest area or clearing of any forest area. It is his contention that while interpreting Section 2 of the Conservation Act the Principle adjudicated generally would be applied and the expression 'or otherwise' appearing in Section 2 of the Conservation Act would have to take colour from the expression 'assigned by way of lease'. Assignment would be to create an interest for the property granting permit for camping but it is not creating an interest in the property. Therefore, it is not necessary that it will not be required for the State Government to get approval of the Central Government before issuing such permits.

59. Further, he also submitted that the provisions of Section 2 of the Conservation Act are not attracted when activity of camping is carried on even in the forest area. It is not covered under any of the restrictions stated in Section 2 of the Conservation Act. The contention is that it is neither a non-forest activity carried out in the forest area nor assignment in terms of Section 2 (iii) of the Conservation Act. It is further the case of the Association that there is no clearing of forest or breaking up while such activity is carried on. Since no interest in the property is created by granting permission for camping, there cannot be any assignment. The expression appearing in Section 2(iii) of the Conservation Act 'or otherwise' would have to take colour from the term assigned by way of lease in view of the principle of *ejusdem generis.* On the strength of these contentions, it is finally submitted that the State Government would not be called upon to get approval of the Central Government as contemplated under Section 2 of the Conservation Act for the purpose of issuing such permits. The contention that at best, it is a license not amounting to carry out a limited activity with no interest in the property which is also indicative that such matters would not be covered under these provisions. Reliance in support of the contentions has been placed upon the judgment of the Hon'ble Supreme Court of India in the case of *United Bank of India* v. *Pijush Kanti Nandy*, (2009) 8 SCC 605, *Bharat Petroleum Corporation Limited* v. *Chembur Service Station*, (2011) 3 SCC 710 and *Pradeep Oil Corporation* v. *Municipal Corporation of Delhi*, (2011) 5 SCC 270.

60. The State of Uttarakhand has also raised similar arguments that it is not a non-forest activity but an eco-tourism activity and permission of MoEF is not required. According to the stand taken by MoEF, it is stated that keeping in view the nature and period for which such activity is carried on and the conditions in which it is carried on satisfies the ingredients of Section 2 of the Conservation Act. This being the non-forest activity permission of MoEF in principle would be necessary. According to the applicants, all land in this area is a forest land. It has been so recorded or even if not so recorded, the stretch between Kaudiyala and Rishikesh on either side of Ganges can be categorized as sub-tropical Broadleaf Forests, equivalent to Champion & Seth's 5B/C-1A : Dry sal bearing forest as described in the Rapid Impact Assessment Report conducted by WII. The activity of camping is a non-forest activity that is being carried on in the forest area which is impermissible without permission and sanction of the authority is required. Furthermore, there is clear breaking up of the forest land in physical and scientific terms. The activity of camping is being carried on for a major part of the area and continuously and permanent, semipermanent structures are raised and is being used for commercial purpose bringing it within the ambit of Section 2 of the Conservation Act. The expression 'or otherwise' is an extension of the words used prior to this expression and or otherwise or is a disjunctive word and on proper interpretation the approval of the Central Government does becomes necessary. To buttress their submissions, the applicant places reliance upon the judgment of the Hon'ble Supreme Court in the case of *Lafarge Umiam Mining Pvt. Ltd.* (supra), *Lilavati Bai* v. *State of Bombay*, AIR 1957 SC 521, *Animal Welfare Board of India* v. *Nagaraja*,

(2014) 7 SCC 547, and *Maharashtra University of Health Sciences* v. *Satchikitsa Prasarak Mandal*, (2010) 3 SCC 786.

61. In order to examine the merit of the respective contentions raised before us first and foremost, we need to analyze the language of Section 2 of the Conservation Act.

62. From the bare reading of the above provision, the noticeable feature of the section is that it opens with a non-obstante clause and gives it precedents not only over the other provisions of the Act but even over the law for the time being in force in a State. To put it simply, the State laws have to give way to implement the provisions of Section 2 of the Conservation Act as it is being the central law covering the field. 'Notwithstanding' clause in statutes impacts the provisions and renders them independent of other provisions contained in the law even if the other provisions provide to the contrary. The provisions will have overriding effect. Non-obstante clause is used by the legislature in contradistinction to subject to the other provisions of this clause is to mandate that the provision should prevail, despite anything to the contrary in the provisions not mentioned in such non-obstante clause and even other laws wherever stated. The Hon'ble Supreme Court of India in *Brij Rai Krishna* v. *S.K. Shaw and Brothers*, (AIR 1951 SC 115) has held that the expression "Notwithstanding anything contained in any other law" prevents reliance on any other law to the contrary.

63. The purpose is to protect the application of such provisions, despite contrary language is appearing in other provisions of the Act or even in other laws in force. The legislative intent is to ensure that the *non-obstante* clause and the law contained therein should have full operation or that the provision embraced in the *non-obstante* clause would not be an impediment for operation of the enactment. Reference can be made to the case of *R.S. Raghunath* v. *State of Karnataka*, (1992) 1 SCC 335.

64. Thus, it is clear that provisions of Section 2 of the Conservation Act, therefore, must have precedence over any other law for the time being in force in the State of Uttarakhand. The essence of Section 2 of the Conservation Act is to be examined in light of the preamble of the Act. This Act was enacted to provide for conservation of forest and for matters connected there with or ancillary or incidental thereto. It is not a matter which is confined merely to the conservation of forest but it expands its operation and enforcement to matters which are ancillary or incidental thereto. The provisions of Section 2 of the Conservation Act, therefore, have to be so construed in a manner as to achieve the object of the Conservation Act and an interpretation which would frustrate or cause impediment in execution or implementation of the law as envisaged in this Act has to be rejected. The intension of subsection (ii) is to place restriction on de-reservation of the forest or use of forest land for non-forest purpose. As such, the activities are not prohibited, they are regulated by imposition of restrictions in accordance with law. These restrictions have a dual check and balance method. Firstly, the State has to propose the activity and the conditions which need to be imposed for permitting such activity. Second is that the Central Government has to accord its approval for such activity which would culminate by issuance of order by the concerned State Governments in terms of Section 2 of the Conservation Act. In the present case, we are primarily concerned with the interpretation of Section 2(ii) and (iii) read with explanation to the section. Section 2(ii) contemplates imposition of restriction and passing of an appropriate order by the State Government where any forest land or portion thereof may be used for any non-forest purpose, Section 2(iii) requires that a the forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or the specified entities which are not owned and managed by the government. The legislature in its wisdom has gone a step further and added an explanation to Section 2 by Amending Act of 69 of 1988 (w.e.f. 15th

March, 1986). It states what will be the non-forest purpose. According to the explanation, 'non-forest purpose' means the breaking up or cleaning of any forest land or portion thereof for cultivation of tree, coffee, rubber, palm trees, horticulture plants. etc. Clause (b) of explanation is of far reaching consequence as it mandates that any purpose other than re-afforestation would be a purpose which is non-forest purpose. They have explained what is 'non-forest purpose' and it provides a further clarity by specifically stating as to what activity would not be included as a non-forest activity. All these classes of works are stated for conservation and protection of forest and wildlife. It is stated that if the work relates to, or is ancillary to conservation, developments and management of forest and wildlife namely establishment of check posts, fire lines, wireless communications and construction of fencing, bridges, culverts, dams, waterholes, trench marks, boundary marks, pipelines or like purposes then it will not be a non-forest purpose. In clarification to the explanation, the significant expression is 'or other like purpose' which call for interpretation. This leaves no doubt that, it is required to be a purpose which ought to be like the purpose specified by the legislature. It is a situation where the principle of *ejusdem generis* would be appropriate and the words 'or other like purpose' would mean and get colour from the preceding expression. If the proposed activity does not have similar ingredients, requirements and nature then it would be an activity which will per se become an activity of non-forest. Giving it any other meaning would lead to complete frustration in implementation of what has been stated i.e. non-forest purpose.

65. At this point, it would be appropriate to refer comparatively to the provisions of the State and the Central law that would have bearing on the matters in issue. These provisions even if are not overlapping *strict-senso* but they have the effect of diluting if not wiping out the effect of the Central law. They would further help in determining as to whether the activity in question is purely temporary or has essence of continuous activity in reference to the law in question. We may reproduce the provisions as follows:—

Forest (Conservation) Act, 1980	**River Rafting/Kayaking Rules Remarks**
2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing— (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government; (iv) that	**Uttarakhand River Rafting/Kayaking Rules, 2014** Rule 7 : Grant of Permit 1) After the recommendations of the Technical Committee, new applicant shall be issued a permit for a minimum of 2 rafts and maximum of 5 rafts during Ist and IInd year for a period of one year. Thereafter, based on merits and demerits, permit shall be issued for 5 years. In case of rejection of any application, the applicant shall have to be informed with reason for non-acceptance. 2) The operator's already holding permit for more than 5 rafts shall keep on holding the same until the permission expires/cancelled/rejected. 3) Every eligible applicant shall be issued a separate permit for each river and the operators already plying shall have to seek separate permit for each rivers after notification of these Rules. 4) The permit issuing authority shall

any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation. *Explanation* — For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for— (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; (b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.	issue river wise permit based on the carrying capacity of each river. 5) The applicant shall be granted permit for a maximum period of five years/seasons which will be necessary to be renewed every year. 6) In respect of carrying capacity of each river, the applications received in excess, their selection shall be made through lottery or auction. Rule 10 : Responsibilities and duties of permit holder/operator 7) Every permit holder/operator/river guide shall ensure that rafting/kayaking activities will be carried out in accordance with the bearing capacity prescribed by the manufacturing company or as per the bearing capacity determined by the Technical Committee. Rule 25 : Permission for temporary camps 1) Under Rule 7 permit holder shall apply to the concerned department/concerned District Magistrate for revenue land seeking permission for temporary beach camping on forest/revenue land situated along with the river banks. Private land owners along river bed will be considered for grant of permission of establishment beach camping for rafting/kayaking on priority basis keeping in view the bearing capacity of the river.
	The Uttarakhand River Rafting/Kayaking (Amendment) Rules, 2015 Rules 7(5) are substituted with the following provisions and Rule 7(7) has been added 7(5) The applicant shall be granted permit for a maximum period of five years/seasons. 7(7) In case of rest capacity of carrying capacity of river Ganga the priority shall be given to those firms who are conducting rafting in other rivers in Uttarakhand State.

