

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

ORIGINAL APPLICATION NO. 636 OF 2022

IN THE MATTER OF:

ASHISH CHAUBEY

APPLICANT

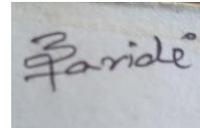
VERSUS

ACP TOLL PLAZA PRIVATE LIMITED

RESPONDENT

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KAUSAR RAZA FARIDI

Place: New Delhi
Date: 22-07-2024

**ADVOCATE FOR THE
APPLICANT**

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT PRINCIPAL BENCH NEW DELHI
ORIGINAL APPLICATION NO. 636 OF 2022**

IN THE MATTER OF:

ASHISH CHAUBEY

APPLICANT

VERSUS

ACP TOLL PLAZA PRIVATE LIMITED

RESPONDENT

**WRITTEN SUBMISSION ON THE ISSUE OF LIMITATION
IN TERMS OF ORDER DATED 10-07-2024.**

TO,

THE HON'BLE THE
CHAIRMAN AND HIS
COMPANION MEMBERS OF
THE NATIONAL GREEN
TRIBUNAL, PRINCIPAL
BENCH AT NEW DELHI.

THE SUBMISSION ON
BEHALF OF THE
APPLICATION ON THE
ISSUE OF LIMITATION.

MOST RESPECTFULLU SHOWETH:

1. That the present OA No. 636 of 2022 was filed on 23-08-2022 by the applicant against permanent illegal construction of a toll plaza and building in the Eco Sensitive Zone of Kaimoor Wild Life Sanctuary Area in violation of NOC dated 31-03-2014 as well as violating guidelines issued by the Hon'ble Supreme Court of India in respect to the wildlife sanctuary area. The user agency is also in violation of other terms and conditions of the NOC as per the committee report.
2. That is the present OA No. 636 of 2022, this Hon'ble Tribunal was pleased to issue notice considering the seer violations of Environmental norms contained in NOC dated 31-03-2014 issued by Special Secretary, Uttar Pradesh Government in connection with the permission to use 129.251 hectare the forest lands and cutting of 18632 trees of Kaimoor Wildlife Sanctuary in Sonbhadra, Obra and Renukoot Forest Divisions for the upgradation and widening of the SH-5A to the U.P. State Highway Authority (UPSHA)
3. That the Hon'ble Tribunal was pleased to indicate to the application vide its order 10-07-2024, that "*Ex-facie, we find that application is barred by limited provided under Section 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010')*" and granted an opportunity to the application to show the materials that the present OA is not barred by the limitation period provide under Sections 14 and 15 of the NGT Act, 2010.

4. The applicant with all due regards submits that the present OA is well within the limitation period as provided under Section 14 and Section 15 of the NGT Act, 2010.
5. That as per the Concession Agreement dated 08-12-2011 between Project Proponent- ACP Tollways and Uttar Pradesh State Highway Authority (UPSHA), it was the duty of the concessionaire to do all such acts, deeds and things which are necessary or required before commencement of the construction works in accordance with the agreement, applicable law and applicable permit.
6. It is submitted that non-compliance of the Environmental Impact Assessment Notification dated 14-09-2006 and lack of proper sanction/ clearance for the Central Government is violation of mandatory provisions of the above-mentioned notification is a continuous violation of the Notification dated 14-09-2006 and Concession Agreement dated 08-12-2011.
7. That Hon'ble Supreme Court in the case of *State of Bihar v. Deokaran Nenshi*, (1972) 2 SCC 890 has observed that “*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*”.

A copy of the judgment is annexed hereto as **Annexure W-1.**

8. It is further submitted that the Hon'ble Supreme Court of India in the case *Maya Rani Punj v. Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445 has observed that “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”

A copy of the judgment is annexed hereto as **Annexure W-2**

9. It is further submitted that considering the law laid down the Hon'ble Supreme Court in the cases referred in para no. 7 and para no. 8 and the facts of the present OA, it is crystal clear that Respondent no.1 ACP Tollways have committed breach/non-compliance which is continuing even now, hence, every day in non-compliance/violation of the above-said paras is giving fresh cause of action to the applicant on every non-complied day, hence, the limitation period provided under Section 14 of the NGT Act, 2010 is not barring this instant Application.
10. It is further submitted that the Hon'ble Supreme Court in the case of *Mantri Techzone Pvt. Ltd v. Forward foundation*, (2019) 18 SCC 494 has interpreted that application of Section 14 and Section 15 of the NGT Act, 2010 and observed regarding jurisdiction of the NGT in para 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 48 Tribunal is a specialized 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.”