From the above comparative table, it is clear that the provisions of the State Law, if not in direct conflict, are at substantial variance to the extent that they cannot be harmonized or reconciled to achieve the object of the central law.

66. In the above context, let us now examine the nature of the activity that is admittedly being carried on under the name and style of camping activities. It is an activity which is being carried on from September to June that means, an average ten months in a year. There are structures of permanent, semi-permanent and temporary

nature raised on the sites in question which vary from 20000 sq. m. to 50000 sq. m. on the sites. According to the applicant, these sites are located on the banks of the river, somewhere in the middle of the river or the forest area or adjacent to the river bank. According to the State of Uttarakhand, although the activity is for ten months in a year but no permanent or semipermanent structures are permitted to be raised. They are expected to put tent etc. only on the area for camp activity which is 20000 sq. m. to 50000 sq. m. Similar is the stand taken by IAPRO and other authorities of the State. Of course, it is un-disputed that it is a commercial activity having financial implications, investment and large incomes. According to the applicant, it is a commercial activity *simplicitor* while according to others it is eco-tourism.

67. At this stage, we are not getting into correctness of these details which we will discuss in the latter part of the judgment. It suffices to note that admittedly it is an activity which has impacts on environment and ecology and bio-diversity of the river. There are allegations and even records to suggest that number of camping areas have been found to be offending the conditions imposed by the State Government. Cases of breach had been registered against them and in a case even fire-arms were found to be in possession of the visitors coming to these camps. Photographs have been placed on record to show that there is permanent, semi-permanent and temporary structures raised and large scale tenting is done in the river bed. This activity from its nature, substance and actualities extending on the site clearly show that it is a non-forest activity for a non-forest purpose. This activity cannot be said to be included as relating to or co-ancillary to conservation, it is not for development and management of wildlife, it is nowhere achieving, much less, similar to the activities specified in the explanation to Section 2 of the Conservation Act which makes it an activity which is not non-forest activity. To fall in the explanation it has to be one of the stated activity or an activity which in absolute terms, nature and performance would be similar thereto. Once it is held that the activity of camping on the forest land or any portion thereof is a non-forest activity and for a non-forest purpose, the provisions of Section 2(ii) of the Conservation Act would be applicable and it would be expected of the State Government to issue permission/order in terms thereof only upon taking approval of the Central Government. The activity of camping does not have fundamental ingredients and the specified works which have been stated in exception to the explanation. They are nowhere within ambit of the excluding clause. On the contrary they would squarely fall within the scope of clause (b) of the explanation. Clause (a) even states an activity like cultivation of tea, rubber and coffee even horticulture has been treated to be non-forest activity, where the forest is broken up cleared of any forest land for these activities. Clause (b) of explanation emphasizes that any purpose, which is other than re-afforestation would be a 'non-forest purpose'. The law clearly reads against any such restricted activity like camping and certainly re-afforestation is not one of the main or even incidental purpose of this activity.

68. Taking with all its dimensions, the manner and the way as to how it operates, we are unable to accept the contention that it is not a non-forest purpose or activity.

69. Another limb of the submission on behalf of the respondents, particularly IAPRO is that since it is not assignment by way of lease or otherwise, there being no interest in land, it would not be covered under Section 2 (iii) of the Forest (Conservation) Act. Even if we accept this contention, the consequences will not be different as we have already held that this activity would be covered under the restriction of Section 2 in terms of Section 2(ii) of the Conservation Act. Still we will proceed to discuss even this contention of the respondents. It is correct that where in forest land or any portion thereof may be assigned by way of lease or otherwise to private persons or specified persons not controlled or governed by the management, the provisions of Section 2 of the Conservation Act would operate. It is also correct that the permission granted by

the State Government does not tantamount to lease as understood under the Transfer of Property Act, 1882. There is a clear distinction between lease and license. Lease has been defined under Section 105 of the Transfer of Property Act, 1882 while section 52 of the Easement Act, 1882 explains the word license. They are as follows:

> "105. Lease defined. — A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of corps, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms

On the other hand, Section 52 of the Easement Act, 1882 reads as under:

> "52. 'Licence' defined. — Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does no amount to an easement or an interest in the property, the right is called a licence."

70. A license granted creates a right in the licensee to enter into the land and enjoy it. The right of the licensee is a restricted one. A lease on the other hand would amount to transfer of property. A license has to be granted and this permission granted by the State of Uttarakhand to carry on camp activity is nothing but a license or a permission to carry on the non-forest activity in a forest land.

71. The Karnatka High Court in the case of *Magarahole Budakattu Hakku Sthapana Samiti* v. *State of Karnataka*, AIR 1997 Kar 288 while dealing with the expression assigned by way of lease or otherwise held as under:

> "27. Now, I proceed to ascertain the meaning of the expression "assigned by way of lease or otherwise". In the context of the statutory provisions, the word "assign" would mean "to make over a right or interest to another" (See *Mozley's and Whiteley's Law Dictionary*). According to Black's Law Dictionary as well, the word has the same meaning for the present purposes. Therefore, the restrictive Sec. 2 of the 1980 Act will apply to making over of a right or interest by the State Government or other authority, by way of lease or otherwise to any private person including a company in or over any forest land or in portion thereof. In the said sense, interest in an immovable property can be assigned by way of conveyance by any of the modes recognised under the Transfer of Property Act, 1882 namely, sale, lease, mortgage, charge, ascent, gift, disclaimer, release or any other assertion of property or any interest therein by an instrument except a will. The other two types of assignment of rights in an immovable property have been recognised under the Easements Act, 1882. These are easementary rights and rights as a licensee. These rights have been defined in the following manner:
>
> "Sec.4-"Easement"
>
> An easement is a rights which the owner or occupier of a certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or prevent and continue to prevent from something being done, in or upon, or in respect of, certain other land not his own."
>
> "Sec. 52-"Licence"
>
> Where one person grants to another or to a definite number of persons, a right to do, or to continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."
>
> 28. From the above, it is clear that Sec. 2(iii) of the 1980 Act restricts the right of the State Government to transfer or create any right in or over a forest land or a portion thereof either by of lease or otherwise. The expression "otherwise" will, in

my opinion, include assignment of rights even by way of casement or licence.

29. Application of law to the present facts

30. Keeping in view the facts as stated above, it cannot be seriously disputed that the State Government has, assigned a portion of the forest land by way of lease or otherwise thereby creating a right in the properties in question which forms a part of the "national park"-cum-"reserve forest" in favour of the fifth respondent, which is a private company, without seeking prior approval of the Central Government. There is an absolute prohibition on the grant of such rights under Sec. 20 read with Sec. 35(3) of the Wildlife (Protection) Act, 1972. As such the grant of lease in question is void and cannot be acted upon by the fifth respondent. Further, the transaction is also hit by Sec. 2 of the Forest Conservation Act, for want of prior approval of the Central Government."

72. The expression 'or otherwise' is intended to provide for something more and different than what is a lease as provided under the expression specifically used in Section 2(iii). The Section contemplates that forest land or any portion thereof may be assigned by way of lease or otherwise to any private person. 'Assignment' as per dictionary meanings is a task or piece of work allocated to someone as a part of job or course of study. The Oxford English Dictionary (3rd ed. 2010) defines 'Assignment' as an act of making a legal transfer of a right or liability; a document affecting a legal transfer of a right or liability. The Law Lexicon (3rded 2012) defines 'Assignment' as the term assignment, as ordinarily used, signifies the transfer, between living parties, of all kinds of property, real, personal and mixed, whether in possession or action and whether made by delivery, endorsement, transfer in writing, or by parole, and includes as well the instruments by which the transfer is made and the transfer itself. The Supreme Court in the case of *The Commissioner of Gift Tax, Madras* v. *N.S. Getty Chettiar*, (1971) 2 SCC 741, stated that 'Assignment' means the transfer of the claim, right or property to another. Lease creates an interest in the property while license creates a right *simplicitor.* It cannot be stated that a licensee of a forest area/forest land would not be covered under Section 2 of the Conservation Act. It is a permission granted vesting of certain rights to use the said forest area subject to a restriction and limitation imposed in the permission. Of course, it does not create any interest in the property like passing title to the licensee of a person in whose favour the permission is granted. 73. The expression 'or otherwise' is an explanation of the word 'of lease' and not only means lease in other form, the expression 'or otherwise' would fairly take into its ambit, grant of a permission or a license. The contention that while interpreting the word 'or otherwise' the Tribunal should apply principles of doctrine of *ejusdem generis* and hold that the expression 'or otherwise' is to take colour and should mean lease alone or something which is similar to the terms cannot be upheld. In the case of *United Bank of India* (supra), the Supreme Court was dealing with the Pension Regulations of the bank and while dealing with the expression 'qualifying service' held that it would be applicable to the persons/service rendered while on duty, and persons not in service are not entitled to the benefit. The term 'otherwise' appearing in the rule should be read *ejusdem generis.* It cannot be construed that a person not in service, would be deemed to be in service because of this expression. In para 15 of the judgment, the Supreme Court held as under:

"15. The meaning of the word "otherwise" as given in *Advanced Law Lexicon* (3rd Edn., 2005) is as under:

"*Otherwise-By* other like means; contrarily; different from that to which it relates; in a different manner; in another; in any other way; differently in other respects in different respects; in some other like capacity."

As a general rule, "otherwise", when following an enumeration, should receive *an ejusdem generis* interpretation (per *Cleasby, B. Monck* v. *Hilton*. The words "or

otherwise", in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned, (Cent. Dict.) [See *R&B Falcon (A) Ply Ltd.* v. *CIT*.]

74. Even while keeping the principle as enunciated by the Supreme Court (supra), the respondents including the private respondents cannot evoke any advantage. Firstly, the judgment of the Supreme Court was dealing with different jurisprudence i.e. the service regulations for a limited class of people. Secondly, the Supreme Court stated that the expression 'otherwise' could not create a class, which will be beyond the scope of the principal expression i.e. the 'qualifying service' which had been defined under Regulation 2000 of those Regulations. The 'qualifying service' had been independently defined meaning the service rendered while on duty 'or otherwise' and Rule 29 provided the conditions in which a voluntarily retiring employee should satisfy/specify certain requirements to claim benefit of pension. Thus, the word 'otherwise' was not used in the same provision, still the Supreme Court stated the principal as afore-noticed.

We have to construe the word 'or otherwise' with reference to the provisions of the Conservation Act, scheme, purpose and object of the Act and that too in light of the facts and circumstances of the present case. The widest term that could be used by the legislature is lease. Lease would cover all cases, where right in property is transferred by different forums/forms known to Transfer of Property Act, 1882. The word 'otherwise' has to be construed as an extension of lease because anything else would otherwise be covered under lease and there was no occasion to add words 'or otherwise'. Intent of the legislature is very clear that it wanted to create another kind of cases which were not lease but still would be covered under Section 2 (iii) on the principle of extension. In the case of *Lilavati Bai* v. *State of Bombay*, AIR 1957 SC 52, while dealing with the words 'or otherwise' Supreme Court held that the legislature has been cautions and thorough-going enough to bar all avenues of escape by using the words 'or otherwise'. Those words are not words of limitation but of extension so as to cover all possible ways in which vacancy may occur. Applying the said dictum of the Supreme Court in the present case, it is clear that the intention was to cover all cases of forest land being used for non-forest activity/purpose. It was to ensure that no cases escape the restriction of these laws. The cases will obviously be those which fall beyond the word lease. The grant of permission or license as afore-discussed would be the cases falling in the extension yet not covered by the expression lease'. While applying the principal stated in *Lilavati Bai* (supra), the Supreme Court applied the same with further expansion in *Animal Welfare Board of India* v. *Nagaraja*, (2014) 7 SCC 547, where the Court was dealing with the Notification issued by MoEF and the corrigendum issued by the Government of Maharashtra in relation to Section 11 of the Prevention of Cruelty to Animals Act, 1960. The case related to cruelty to animals who were being used in bullock cart race. While dealing with the expression 'or otherwise' in Section 11(1)(a) it was observed that such 'or otherwise' was intended to prevent the animals from unnecessary pain or suffering to the animals and the expression was not limited and intended to cover all situations where animals suffer pain. These expressions are purposefully included and not without any basis. It is also a settled principle that where the words are clear and there is no obscurity and intention of legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending the statutory provisions. In such case the principle of *ejusdem generis* is not attracted. The Supreme Court in the case of *Maharashtra University of Health Sciences* v. *Satchikitsa Prasarak Mandal*, (2010) 3 SCC 786 held as under:

"38. Therefore, the doctrine of *ejusdem generis* cannot be pressed into service to defeat this dominant statutory purpose. In this context we may usefully recall the observations of the Supreme Court of United States in *Helvering* v. *Stockholms*

Enskilda Bank, 293 US 84 (1934), 88-89, 79 L.Ed. 211, 55 S.Ct. 50, 52 (1934) as under:

> "….while the rule is a well established and useful one, it is, like other canons of statutory construction, only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of *ejusdem generis* is only one. If, upon a consideration of the context and the objects sought to be attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, *we must give effect to the conclusion afforded by the wider view in order \that the will of the legislature shall not fail*"
>
> (Emphasis supplied)

39. Therefore, with great respect, this Court is constrained to hold that the Hon'ble High Court possibly fell into an error by holding that the Grievance Committee has no jurisdiction to entertain the complaints made by 5th and 6th respondent since they are not approved teachers. Various other factual aspects were considered by the High Court but since the High Court has come to a clear erroneous conclusion that Grievance Committee has no jurisdiction in dealing with the complaint filed by the 5th and 6th respondent, the very basis of the High Court judgment is unfortunately flawed and cannot be sustained."

75. The doctrine of *ejusdem generis* has to be applied in the case of ambiguity of the expression, unclear legislative intent and where such interpretation would further the cause of statute/provision in which the expressions are used. In our view, none of these 72 essentials are satisfied in the present case. The expression 'otherwise' is intended to cover all other modes by which a forest land can be put to a non-forest use or purpose. This approach would further find support from the fact that under the explanation, the legislature has even provided what non-forest purpose means and further taken caution of even specifying what will be included therein. Specifying the users with such certainty and clarity, leaves no scope for introducing or taking away any of the expressions used by the legislature and rule of plain construction would serve the purpose keeping in mind that these are socio and environmental welfare legislation.

76. Another contention submitted accordingly to the respondents, particularly the private respondents is that since it is a license *simplicitor* and that too very limited one, licensee would not be covered under the expression 'or otherwise'. This license does not create any interest in the property which is the very essence of invoking the provisions of Section 2 of the Conservation Act. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of *Pradeep Oil Corporation* v. *Municipal Corporation of Delhi*, (2011) 5 SCC 270. In that case the Hon'ble Supreme Court was concerned with a question if the property tax could not be levied on licensee who had raised construction of petroleum storage depots and they had been subjected to property tax. It was observed that license was not assignable, but was revocable. Even in this case the Hon'ble Supreme Court while specifying the distinction between lease and licence as afore-noticed held that it was for the appellant to show that despite the right to possess the demised premises exclusively, right or interest in the property had not been created. However, it was observed further that maintenance facilities were to be provided and the definition of land building in the Delhi Municipal Corporation Act, 1957 should be given its fullest effect and even an Oil Tanker was held to be construction and therefore, it was liable to tax as claimed.

If we apply this very judgment relied upon by the private respondents, the principle stated therein is rather against them. Even in the present case the area in question is exclusively in the possession of the persons to whom permit is issued. They enjoy

exclusion of all others and the visitors are only those, who are permitted both to the nature and interest upon the property and enjoy the same, subject to the payment of such amounts as are imposed by them alone. Consequently, it is an activity where temporary or even semi-permanent structures are raised and activity carries on from year to year. Now, permits have been granted for 5 years which can be renewed year to year. Thus in our considered view, this judgment does not further the case of the respondents.

77. The Rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but its only permissible inference is that in the absence of an indication to the contrary, and where context, object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. Lord Scarman said "if the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation is a useful servant but a bad master". (Refer : *Kavalappara Kottarathil Kochuni* v. *State of Madras*, AIR 1960 SC 1080, p. 1103 : (1960) 3 SCR 887; *Tribhuwan Parkash Nayyar* v. *Union of India*, AIR 1970 SC 540, p. 545 : (1969) 3 SCC 99 (the rule is neither final nor conclusive). *Mangalore Electric Supply. Co. Ltd.* v. *C.I.T., West Bengal*, AIR 1978 SC 1272, p. 1275 : (1978) 3 SCC 248; *Grasim Industries Ltd.* v. *Collector of Customs Bombay*, AIR 2002 SC 1706, p. 1710 : (2002) 4 SCC 297 and *Lilawati Bai* v. *State of Bombay*, AIR 1957 SC 521, p. 529 : 1957 SCR 721; *Hamdard Dawakhana* v. *Union of India*, AIR 1965 SC 1167, p. 1172 : (1965) 2 SCR 192; *Grasim Industries Ltd.* v. *Collector of Customs Bombay*, supra and *Quazi* v. *Quazi*, (1979) 3 All ER 897, p. 916 : [1980] A.C. 744 : [1979] 3 WLR 823 (HL)).

78. Another contention on behalf of the respondents and private respondents to escape their responsibility in terms of Section 2 of the Conservation Act is that the activity does not result in breaking up much less non forest use of forest land or portion thereto for the activity. In support of their contention that this does not tantamount to non forest use of forest land or any part thereto reliance has been placed upon the judgment of Madras High Court in the case of *S. Jayachandran, Joint Secretary, TN Green Movement* v. *UoI*, (2000) 1 LW 301. This contention is again without merit. The view of the Madras High Court was in relation to film shooting in the forest area of Ooty. The petitioner had approached the Court against the respondents for carrying on such activity as well as to dismantle the film sets erected. In those facts, the Madras High Court took the view that breaking up of a forest area involves extensive digging etc. and mere carrying on of film shooting with temporary sets would not fall in that category. It was noticed in this judgment that extensive digging of wells or foundation of houses or tiling the land for the purposes of cultivation in a forest area may amount to breaking up of the forest land. The breaking up should be such, as to have some degree of permanence and there should be danger of deforestation by the activity. Firstly, this judgment on facts and on principle of law, both has no application to the present case. Admittedly, the camps are made in the area of 20,000-50,000 sq. mtr. or falling within the category of reserved forest land. The photographs also show that some basic foundation are laid for the purposes of fixing up of tents which is not a temporary measure but is of semi-permanent nature and various services are provided for the visitors to these camps. The camps are operational for ten months of a year and this process is continuing from year to year.