10.1 It is further submitted that the Hon’ble Supreme Court has further observed in *Mantri Techzone Pvt. Ltd v. Forward foundation* (Supra) para 44 “The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) 50 read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns”

10.2 That the Hon’ble Supreme Court has further observed in the para 45 “Section 15 of the Act provides power & jurisdiction,

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

10.3 The Hon’ble Supreme Court further observed that “*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”*

10.4 The Hon’ble Supreme Court lastly observed in para 50 that “*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.”

A copy of the judgment is annexed hereto as **Annexure W-3**.

11. In the light of above stated facts, it is humbly prayed that the instant OA be considered within limitation and be decided on the merits.

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

ORIGINAL APPLICATION NO. 636 OF 2022

IN THE MATTER OF:

ASHISH CHAUBEY

APPLICANT

VERSUS

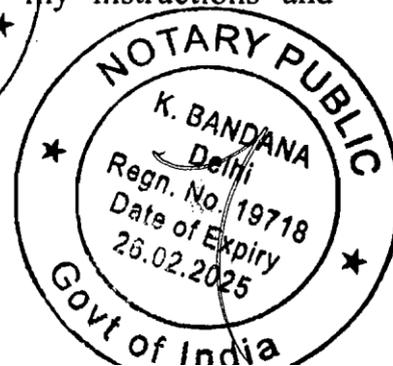
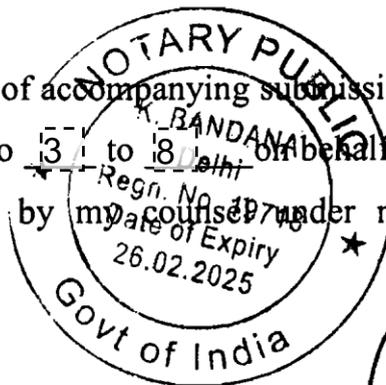
ACP TOLL PLAZA PRIVATE LIMITED

RESPONDENT

AFFIDAVIT

I, Ashish Chaubey, applicant, aged about 33, Delhi, New Delhi Pin:- 110001, do hereby solemnly affirm and declare as under:

1. I the deponent is the applicant of the above said OA. I am now well aware of the facts of submission; hence deponent is competent to swear this affidavit before this Hon'ble Tribunal.
2. The contents of accompanying submissions from para _1_ to 11 on page no 3 to 8 on behalf of the applicant has been drafted by my counsel under my instructions and



contents of the same has been read over & explained to me in vernacular which has been understood by me and same are true and correct to the best of my knowledge.

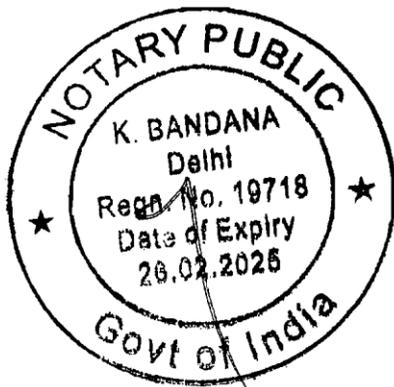
3. The applicant craves leave of this Hon'ble Tribunal to read the contents of same as integral part and parcel of this affidavit as the same are not being repeated herein for the sake of brevity.

IDENTIFIED
DEPONENT
VERIFICATION: 22 JUL 2024

Verified at Delhi on ___ - ___ 2024 that the contents of my above affidavit are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

22 JUL 2024

DEPONENT



ATTESTED
 NOTARY PUBLIC DELHI
 Govt. of India
 Mob. 9854768498

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SUPREME COURT CASES

(1972) 2 SCC

insurance. In such a case, therefore, the insurer, by virtue of the transfer of assignment in his favour will be in a position to maintain a suit in his own name against third parties. (22 Halsbury's Laws of England, Simond Edn., paras 512-513 and Shawcross on 'Motor Insurance').