79. Although a forest is usually defined by the presence of trees, under many definitions an area completely lacking trees may still be considered a forest if it grew trees in the past, will grow trees in the future, or was legally designated as a forest regardless of vegetation type. As per Section 2 (ii) of Conservation Act provides that

no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for : (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; (b) any purpose other than re-afforestation.

80. Breaking up of forest land would mean its fragmentation in to two or more parts that loses continuity with each other. The breaking up of a forest can occur as a result of an obstruction created in such a manner that the two segments of the previously single strip gets separated from each other and exchange of biomass (especially animals) is obstructed/made difficult. As a matter of fact, this is possible only when such an obstruction is of permanent nature, e.g., construction of a wall, wide multi-lane tarred road with heavy traffic movement, creation of agriculture/horticulture land or human settlements/industrial complexes or raising of fencing in between the two segments. Further, breaking up of the forest ecosystem would occur only when the extent of these activities is quite significant and affects a large area. A few residential houses or a few small agriculture/horticulture fields here and there, for example, may not result in the breaking up/fragmentation of a forest.

81. A question which arises for consideration is whether setting up of rafting camps along the beach of river Ganga and its tributaries qualifies as breaking up of the forest as comprehended under Section 2(ii) of the Conservation Act or not. The contention of the respondents is that setting up of the camps of temporary type as such cannot be treated as breaking up of the forest. They contend that the camps laid on the river beach are of temporary nature and do not remain for the whole year. Therefore the activity is not in any manner violation of the Conservation Act. The petitioners, on the other hand, plead that the density of the tents together with the number of camps along the beaches for the most part of the year make the activity a permanent obstruction and hence qualifies it to be taken as a means of breaking up the forest.

82. Here we may note that the term 'forest' is used for a distinct type of ecosystem and does not include just trees or plants but comprises a great range of flora and fauna diversity, which are interdependent other and together with the abiotic features of the area form the ecosystem are called forest. Each individual constituent of this biodiversity is important in its own terms in ways we may not currently understand, as interdependent species have evolved over millions of years to interact and flourish.

83. The term 'breaking up' has to be understood with the object of the Conservation Act in mind. The primary purpose of the Act as already noticed is conservation of forest and to deal with matters incidentally and ancillary thereto. When we talk of breaking up a forest it does not mean simplicitor, physical breaking up of the forest area, but the impact of the activities on the eco system of the forest area. If in the forest area there is a substantial obstruction caused by raising of temporary or semi-permanent construction and these places are used for regular living of human beings and incidental activities are carried on, it certainly possesses an obstruction to the wildlife and eco system of the forest area and to the ecology of the area. This case cannot be compared to the case of *S Jayachandran, Joint Secretary, TN Greens Movement* (supra) rather if the activity of camping is carried on for ten months every year it has certain degree of permanency as understood and digging of the area is carried on. Thus, even according to that judgment, it would be breaking up of the forest area. Furthermore, this is an act being carried on by the private respondents with the permission of the State and is certainly not an act/purpose of reforestation. Thus, we are unable to accept this contention of the respondent.

In view of the above discussion, we would answer both the issues under consideration against the respondents. The cases of camping activities in the reserved

forest areas are activities which are for non-forest purpose or are non-forest activity in the forest area. These cases would attract the provisions of Section 2(ii) and (iii) of the Conservation Act. It is obligatory upon the State of Uttarakhand to seek approval at least as a matter of scheme from MoEF and then issue orders/permits in terms of Section 2 of the Forest Conservation Act.

DISCUSSION ON ISSUE NO. 4 AND 5

4. Whether it was permissible for the State of Uttarakhand to cover regulation of forests under the Rules of 2014 which were formed under clause (a) and (b) of sub-section 2 of Section 8 of Uttarakhand Tourism Development Board Act, 2001 when the field was already covered under the Central legislation, i.e., the Conservation Act?

5. Whether eco-tourism in the forest area would squarely fall within the ambit and scope of the provisions of the Conservation Act and the letter dated 28th August, 1998 issued by MoEF is liable to be quashed?

84. We would take up both the above issues together for discussion as they are inter-linked. Camping and rafting stated to be ecotourism activity is carried on under the slogan 'back to nature'. Ecotourism is about uniting conservation communities and sustainable travel. It is defined as responsible travel to natural areas that conserves the environment and improves the welfare of the local people. There are certain principles of ecotourism like; minimise physical, socio, behavioural and psychological impacts, building environmental and cultural awareness and respect, providing positive experiences for both visitors and hosts, providing direct financial benefits for conservation, design, construction and operation of low-impact facilities, recognizing the rights and spiritual beliefs of indigenous people etc..

85. Ecotourism may be treated as form of tourism involving visiting fragile, pristine and relatively undisturbed natural areas, intended as a low-impact and often small scale alternative to standard commercial (mass) tourism. Ecotourism is generally marked as 'eco-friendly' or environmentally sound. This is indeed the idea of ecotourism : low-impact, low-consumptive, and environmentally sensitive. (Refer : Lumsdon, L.M. and Swift, J.S. (1998) Ecotourism at a Cross roads : The case of *Costa Rica. J. Sustainable Tourism* 6(2) : 155-173).

86. Examples of negative environmental impacts of tourism to the protected natural areas have been listed as : overcrowding, environmental stress, trail erosion, deterioration of vegetation, noise pollution, contamination of air, water and land, forest fires, wildlife mortality, health hazard, habitat destruction, deforestation, erosion, ecological changes, behavioral changes of animals, groundwater pollution, scarring of landscape, etc. ***[****Boo, E. (1990) Ecotourism : The potentials and Pitfalls, Volume 1. Washington : WWF****]***. In view of the above definition of the term 'eco-tourism' the question arises whether the State Government treated the rafting and camping activity in the concerned area as an activity under eco-tourism and whether the advice received from MoEF in 1998 in respect of allotment of camps for the rafting was followed by it. If the answer is yes, then what steps were taken by the government in that direction. It is a known fact that prior to 1996 there were just two river camping sites (one at Kaudiyala-Shivpuri and the other at Vyasi) in the impugned area between Kaudiyala and Rishikesh in the Garhwal region of Uttarakhand (Latitude 30°4?27?N-30°7?23?N and Longitude 78°29?59?E - 78°18?51?E) *[see Farooquee et al, 2008 : in Current Science VOL. 94(5) : 587 - 594]*. The number increased to 8 in 1997 and to 12 camping sites in 1999 ***[****Johnsingh&Rajvanshi, 1999 : Ecological Assessment of the Rafting Camps on the River Ganga; Wildlife Institute of India, 11+viii pp****]*** and then to 26 camping sites in 2006 and to as many as 34 camping sites in 2010 *[Rajvanshi et al, 2010 : A Rapid Impact Assessment of the Rafting Camps along the Kaudiyala - Rishikesh stretch of River Ganges, Uttarakhand; Technical Report, Wildlife Institute of*

*India 70pp***].** The IAPRO confirms that 94 rafting camp operators are working in the Kaudiyala - Rishikesh segment of the river. Even according to State authorities (Respondents 3 to 5) presently there are about 37 beach camps operating on the reserve forest land of the Narendra Nagar Forest Division, 51 beaches in revenue land of Tehri and a few beaches in revenue land of Pauri district. According to these respondents as per the State Government Policy, the camp operators are given permission to set up temporary pegged-tents in areas along the river wherever there is a natural clearing at specified places from mid September to June. There is no document on record that would indicate that there is any application of mind in the allotment of camp sites and no survey/study has ever been conducted by any Government agency to check the feasibility of different areas for camping sites. Instead it becomes quite apparent from the documents that the State Government has been allotting the camping sites over the years on demand from the concerned campers, without bothering to check the feasibility of the sites and the overall carrying capacity of the river segment in question in respect of the camping activity. In traditional ecological usage, carrying capacity has been defined in a general way as the total number of individuals of a species that can live in an ecosystem (or habitat) under certain conditions. The carrying capacity of a biological species in an environment is the maximum population size of the species that the environment can sustain indefinitely, given the food, habitat, water and other necessities are available in the environment. There are other contexts as well in which carrying capacity has been used. For instance, it has been used to refer to the ability of foundations, materials or structures to accommodate a given load, in terms of either weight or volume and to the numbers of cars a freeway can carry smoothly.

87. In recreation planning and management, carrying capacity has received much attention only since the 1960's, but the concept is much older. Ohmann (1973) states that overcrowding in National Parks in the U.S.A. and consequent loss of wild land values were noted early in the 1930's ***[****Ohmann L.F. (1973) Ecological carrying capacity. USDA Forest Service General Technical Report NC-9 : 24-28****]***. As early as 1960 the Californian Public Outdoor Recreation Plan stated as one of its basic hypotheses "that each recreation resource type within a region has a maximum user carrying capacity, (number of users per acre per day and season); when used beyond this capacity the character and quality of the resource are altered or destroyed". Within the U.S. Forest Service, research workers had by 1964 struggled to define and assess the implications of the concept of carrying capacity for either recreational land or wilderness areas. Ecological consideration of carrying capacity determination includes the impact of recreational activities upon the environment. Ecological studies have been concerned mainly with the need to prevent or limit damage to natural or semi-natural habitats that may include areas of great intrinsic ecological interest, while still allowing some limited, or at least controlled, recreation use. The relevance of the concept of carrying capacity to the concept of sustainability adds to its value as an organizing management framework. Implementing the sustainability concept, environmental values should not be used up faster than they are produced. The capability of the resource base to continue to provide for recreational use is generally viewed through the concept of carrying capacity *[Traklois, D. (2003) Carrying Capacity - An Old Concept : Significance for the Management of Urban Forest Resources. NEW MEDIT 2(3) : 58-64]*.