Normally, an assignment of a right of action for a tort is not valid under Section 6(e). But cases of subrogation as applied to insurance for indemnity are an exception to the rule and assignments by the assured to the insurer of his rights and remedies being more than a transfer of a mere right to sue are permissible and are valid. But express assignment by the assured of all his rights is necessary and subrogation by itself will not enable the insurer to sue in his own name [1896 AC 250; (1883) 11 QBD 380]."

It is regrettable that the attention of the High Court was not drawn to the above decision.

54. I think the reasoning in the decisions above referred to is correct, that the assignment conveyed to the insurance company, the entire right in respect of the subject-matter of the insurance, including the right of the assured to sue in its own name and that, after the assignment, the assured had no cause of action to institute the suit against the Railway Administration for recovery of damages.

55. I would allow the appeal and set aside the judgment and decree of the High Court and restore the decree passed by the Subordinate Judge, Coimbatore, dismissing the suit, without any order as to costs.

(1972) 2 Supreme Court Cases 890

(From Patna High Court)

[BEFORE J. M. SHELAT AND H. R. KHANNA, JJ.]

STATE OF BIHAR

... Appellant;

Versus

DEOKARAN NENSHI AND ANOTHER

... Respondents.

Criminal Appeal No. 208 of 1969†, decided on August 24, 1972

Mines Act, 1952—Sections 66 and 79 read with Metalliferous Mines Regulations, 1926—Period of limitation for filing complaint—Continuing offence—Meaning.

Words and Phrases—Continuing offence.

Held:

- (i) Section 79 lays down that no court shall take cognizance of any offence under this 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 the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the section provides that if the offence in question is a continuing offence, the

†Appeal under Article 134(1)(e) of the Constitution of India from the Judgment and Order, dated April 17, 1969, of the Patna High Court in Government Appeal No. 28 of 1967, under Section 417(1), Cr. P. C.

STATE OF BIHAR v. DEOKARAN NENSHI (*Shelat, J.*)

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period of limitation shall be computed with reference to every point of time during which the said offence continues. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. On every occasion that such disobedience or non-compliance occurs and reoccurs, 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. (Paras 1 and 5)

- (ii) Regulation 3 of the India Metalliferous Mines Regulations, 1926, read with Section 66 of the Mines Act makes failure to furnish annual returns for the preceding year by January 21 of the succeeding year an offence. In other words, Regulation 3 does not render a continued disobedience or non-compliance of it an offence. (Para 9)

Best v. Butler and Fitzgibon, (1932) 2 KB 108; *Verney v. Mark Fietcher and Sons Ltd.*, (1909) 1 KB 444; *Rex v. Taylor*, (1908) 2 KB 237; *London County Council v. Worley*, (1894) 2 QB 828; *Emperor v. Karsandas*, AIR 1942 Bom 326; *State v. Bhiwandiwala*, ILR 1955 Bom 192; *Bihar v. J. P. Singh*, 1963 BLJR 782, and *State v. Laxmi Narain*, AIR 1957 All 343, referred.

Appeal dismissed.

Advocates who appeared in this case :

S. C. Agarwala, Advocate

for Appellant;

G. L. Sanghi, D. N. Mishra and J. B. Dadachanji & Co., Advocates

for Respondent.

The Judgment of the Court was delivered by

Shelat, J.—Section 66 of the Mines Act, 1952, provides that any person omitting inter alia to furnish any return, notice etc. in the prescribed form or manner or at or within the prescribed time required by or under the Act to be made or furnished shall be punishable with fine which may extend to Rs. 1,000/-. Section 79, however, lays down that no court shall take cognizance of any offence under this 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 section provides 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. Under Regulation 3 of the India Metalliferous Mines Regulations, 1926, an owner, agent or manager of every mine is required to forward to the District Magistrate and to the Chief Inspector annual returns in respect of the preceding year in the forms prescribed therein and on or before January 21, in each year.