In the above scenario of allotment of camping sites along the river, a study on carrying capacity would include collection of the data in respect of (i) ecological features of the concerned area, (ii) habit and habitat of important fauna, especially animals listed under various schedules of Wildlife Protection Act, 1972, (iii) total number of sites available for the camping in the river segment in question, (iv) impact of the camping activity on the local biodiversity, especially the higher animals,

including reptiles, birds and mammals as well as (v) mitigative measures required to minimize the negative impacts. There is no document on the record that would suggest that such a study was undertaken by the State Government at any point of time.

88. It may be noted that WII conducted a survey of the rafting camps located in the Rishikesh - Kaudiyala segment of the River Ganga during 1999 on the advice of Forest Department of Uttar Pradesh Government. During this survey, it was noticed that some camps were violating the norms set in respect of toilets and solid waste disposal. Further, while a few camps had flush toilets instead of dry toilets, some camps disposed of the solid wastes very carelessly. Even the camps that used dry toilets had put these toilets only about 20m away from the water mark. Plastic waste was not properly disposed off. **[**see *Johnsingh & Rajvanshi, 1999 : Ecological Assessment of the Rafting Camps on the River Ganga; Wildlife Institute of India, 11+viii pp***]**.

89. However, not much attention was given to the recommendations made in the WII 1999 study and the violations committed by the camp holders continued as is quite evident from the later reports. For example, *Farooquee* et al. (2008) observed that "almost all camp operators use more area of the beach than what was actually allotted to them. According to them most of the toilet tents are situated near the living tents and are not more than 10 m away from the sand back; in many cases they are situated right on the sand itself. The location of toilet tents in most cases is within the submergence levels of the Ganga during the rainy season. Though some dry soak pits have been made according to the norms, most of them get submerged under water during the rainy season and wash away the old deposits. It is well known that the level of river rises by 5 to 6 m during the peak rainy season, and almost all toilet tent locations get submerged under water during this season. Similarly, though fishing is prohibited, some tourists have been observed with fishing rods at various locations on the river during peak camping season. Even detergents were used to clean the utensils". *[see Farooquee et al. 2008 : Current Science, VOL. 94 (NO. 5) : 587-594.].* Similarly, *Mahapatra* et al (2011) also reported violations in respect of the camps [**see** *Mahapatra, et al 2011 : in International Journal of Environmental Sciences Volume 1 No. 5 : 757-771*].

90. The guidelines framed by the Ministry of Tourism, Government of India for the development of campsites clearly state that "carrying capacity must be kept in mind for wildlife/adventure (Land, Water and Aero-sports)/new destinations. There should be a minimum separation of 500 meters between campsites and no more than two campsites in an area of one sq kilometer should be there. The maximum number of campsites for a destination must be planned ahead as a part of the camping master plan. Congestion of campsites in popular areas must be avoided at all costs." However, the State Authorities never thought it worthwhile to have a detailed study of the wildlife habitat of the region and the carrying capacity of the said river segment in respect of rafting and establishment of campsites. Instead, the only consideration for these authorities seems to have been the generation of funds, as is evident from the shooting up of the allotment cases of campsites.

91. On the basis of a rapid on-spot survey of various camping sites located between Kaudiyala and Rishikesh during 2010, WII Research Team observed that location as well as size of 13 of the 34 campsites allotted during 2010 were questionable on account of their negative impacts on wildlife and their habitat. [see *Rajvanshi et al, 2010 : A Rapid Impact Assessment of the Rafting Camps along the Kaudiyala - Rishikesh stretch of River Ganges, Uttarakhand; Technical Report, Wildlife Institute of India 70pp***]**. However, the State Government decided to ignore the findings and continued to allot the camping sites with least regard to the negative impacts on the wildlife occurring in the concerned area, which forms part of the Forest ecosystem.

92. The area under dispute is reported to be harbouring 15 prominent mammal species [besides thousands of other organisms yet to be even completely listed]. All these animals have their peculiar requirements that would be provided by the habitat in which they existed for millions of years. Most of these organisms would frequent the water front available in the form of the river for meeting their water requirement. Presence of tents and the people in considerable number that too with varied interests each new day, for almost ten months in a year would surely act as a barrier to these animals and consequently affect their normal behaviour. Animal behavior refers to the activities animals perform during their lifetime, including locomotion, feeding, breeding, capture of prey, avoidance of predators, and social behavior. Habitat selection refers to the animal's choice of a place to live. Two types of factors affect where animals of a particular species live. First are the animal's physiological tolerance limits, which are determined by the species evolutionary history and may involve temperature, humidity, water salinity, and other environmental parameters. Within those constraints, a second set of psychological factors are important : Animals make choices about where to reside based on available food resources, nest sites, lack of predators, and past experience. *Farooquee* et al (2008) have reported 15 wild mammal species from the area surrounding the campsites. As can be seen from the Tabulated data below, most of these mammals are included in Schedule I - IV of the Wildlife Protection Act of India and require protection.

Sl. No.	Name of species	Schedule of Wildlife Act, 1972
1.	Leaopard (Panthera pardus)	I
2.	Rhesus macaque (Macaca mullata)	II
3.	Langur (Presbytis entellus)	II
4.	Fox (Vulpes Bengal ensis)	II
5.	Jackal (Canis aureus)	II
6.	Black Bear (Salenar ctos thi betanus)	II
7.	Barking deer Grazing (Muntiacus muntjak)	III
8.	Sambar (Cervus unicolor)	III
9.	Goral (Nemor haedus goral)	III
10.	Wild boar (Sus scrofa)	III
11.	Black napped hare (Lepusnigricolis)	IV
12.	Porcupine (Hystrix indica)	IV
13.	Mongoose (Herpestes edwardsi)	
14.	Wild cat (Felis Bengal ensis)	
15.	Common otter (Lutra lutra monticola)	

93. The State of the Uttarakhand has also issued three Government Orders upon which the reliance was placed during the course of arguments. First Government Order was issued in 28th October, 1993 and modifications were made to the Government Order which provided that river rafting and river site camping would be allowed in reserved forest area subject to the conditions which include river rafting, camping be set up only in the areas which have been identified by Divisional Forest Officer and term of permit would be decided by the Ministry of Tourism. It also placed some restrictions in regard to the persons not to use firewood for purpose of cooking, use dry pit toilets and use dug pits for disposal of wastes. Another Government Order was issued in March-April, 1994 by the Government. This was to be taken for prior permission for establishment of such camps near the river. Spent half burnt wood and coal had to be buried in a dug hole and not to be thrown in the river. This Government Order also directed that the permit should be issued for a period of five years

maximum and would be renewed every year by the forest department. To this and in view of the MoEF's letter dated 28th August, 1998, the Government Order dated 25th September, 1999 was issued by the Government. In this the recommendations of WII of June 1999 were incorporated for issuing permits for camping etc. This Government Order also provided that use of generators for lighting and Diesel/Petrol/Kerosene fuel, water pumps are not allowed. At night time, light is allowed within the tents only and no bright light is allowed. Use of radio, video, tape recorder or playing any music was not permitted. The garbage had to be disposed of at designated spots and it had to be ensured that there is no littering on the camping site and the garbage should not be thrown in to river. The guidelines for camping, Government Orders and Rules of 2014 which were amended by Rules of 2015 inter-alia provided that camp fire shall only be permitted on Saturdays and Sundays and permit for camping would be given for 5 years but it will be necessary to be renewed every year. This condition was amended to say that the permit would be for a maximum period of 5 years or season. The requirement of renewal was deleted. These show the nature of the activity as well as the dimensions of the regulatory regime.

94. Above are the provisions of law and government orders which govern the grant of permits for carrying of rafting and camping activity even in the forest area. We have already discussed in great detail the camping activity in forests and its impacts on environment, ecology and bio-diversity of the river. This being undisputedly a forest area, covered under Section 2 of the Conservation Act. The earlier letters of the MoEF taking the view that forest clearance in accordance with the provisions of the Conservation Act is not required for this activity are not legally tenable. The letter dated 28th August, 1998, in so far as it states that this activity does not fall within the ambit and scope of Section 2 of Conservation Act is issued on an erroneous understanding of law. We have already discussed that the camping activity is duly covered under Section 2 (ii) and (iii) of the Conservation Act.

95. The stand of the MoEF in its letter dated 27th March, 2015 is in consonance with the provisions of Section 2 and the scheme of the Conservation Act.

It is an ecotourism activity which is being carried on commercial basis. The period involved cannot be termed as temporary. As noticed above, the leases are being granted for a tenure of 5 years and activities are carried on effectively for ten months over a year. The structures being raised are of temporary and semi-permanent nature. It is an activity in the forest area, covering an area of 20,000-50,000 sq. mtr. in each site. Wires are laid down and electricity is supplied. All other facilities are provided, thus it is obviously a non-forest purpose/activity in the forest area and is not the purpose covered under the explanation of Section 2 of Conservation Act. The cumulative effect is that the approval of the Central Government, even as a policy matter would be necessary. Compliance to the provisions of Section 2 in these cases is mandatory. The letter of MoEF dated 28th August, 1998 is clearly in conflict with the statutory provisions. An office letter cannot waive what is statutorily covered under the Conservation Act. This Act even does not vest any power in MoEF to exclude non-forest activities in a forest area which do not fall within the specified category in the section itself. The letter of the MoEF dated 28th August, 1998, suffers from basic infirmity of lack of jurisdiction. It is a settled principle of law that statutory provisions cannot be amended or varied by office letters, much less the letters which could not be implemented when they are in not conformity with the statutory provisions. The letter dated 28th August, 1998, therefore, is liable to be quashed and cannot be given effect to. Another legal aspect in the present case is that State of Uttarakhand has admitted to do indirectly what it cannot do directly. The State of Uttarakhand is under legal obligations to strictly adhere to the Forest and Conservation Act and cannot avoid the approval of the Central Government in that behalf for carrying on of such activity. Firstly, the Act of 2001, does not empower the State Government to frame rules or

regulations in exercise of its delegated legislative powers in relation to the forest land or forest areas which are covered under the Conservation Act. Secondly, under the power of delegated legislation in terms of Section 8 of the Act of 2001, Rules of 2014 as amended by 2015 can only be framed in so far as they aide or provide for implementation of the statutory provisions contained in the Act of 2001. In exercise of its delegated legislative powers the State Government cannot encroach upon the field which is otherwise covered by the Central legislation i.e. the Conservation Act, we have already discussed and held that the Forest and Conservation Act, will have precedence over any law of the State. Thus the provision which empowers the State Government under the Act of 2001 to grant permission for camping activity in the forest area which is a non-forest activity would be ultra virus the provisions of the Conservation Act. The power to grant permits and licenses to certify and allow tourism related enterprises and to determine the terms for registration, grant of permission, recognition of institution and fee will have to confine itself within the ambit and scope of the Act of 2001. They cannot transgress into the valid cover provided by the Conservation Act, whether for a non-forest activity/purpose or otherwise. Whether utilisation of the forest area has to be permitted or not must essentially follow the legislative provisions contained under Section 2 of the Conservation Act. The Central Government must grant its prior approval in that regard and such condition should regulate measures as they may be necessary for the purposes of protecting the forest and environment both. The Entries in the IIIrd list of the Constitution are to be treated as fields for legislative competence. They have to be interpreted while keeping the national guidelines in mind. They demarcate the field in which the State or the Centre would have jurisdiction. They are closely linked and are supplementary to one another. Because of transgressing legislative competence in exercise of delegated legislation the State of Uttarakhand has created authorities in the State itself, while in terms of the Forest and Conservation Act, it is the Central Government which plays a vital role to grant of approval for carrying on of such activity in the forest area. Whenever there is conflict between the powers to be exercised by the Centre and State the power of the Centre and the field covered by the Central Legislation shall prevail in accordance with law. If a field is covered by the Central Legislation which have been covered at any prior point of time, then the State Legislation must give way for implementation of the Central Legislation. 'Forest' falls in item No. 17(a) of List III i.e. Concurrent List. Thus the field is already covered field and cannot be brought into service in any case because of the non-obstante clause contained in the Conservation Act. The laws of the State would have to be implemented with precedence to the Central Law and in consonance thereto.

96. In view of the above discussion, letter of the MoEF dated 28th August, 1998 is liable to be quashed which we so directed. Furthermore, the Rules of 2014 as amended in 2015 so far as Rules 7(ii), (v), 24 and 25 which deal with the implementation and proposal to grant permits for carrying on of camping activity (non -forest purpose) in the forest area are concerned, they are in conflict with the provision of Section 2 of the Conservation Act and hence are ultra virus and cannot be implemented. It is obligatory upon the State of Uttarakhand at best as a matter of policy to seek prior approval of the Central Government before issuance of any permit for said camping activity.

DISCUSSION ON ISSUE NO. 8

8. What is the relevancy for determining the conduct of the State Government, private parties and the incidents of violation reported before the Tribunal?

97. We prefer to deal with question no. 8 before we answer question no. 6 and 7 as question no. 8 has a direct bearing on them.

98. The conduct of the State and the parties would be of considerable significance while deliberating upon this issue. It is on record before us that there are nearly 37 camping sites besides the one which are falling in the revenue area. There are nearly 2463 tents on these sites. According to the State these sites are completely regulated and inspections are carried out on regular intervals by the officers of the Forest and Revenue Department particularly at the end of the license period. It was contended with some vehemence that there is six layer system for granting these licenses and it provides proper check and balance so that this activity does not have adverse impacts on environment and ecology. This contention of the State unfortunately is not substantiated by the record produced before us including the one relied upon by the State Government. The theory of six layer system for consideration of application and grant of permits/permissions appears to be a great misnomer. We had called for the original files of the few cases to examine how this process takes place. Not even a single file was found to be complete and in compliance with the Government Order issued by the State Government itself, much less in conformity with the provisions of the Conservation Act.

99. The applications were allowed within 24 hours of their filing. In other words, the so called six layer system was categorized in favour of the applicants within 24 hours or 3 days as the outer limit. This system is expected to provide for inspection by the ground staff of the Forest Department, its submission to the higher authorities who are expected to grant their consent and then it is required to be submitted to the Divisional Forest Officer of the concerned area who then is expected to make due recommendations to the Chief Conservator of Forest who would then grant or permit to be granted the permission for carrying on the camping activity in the forest area. It is unfortunate that the projection of law by the departments of the State of Uttarakhand is entirely opposite to the reality on the ground. The record of these applications before the Tribunal clearly demonstrates complete go by to the prescribed guidelines and the statutory requirements.

100. As far as conducting of inspection at the regular intervals by the staff of the forest/revenue department is concerned even on this aspect much is required to be done. According to the Government, they have come across number of enterprises committing breach of the conditions stated in the permission. They have registered PRO cases for various offenses under the Penal Code, 1860, Conservation Act and for violation of the conditions of the permission. Strangely in one of these cases registered against the guest/enterprises it even came to light that they were possessed of a firearm and there were threats of it being used. Further, the violation related to various aspects like Non-collection and disposal of Municipal Waste Encroachment in the reserve forest and unauthorised use of forest area and encroachment of beach area.

101. These breaches were noticed in the area of Shivpuri, and the cases are stated to be pending adjudication. According to the applicant there are large number of cases which do not even come to the notice of the authorities and they relate to spoiling the beach camp area, raising of construction, throwing of waste even in the river and obstructing the course of the river as well. The enterprises who are given permission have also violated the conditions of the permission. The photographs that have been placed on record collectively as Annexure-A (II) show that the tents and even temporary and semi permanent structures have been raised right in the river bed even and in the middle of the river. There is large number of tents and the waste from toilets is shown to be directly entering the river. The Google images have been filed on record by the applicants, which show not only the camping sites are within the flood plain but even constructed on the banks of river Ganga just below the Haridwar-Rishikesh-Badrinath Road. The rafting camps are not even 10-15 m away from the actual flow area of the river. There is a rollercoaster camp installed right in the river

bed and bonfire appears to be a regular feature where people are burning forest wood. The Google images stated to have been taken on 4th September, 2015 when the matter was being heard, large scale camping on the river side. From these images it appears that there are large number of camping sites and it is doubtful that the State has been able to present on record the actual figure of the camp sites and area occupied by them and extent of their activities. Of course, it is contended by the respondents that there is nothing in the area of the river Ganga. Patently with reference to these Google images it does not appears to be correct. All these activities and the manner in which they are being conducted at the respective sites clearly show the violation of law and they are squarely covered under the exception shown in the letter of the MoEF dated 27th March, 2015.

102. We must notice the contents of the "Rapid Assessment Report along the Kudiyala-Rishikesh stretch of River Ganga, Uttarakhand". This was a report prepared by the WII in June, 2010. They had carried out a survey of actual site of the area and noticed that tourism is the largest service industry with the contribution of 2.63 per cent to the national GDP and 8.78 per cent of the total employment in India. White water Rafting' on river Ganga in Uttarakhand being a very popular water sport attracts adventure seekers from far and wide. There were just 2 camping sites one between Kaudiyala-Shivpuri and other at Vasai in up-stream from Rishikesh, as noticed in 1994. These were increased to 12 in 1999 and finally there are 34 camping sites as noticed in 2010. They noticed environmental impacts of Rafting Camps. The study that the Institute conducted was in area located in Garwhal region of Uttarakhand between 300 4° 27//N-3007 23//N and 780 29° 59//E-780 18° 55//E. It is located upstream between Rishikesh and Kaudiyala, in the foot of Himalayas. As already noticed they described this stretch as subtropical broadleaf forest. Many species of wildlife in the forest were noticed. They even surveyed the site and principal objective was to make snapshot observations of the camping sites in and around, along the river.

103. The various camps, their location and characteristics were noticed and team made recommendations as to which of the sites would be recommended for camping with adequate case on different issues. These locations were found to be extended to 50 m from the edge of the river. The camps were found to be even at a distance of 300 m from the other camps. Some sites were recommended while others were found not worthy of being recommended on different grounds. There were sites which were partly on the beach and partly on the vegetable grounds. Some sites were found to be on 3 km and even more distance from the river bed. They made comments about all the 34 sites. The team noticed wildlife along the river rafting stretch. On 3 sites animal presence was noticed. These locations were considered to be sites which were being used by wildlife. They also offered comments on each of the site with reference to wildlife values. Nearly, 14 sites were found to be unsuitable in this regard. It was advised that best codes as were available for planning environment sustainability in tourism projects should be followed. It was observed that Minimum Environment Impact Plan should be prepared. Various points indicated in relation to travel and camp, on durable services, disposal of waste, minimizing the impact of fire, respect to wildlife and be considerate to host and other visitors. These guidelines were required to be incorporated in the permission to regulate adventure tourism in Uttarakhand. We may extract the relevant part of this Rapid Impact Assessment Report.