2. The respondents are the owners of a stone quarry situate in Chandiwali in Greater Bombay. They failed to furnish to the Chief Inspector the annual returns for the year 1959, by the January 21, 1960. On March 28, 1960, the Chief Inspector drew their attention to the said failure and warned the respondents that if they failed to furnish the returns within two weeks from the date of the said letter, that is, by April 11, 1960, proceedings would be instituted against them under the Act. On their failure to do so despite the said warning, a complaint was filed in the Court of the Magistrate, Dhanbad on April 12, 1961.

3. Two questions were agitated in the Trial Court in the High Court and also before us. One was regarding the jurisdiction of the Court at Dhanbad, and the other was whether the complaint was barred by limitation, it having been filed more than a year after the default, which occurred on January 21, 1960. Both the questions go to the root of the matter, but in the view we take of the second question, it would not be necessary for us to go into the first question.

4. The failure to furnish the annual returns either in the prescribed forms or within the time prescribed for it, that is, by January 21, in the succeeding year, is undoubtedly an offence punishable under Section 66 of the Act. A complaint in respect of such an offence has, under Section 79, to be filed within six months from the date of such default, in the present case January 21, 1960. The question then is whether the offence in question is covered by the substantive part of Section 79, or whether it is covered by the Explanation thereto. If the offence is of the former kind, the complaint in regard to it would be clearly time barred. It would not be so if the offence is of the kind, often called a continuing offence, in which event the Explanation to Section 79, would operate.

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 reoccurs, 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.

6. A few illustrative cases would help to bring out the distinction between the two types of offences.

7. In England, the Trade Union Act, 1871, by Section 12 provided that if any officer, member or other person being or representing himself to be a member of trade union, by false representation or imposition obtained possession of any moneys, books etc. of such trade union, or, having the same in his possession wilfully withheld or fraudulently misapplied the same, a court of summary jurisdiction would order such person to be imprisoned. The offence of withholding the money referred to in this section was held to be a continuing offence, presumably because every day that the moneys were wilfully withheld an offence within the meaning of Section 12 was committed. *Best v. Butler and Fitzgibbon*.¹ In *Verney v. Mark Fletcher & Sons Ltd.*,² the question again was whether the offence for which the information was lodged therein was a continuing offence. Section 10(1) of the Factory and workshop Act, 1901, inter alia provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Its sub-section (2) provided that a factory in which there was contravention of the section would be deemed not to be kept in conformity with the Act. Section 135 provided penalty for an occupier of a factory or workshop if he

1. (1932) 2 KB 108.

2. (1909) 1 KB 444.

failed to keep the factory or workshop in conformity with the Act. Section 146 provided that information for the offence under Section 135 shall be laid within three months after the date at which the offence came to the knowledge of the Inspector for the district within which the offence was charged to have been committed. The contention was that in May 1905, and again in March 1908 the fly-wheel was kept unfenced to the knowledge of the Inspector and yet the information was not laid until July 22, 1908. The information, however, stated that the fly-wheel was unfenced on July 8, 1908, and that was the offence charged. It was held that the breach of Section 10 was a continuing breach on July 10, 1908, and therefore, the information was in time. The offence under Section 135 read with Section 10 consisted in failing to keep the factory in conformity with the Act. Every day that the fly-wheel remained unfenced, the factory was kept not in conformity with the Act, and therefore, the failure continued to be an offence. Hence the offence defined in Section 10 was a continuing offence. (See also *Rex v. Talor*³). Section 85 of the Metropolis Management Amendment Act, 1862, prohibited the erection of a building, on the side of a new street of less than fifty feet in width, which shall exceed in height the distance from the front of the building on the opposite side of the street without the consent of the London County Council and impose penalties for offences against the Act and a further penalty for every day during which such offence should continue after notice from the County Council. The Court construed Section 85 to have laid down two offences: (1) building to a prohibited height, and (2) continuing such a structure already built after receiving a notice from the County Council. The latter offence was a continuing offence applying to any one who was guilty of continuing the building at the prohibited height after notice from the County Council. *The London County Council v. Worley*.⁴