CONCLUSIONS AND RECOMMENDATIONS

Consideration of the environmental aspects of rafting camps needs to cover both possible aspects (i.e. opportunities and potentials for sustainable use of environmental assets) as well as the negative impacts (e.g. problems of environmental degradation and pollution) that have to be central in the development of safeguards for addressing the impacts of camping sites in

Rishikesh-Kaudiyala stretch. Natural resource managers will have to apply a variety of strategies to avoid. Manage and minimize camping-related impacts.

Site Management strategy

Management actions implemented to spatially concentrate camping activities and reduce camping disturbance have been highly successful. These reductions in area of camping disturbance are attributed to a camping site policy, limitation on site numbers, and construction of sites in suitable terrain use of facilities and on ongoing program of campsite maintenance. Such action are most appropriate in higher use backcountry and wilderness settings (Marion and Farrell, 2002) Because impact is almost synonymous with use, impacts can be reduces by limiting the spatial extent of use. This confinement strategy is one of the most commonly employed techniques in recreation management. The effectiveness of this approach can be amplified by confining use to sites that are particularly durable and able to withstand repeated disturbance, and by keeping use away from habitat that is rare or critical to animals. The success of attempts to employ spatial control as a management technique can be greatly increased through careful site selection for camping that will meet the needs and aspirations of recreationists, while minimizing both the extent and severity of impact.

Research has indicated that use containment and site management strategies are most effective in minimizing the areal extent of camping impact (Cole, 1981; Hammitt and Cole, 1998; Leung and Marion, 2000a). A containment strategy seeks to limit the aggregate extent of resource impact by concentrating visitor use within a limited number of areas or sites, or within the boundaries of a single site (Leung and Marion, 1999). A review of all the 34 camping sites along Rishikesh-Kaudiyala stretch of Ganges clearly reflect that location and size of as many as 13 sites is questionable on account of their impacts on wildlife and their habitats.

104. This Rapid Impact Assessment Report was not found worthy of acceptance by the State of Uttarakhand according to the Inter-Departmental Meeting of the State of Uttarakhand chaired by Chief Secretary dated 8th September, 2010. It was held as a one day affair in which the team had gone in the river through the motor boat which was not permissible and they had no fair opportunity to examine the sites and offer fair comments. This contention does not impress us at all. These were verifiable facts and whether the State Government wanted to accept the report or not is a matter, exclusively in the domain of the State Government. But to treat it as an irrelevant document was certainly a mistake, the State Government ought to have considered the report objectively and taken its decision while granting permissions so as to ensure that there was no degradation of environment, biodiversity, ecosystem and particularly the forest area. If the people are going to these pristine sites with firearms under the name of 'Back to Nature' then the situation is pathetic. Firearms could be used even to shoot the wildlife also indiscriminate bonfire is an indicator of serious violation. It would affect the environment and wildlife both in that area. It is an eco-sensitive area and greater precautions are expected to be taken by the people who wish to carry on such activities as well as by the State which wishes to permit carrying on of such activities. Thus, the conduct of the State and the private parties are of relevancy in determining the main issue. The Rapid Assessment Report would provide an insight into the working of these camp sites. Undisputedly, there are violations committed by the management as well as the guests at the camp sites.

DISCUSSION ON ISSUE NO. 6 AND 7

6. Whether camping site is a pure commercial activity and cannot be permitted in the forest land or on the banks of river Ganga, keeping its impact on environment in mind and should be barred?

7. If question no. 6 is answered in the negative, what should be the

regulatory regime governing carrying on of such rafting and camping activities?

105. It has been commonly stated by all the respondents that large numbers of tourists come to Uttarakhand during the season for rafting and camping. Nearly 60,000 visitors come every year which includes 4 to 5 thousand foreign tourists. It provides revenue to the State as well as employment to the people of the area. It is clear that this eco-tourism activity is completely a commercial activity intended to provide financial benefit to the State and provide employment to the people of the area. It is true that rafting does not have any adverse impacts on the environment, ecology and river per se but carrying on of camping activity in the forest area does have substantial impacts. Sustainable tourism is probably the adequate answer to this question while rafting could be carried on more liberally but it necessarily need not be connected to camp activity, both can operate independently. In our considered view despite the fact that eco-tourism is a commercial activity still it could be permitted, but subject to a strict regulatory regime and its enforcement without default.

106. Responsibility lies upon the State to protect its environment, forest and rivers. Right to decent and clean environment is the right of every citizen. Thus, on the cumulative reading of Article 21, 48A and Article 51A(g) of the Constitution the State cannot be permitted to shirk its responsibility of conservation and protection of forests and environment on the plea of earning revenue. If the State chooses to carry on such activity which certainly is not a prohibited activity under the Conservation Act, but is a restricted activity then it must take unto itself responsibility of regulating this activity in all responses without any default. Camping activity does cause contamination of river and ground water particularly when the activity is not carried on strictly in terms of the regulatory regime in force. Google images, Rapid Impact Assessment Report and other documents placed on record show that presently the camping activity in particular is not being properly regulated by the State and its authorities. State is failing in its supervisory capacity and even private entrepreneurs have failed in their duties in complying with the conditions of the permission granted to them in accordance with law. We may also notice here that the wildlife that has been reported between Kaudiyala-Rishikesh in Garwhal region includes leopard, Fox, Jakal, Black Bear, Sangal, Wild Bear, Wild Cat and Rhesus Mancaque. The wildlife requires protection besides conservation of forest. MoEF when issued the letter on 23rd May, 1990 it noticed that camping on sandy stretch of the river would be a source of pollution and is a threat to the forest and the river bank. Site should be more towards the road and not on the river bed. There it had also been stated that it was a commercial activity. The activity of camping cannot be permitted as a primary activity as it has been there for continued period of 5 years. It is a matter of common knowledge that a person who wish to make investment for a period of 5 years would be having some reluctance not to raise structure of atleast some permanence to give greater comfort, convenience and service to its visitors, though at the cost of adverse impacts upon environment, ecology, river and wildlife. Thus, it is absolutely essential that a proper stringent Regulatory Regime is placed on record so that such activity can be permitted to continue longer. The State of Uttarakhand has submitted before the Tribunal on 31st March, 2015 that it would not grant any fresh permits for the current season. We propose to continue the said directions till a proper Regulatory Regime in accordance with law is brought in place and is implemented.

107. We may also notice that the river Ganga from Gaumukh to Rishikesh which few years back was a river of pristine and without any pollution today, because of various factors, of which camping is one, has altered water quality. It is absolutely necessary that a High Powered Committee is constituted to undertake a study taking Rapid Impact Assessment Report and all other relevant documents into consideration and to examine the entire matter *de novo.*

108. It may be little impractical and may cause undue delay in commencement of the activity of camping if every individual licensee of a camp site is required to obtain clearance and order in terms of Section 2 of the Forest Conservation Act. It will be substantial compliance to the provisions of the Act if sites are identified; Collective Management Plan is submitted by the State to the MoEF which should grant its approval and/or by adding such conditions as it deems fit and proper, resulting in passing of a collective and comprehensive order under Section 2 of Conservation Act by the State of Uttarakhand. There has to be a very serious supervision with physical inspections at regular intervals by team of high officers of the Forest Department of Uttarakhand and Uttarakhand Environment Protection and Pollution Control Board. It should also ensure that conditions that are imposed in the permit granted by the State Government are fully and effectively implemented. However, there would be no camping or camping site in the mid of the river or river bed and anywhere within the area which is less than 100 meters measured from the middle of the river upto 2 km beyond boundary of the Rishikesh upstream and not less than 200 meters measured from middle of the river there onwards till boundary of Haridwar downstream. (100 meters as a crow flies)

We consider it appropriate to observe that the State of Uttarakhand while exercising powers in consonance with the provisions of the Act of 2012 should keep in mind 1 in 25 years flood plain as the guiding factor since it is a well-studied and documented limitation.

109. In any case no construction permanent or semi-permanent should be permitted in any circumstance. The State Government and the Central Government should consider the period of 5 years for which the permits are being granted for their reasonableness. Some conditions in the permission orders placed on record appears to be reasonable and must be imposed in the permission/license granted by the State. Further the permission/license granted by the State is not an absolute right of the private entrepreneur and they must carry out each direction issued in the permission in its true spirit and substance. The concept of Back to Nature' ought not to be used for developing revenue at the cost of Environment and Ecology. River Ganga is not a river simply for our country, but it is a river that is worshiped and is a lifeline to a large population in our country. Therefore, this is a fit case where the Tribunal must issue interim directions till the proper Regulatory Regime comes into force in accordance with law.

110. In light of the above discussion we pass the following directions.

1. No camping activity shall be carried out in the entire belt of Kaudiyala to Rishikesh and the Government would abide by its statement made before the Tribunal on 31st March, 2015, till the regulatory regime in terms of this Judgement comes into force and is effectively implemented. However, we make it clear that Rafting per se does not cause any serious pollution of river or environment. We permit rafting activity to be carried on with immediate effect.
2. We constitute a Committee of officers not below the rank of
   a) Joint Secretary from the Ministry of Environment and Forests and along with a specialist in this field from the Ministry.
   b) Secretary, Department of Environment and Forest from the State of Uttarakhand.
   c) Member Secretary, Central Pollution Control Board.
   d) Chief Conservator of the Forest of the concerned area.
   e) Member Secretary, Uttarakhand Environment Protection and Pollution Control Board.
   f) Director of Wildlife Institute of India or his nominee of a very senior rank.

Member Secretary, Uttarakhand Environment Protection and Pollution Control Board would be the Nodal Officer and Convenor of this Committee and responsible for submitting report to the Tribunal as per the directions of this judgment.

This Committee shall be at liberty to engage any Government Institution or a private body which have expertise in the line to prepare the regulatory regime and Regime is to be submitted to the Tribunal in accordance with law.

3. The Rapid Impact Assessment Report shall be treated as a relevant document and the Committee would conduct or get conducted further survey to satisfy itself.
4. The Committee shall consider all aspects of Environment, Wildlife, River and Biodiversity while preparing the relevant regulatory regime.
5. The Committee shall give recommendation for all preventive and curative measures and steps that should be taken for ensuring least disturbance to wildlife and least impact on the environment and ecology.

5(A). The Committee shall specifically report in relation to carrying capacity of the area in regard to both the activities, in view of the fragile ecology of the area. (Carrying capacity in terms of visitor per day and other environmental loads of the activity taken together).

6. After preparation of this report which should be prepared within 3 weeks from the pronouncement of this Judgement, the State of Uttarakhand through Secretary, Forests would submit a Comprehensive Management Plan cum proposal for approval to MoEF. MoEF would consider the same in accordance with law and accord its approval in terms of Section 2 of the Forest Conservation Act within 3 weeks thereafter.
7. The Committee shall ensure that it not only identifies the sites which can be appropriately used for camping activity but also the manner and methodology in which such sites should be put to use for carrying on of these activities. It is only those sites that are decided by the Committee that would form the part of the Management Plan to be submitted by the State of Uttarakhand to MoEF.
8. After grant of approval, the State of Uttarakhand shall issue an order under Section 2 of the Forest Conservation Act and give permits in terms of its policy.
9. We make it clear that we are not in any way entering upon the methodology that should be adopted by the State of Uttarakhand in economic and technical terms. In terms of revenue and technical aspects, the State is free to take its decisions."
10. We further direct that if the Committee is of the opinion that rafting stations and number of rafting shafts to be permitted should be more than camp sites, it may so recommend but then, those rafting stations shall be used for very limited purposes of picking up and dropping the visitors without any other infrastructure.
11. We hope that the economic interest of the State of Uttarakhand would be duly kept in mind by the Committee and it would ensure that local persons should be provided with maximum chances of employment or other financial gains resulting from this Eco-Tourism.
12. We hereby impose complete prohibition on use of any plastic in the entire belt covered under this judgment. (Plastic such as plastic bags, plastic glass, plastic spoons, plastic bottles package and such other disposable items).
13. It shall be obligatory upon every person to whom permit/license for camping is granted by the State to collect the Municipal Solid Waste or all other wastes from the camping site at its own cost and ensure their transport to the identified sites for dumping.
14. If any licensee fails to comply with these directions, the department would take

action in accordance with law and it would be treated as a breach in terms of the license.

15. In this regard complete record shall be maintained at the end of the licensee of the site as well as at the dumping site, in the records of the concerned authority.

16. No structure of any kind would be permitted to be raised, temporary, semi-permanent or permanent. We make it clear that making of the cemented platforms or bricked walls would not be permitted within the limits afore-stated.

This will be done with reference to River Ganga Data maintained by the Central Water Commission. Within these 100 meters any construction activity what so ever would not be permitted under any circumstances.

Wherever the road intervenes between 100 meters defined space, in that event, the camping can be permitted across the road towards the hill side.

17. The Committee also has to make this Report in relation to source, quantum of Water and source of Power needed keeping in view the camping activity.

111. The application filed by Jaswinder Kaur where she has prayed various reliefs also has been disposed in terms of the order in this case. As such, both the above cases have been disposed of without any order as to cost.

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† Principal Bench at New Delhi

2021 SCC OnLine SC 897

In the Supreme Court of India

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

Civil Appeal Nos. 12122-12123 of 2018

Municipal Corporation of Greater Mumbai … Appellant(s);

Versus

Ankita Sinha and Others … Respondent(s).

With

Civil Appeal No. 86/2019

Civil Appeal No. 5902/2019

Civil Appeal No. 6273 of 2021

(Arising out of SLP(C) No. 6732/2021)

Civil Appeal No. 6274 of 2021

(Arising out of SLP(C) No. 5930/2021)

Civil Appeal No. 6275 of 2021

(Arising out of SLP(C) No. 6733/2021)

Civil Appeal No. 6276 of 2021

(Arising out of SLP(C) No. 16448 of 2021)

Diary No. 11655/2021

Civil Appeal No. 6277-6278 of 2021

(Arising out of SLP(C) No. 16449-16450 of 2021)

Diary No. 13789/2021

Civil Appeal No. 6279 of 2021

(Arising out of SLP(C) No. 16451 of 2021)

Diary No. 13811/2021

Civil Appeal No. 6280-6281 of 2021

(Arising out of SLP(C) No. 16452-16453 of 2021)

Diary No. 13890/2021

Civil Appeal No. 2897/2021

Civil Appeal No. 6282 of 2021

(Arising out of SLP(C) No. 11426 of 2021)

Civil Appeal No. 6283 of 2021

(Arising out of SLP(C) No. 11427 of 2021)

Civil Appeal No. 6262 of 2021

Diary No. 16948 of 2021

Civil Appeal No. 6284 of 2021

(Arising out of SLP(C) No. 11798 of 2021)

Civil Appeal No. 6285 of 2021

(Arising out of SLP(C) No. 12669 of 2021)

Civil Appeal No. 6286 of 2021

(Arising out of SLP(C) No. 16454 of 2021)

Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

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

Decided on October 7, 2021

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. 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*[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

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

15. 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.

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> "41. …Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act……
>
> 43. …In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, [(1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words : (SCR p. 499 : AIR p. 789, para 138)
>
> > "*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > 'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349]'."
>
> For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, [(2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, [2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

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

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

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

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

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

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

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar* v. *Union*

of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

22. 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 the NGT.

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

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

6. In view of the foregoing paragraphs, a need has been felt to establish a

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

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

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

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

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

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 the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds : a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

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.

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

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

33. 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.'

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

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

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

> "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"[10].

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

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

IV. SALIENT STATUTORY FEATURES OF NGT ACT

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

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

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

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

40. 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.

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

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

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

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *UOI*[12]; *M.C. Mehta* v. *UOI*[13] etc.]

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

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

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

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. …. The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

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

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

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

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

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

VI EXERCISE OF SUO MOTU POWER BY NGT

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

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

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

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

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

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

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

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

56. Thus, the ratio in *Rajeev Suri* 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 the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

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

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

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

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

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

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya* v. *All Dimasa Students Union*[18], fittingly observed thus:—

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

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

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

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

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

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

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

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

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

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

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

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

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

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

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

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

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

69. 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."

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

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

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

the NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[22] has so correctly prioritized the substantive rights and observed succinctly,

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

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

X. THE PRECAUTIONARY PRINCIPLE

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

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

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

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

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

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other '*decisions*' or '*orders*' to governmental authorities or polluters, when they fail to "*to anticipate,*

prevent and attack the causes of environmental degradation"[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. 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."

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

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

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

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

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

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

whereas the people who reside there do little or nothing to harm their community."[27]

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

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

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

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

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the 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 Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

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

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

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

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

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

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

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

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

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

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

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

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

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

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

X. CONCLUSION:

97. 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.

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

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

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

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

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

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

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

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

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

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

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

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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

[2] (2013) 15 SCC 341

[3] (2008) 1 SCC 125

[4] (2011) 9 SCC 541

[5] (2018) 11 SCC 734

[6] (2019) 19 SCC 479

[7] Chapter II, 186th Law Commission Report.

[8] (1955) 2 SCR 603; AIR 1955 SC 661

[9] 47 Columbia Law Review 527

[10] 293 US 388 (1935) (dissenting)

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

[12] (1996) 5 SCC 647

[13] (1997) 2 SCC 353

[14] (2012) 8 SCC 326

[15] (2019) 18 SCC 494

[16] 2021 SCC OnLine SC 7.

[17] (1999) 2 SCC 718

[18] (2019) 8 SCC 177

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

[20] (1999) 2 SCC 131

[21] 2020 SCC OnLine SC 572

[22] (1976) 1 SCC 719

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

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

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

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

[28] Supra Note 26.

[29] Ibid

[30] *Rural Litigation And Entitlement Kendra* v. *State Of U. P.*, 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

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

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[33] (1991) 1 SCC 74.

[34] *M.C. Mehta* v. *Union of India*, [(1987) 1 SCC 395.

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

[36] Supra, Note 19.

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

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

[39] (2021) 4 SCC 309

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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN BENCH

SITTING AT PUNE

IA No. 38 OF 2023

IN

ORIGINAL APPLICATION

NO. 108 OF 2022

Kalyan-Ambernath Manufacturers Association.

… Applicant

IN THE MATTER BETWEEN

Nandakumar Waman Pawar & Anr.

… Original Applicants

Versus

Maharashtra Industrial Development Corporation & Ors. … Respondents

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SHORT COMPILATION OF JUDGMENTS BY APPLICANT

Dated this 22nd day of March, 2023

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