8. In *Emperor v. Karsandas*,⁵ the question was as to the proper construction of Section 390, sub-section (1) of the Bombay City Municipal Act, 1888. That sub-section provided that no person shall newly establish in any premises any factory, in which it was intended that steam, water or other mechanical power should be employed, without the previous permission of the Commissioner, nor shall any person work or allow to be worked any such factory without such permission. The sub-section thus laid down two distinct offences: (1) establishing a new factory in which mechanical power was intended to be used without the permission, and (2) working such a factory in which mechanical power was intended to be used without permission. The High Court held that the first offence would be completed when a new factory was established without permission, an offence completed once and for all, while the other offence would be committed whenever such a factory without the permission was worked, that is, on every day that it was worked without the permission. The High Court observed that though the expression 'continuing offence' was not a very happy expression, it was very often used. A person may not continuously work such a factory. He might work it one day and not work it the next day, and then resume its working once again. Therefore, the proper meaning to be attached to such an offence was that whenever he worked such a factory he committed an offence. The distinction between the two kinds of offences lay between an act which constituted an offence once and for all and an act which continued, and therefore, constituted a fresh offence every time on which it continued. Similarly, in *State v.*

3. (1908) 2 KB 237.

4. (1894) 2 QB 826.

5. AIR 1942 Bom 326; 203 IC 592; 44 Cr LJ 120.

Bhivandiwala,⁶ three offences were charged against the respondent: (1) failure to submit a written notice of occupation of his factory as required by Section 7(1) of the Factories Act, 1948, (2) failure to submit an application for registration and grant of licence as required by Section 6 of the Act read with Rule 4 of the Bombay Factories Rules, 1950, and (3) for using the premises as a factory without a licence. The High Court held that the first two offences were offences completed on failure to submit the notice and the application for registration and licence, and a complaint in respect of them would be barred if it was lodged beyond the period of three months from the date of the offence under Section 106 of the Act. But a prosecution in respect of the third offence would not be so barred as that offence was a continuing offence in the sense that using the premises as a factory without registration and licence was an offence committed every time that the premises were used as a factory. Likewise, in *Bihar v. J. P. Singh*,⁷ the High Court of Patna held that conducting a restaurant without having it registered and without maintaining registers required by the Bihar Shops and Establishments Act, VIII of 1954, and the Rules framed thereunder were continuing offences as every time a restaurant was run without its being registered and without maintaining the requisite registers was an offence, and therefore, the period of limitation under Section 36 of the Act would be to run from the date of the occurrence of each of the defaults. See also *State v. Laxmi Narain*.⁸

9. Regulation 3 read with Section 66 of the Mines Act makes failure to furnish annual returns for the preceding year by the January 21, of the succeeding year an offence. The language of Regulation 3 clearly indicates that an owner, manager etc. of a mine would be liable to the penalty if he were to commit an infringement of the Regulation and that infringement consists in the failure to furnish returns on or before January 21, of the succeeding year. The infringement, therefore, occurs on January 21, of the relevant year and is complete on the owner failing to furnish the annual returns by that day. The Regulation does not lay down that the owner, manager etc. of the mine concerned would be guilty of an offence if he continues to carry on the mine without furnishing the returns or that the offence continues until the requirement of Regulation 3 is complied with. In other words, Regulation 3 does not render a continued disobedience or non-compliance of it an offence. As in the case of a construction of a wall in violation of a rule of a bye-law of a local body, the offence would be complete once and for all as soon as such construction is made, a default occurs in furnishing the returns by the prescribed date. There is nothing in Regulation 3 or in any other provision in the Act or the Regulations which renders the continued non-compliance an offence until its requirement is carried out.

10. The High Court, in our view, was right in holding that the complaint was time barred as the offence in question fell within the substantive part of Section 79 of the Act and not under the Explanation attached to it. The appeal, therefore, must fail and is dismissed.

6. ILR 1955 Bom 192; AIR 1955 Bom 161; 56 Cr LJ 666.
7. 1963 BLJR 782.

8. AIR 1957 All 343; 1957 Cr LJ 615; 1958 All WR (HC) 281.

MAYA RANI PUNJ V. C.I.T.

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45. I have, however, persuaded myself to agree with the order proposed by my learned brother because the promoter of lottery in the cases involved before us is the State and the grant is in derogation of the rights of the State. The State, in my opinion, can create such right for the first time, and such transfer of the right by the State as a promoter would amount to a transfer of property and being in consideration of a price can be sale of goods.

46. I should, however, not be understood to accept the position that if private lotteries are permissible and legal, a point which need not be decided in these cases, in such cases sale of goods was involved or not.

47. I, however, agree with my learned brother that the right to participate in the draw under a lottery ticket remains a valuable right till the draw takes place and it is for this reason that licensed agents or wholesalers or dealers of such tickets are enabled to effect sales thereof till the draw actually takes place and therefore lottery tickets, not as physical articles but as slips of paper or memoranda evidencing the right to participate in the draw can be regarded as dealer's merchandise and therefore goods which are capable of being bought or sold in the market. With these observations, I respectfully agree with the conclusion reached by my learned brother and concur with the order proposed by him.

(1986) 1 Supreme Court Cases 445

(BEFORE V.D. TULZAPURKAR, SABYASACHI MUKHARJI
AND RANGANATH MISRA, JJ.)

SMT. MAYA RANI PUNJ .. Appellant ;

Versus

COMMISSIONER OF INCOME TAX, DELHI .. Respondent.

Civil Appeal No. 1943 of 1974[†], decided on December 11, 1985

Income Tax — Penalty — Default in filing return within stipulated time — Whether penalty proceedings under Section 28 of 1922 Act or Section 271(1)(a) of 1961 Act applicable — Determination of, in terms of Section 297(1)(f) and (g) of 1961 Act — Relevant date for such determination would be after completion of assessment when ITO decided to initiate penalty proceedings — Default occurring on September 28, 1961, being the date when return was due — Return filed after more than seven months on May 3, 1962 — Penalty proceedings thereafter initiated by ITO under Section 271(1)(a) of 1961 Act instead of under Section 28 of 1922 Act, held, proper — Income Tax Act, 1922, Section 28(1)(a) — Income Tax Act, 1961, Sections 271(1)(a) and 297(2)(f) and (g)

[†]From the Judgment and Order dated December 21, 1972 of the Delhi High Court in Income Tax Reference No. 50 of 1968

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(1986) 1 SCC

Held :

Though the default occurred in September 1961 the date relevant for the purpose of initiating proceedings for imposition of penalty is when, following the assessment made, the ITO decided to initiate penalty proceedings. The proper provision to apply for dealing with the situation relating to penalty is as provided in Section 271(1)(a) of the 1961 Act. (Para 12)

Jain Brothers v. Union of India, (1969) 3 SCC 311 : (1970) 77 ITR 107 : AIR 1970 SC 778, affirmed and applied

ITO v. M. Damodar Bhat. (1969) 71 ITR 806 : (1969) 2 SCR 29 : AIR 1969 SC 408, relied on

Income Tax — Penalty — Default in filing return within stipulated time -- Rate of penalty — Penalty under Section 271(1)(a)(i)(b) of 1961 Act not violative of Article 20(1) on ground of being a greater penalty than that imposable under Section 28(1)(a) of 1922 Act which was in operation when default first occurred — Constitution of India, Article 20(1) — Income Tax Act, 1961, Section 271(1)(a)(i)(b) (Paras 9 to 11)

K. Satwant Singh v. State of Punjab, (1960) 2 SCR 89 : AIR 1960 SC 266 : 1960 Cri LJ 410, applied

Jain Brothers v. Union of India, (1969) 3 SCC 311 : (1970) 77 ITR 107 : AIR 1970 SC 778 and ITO v. M. Damodar Bhat. (1969) 71 ITR 806 (1969) 2 SCR 29 : AIR 1969 SC 408, followed

Income Tax — Penalty — Default in filing return within stipulated time — Held, a continuing default under Section 271(1)(a)(i)(b) of 1961 Act — Meaning of continuing default or offence — Income Tax Act, 1961, Section 271(1)(a)(i)(b) — Words and Phrases

Held :

As long as the default continues the offence is deemed to repeat and, therefore, it is taken as a continuing offence. If a duty continues from day to day, the non-performance of that duty from day to day is a continuing wrong. The imposition of penalty not confined to the first default but with reference to the continued default is on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. Accrual of penalty depends upon the terms of the statute imposing it. (Paras 17, 19 and 20)

State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890 : (1973) 1 SCR 1004 : 1973 SCC (Cri) 114 : AIR 1973 SC 908 and State v. A.H. Bhiwandivalla AIR 1955 Bom 161 : 56 Bom LR 1172 : ILR 1955 Bom 192 : 1955 Cri LJ 666, referred to

The legislative scheme under Section 271(1)(a) of the 1961 Act in making provision for a penalty coterminus with the default to be raised provides for a situation of continuing wrong. The wrong for which penalty is to be visited, commences from the date of default and continues month after month until compliance is made and the default comes to an end. The rule of *de die in diem* is applicable not on daily but on monthly basis. (Paras 17 and 20)

Jain Brothers v. Union of India, (1969) 3 SCC 311 : (1970) 77 ITR 107 : AIR 1970 SC 778, affirmed

CWT v. Suresh Seth, (1981) 2 SCC 790 : 1981 SCC (Tax) 168 : (1981) 129 ITR 328 : (1981) 3 SCR 419, overruled

Ajit Kumar Sarkar v. Assistant Registrar of Companies, 1979 Tax Law Reports 2001 ; United Savings and Finance Co. Pvt. Ltd. v. Deputy Chief Officer, Reserve Bank of India, 1980 Cri LJ 607 (Cal HC) ; Oriental Bank of Commerce v. Delhi Development Authority, 1982 Cri LJ 2230 (Del HC) and G.D. Bhattar v. State, AIR 1957 Cal 483 : 61 CWN 660 : 1957 Cri LJ 834, approved

In the instant case assessment was made on June 30, 1964, and proceedings for imposition of penalty were directed to be initiated that day. Provisions of Section 271(1)(a) of the 1961 Act were fully applicable and the demand of penalty was thus justified being within the limits of law. (Para 21)

[Ed. In **Bhagirath Kanoria v. State of M.P.**, (1984) 4 SCC 222 the Court said that the expression 'continuing offence' has no fixed connotation or a static import so as to put the concept in a strait-jacket. The Court further observed : "The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by continuing the particular act as an offence." The above view thus seems to be in consonance with that taken in the present case wherein the Court stated that "accrual of penalty depends upon the terms of the statute imposing it".

In the present case as well as in **Bhagirath Kanoria** the Court quoted a passage from the judgment in **Deokaran Nenshi** case to show the distinction between continuing offence and offences which take place when an act or omission is committed once and for all. But while in the present case the Court justified and distinguished the decision in **Deokaran Nenshi** case saying that there was no scope for applying the rule of *de die in diem* inasmuch as under Regulation 3 read with Section 66 of the Mines Act failure to file the annual return by the appropriate date becomes an offence, in **Bhagirath Kanoria** the Court limited that decision with the following observations : "The decision of this Court in **State of Bihar v. Deokaran Nenshi** to the effect that failure to furnish returns before the due date is not a continuing offence must be confined to cases of failure to furnish returns. It cannot be extended to cases like those before us in which, the contravention is not of a procedural or formal nature and goes against the very grain of the statute under consideration." However, instead of deriving a general statement of law from **Deokaran Nenshi** that default in furnishing return within time would in no case be a continuing offence, it would perhaps be more appropriate to distinguish that decision on facts as has been done in the present case.]

Appeal dismissed

R-M/7178/CT

Advocates who appeared in this case :

S.K. Dholakia, Senior Advocate (R.C. Bhatia and P.C. Kapoor, Advocates, with him), for the Appellant ;

S.C. Manchanda, Senior Advocate (M.N. Tandon and Miss A. Subashini, Advocates, with him), for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J.—The assessee is in appeal by special leave challenging the decision of the Delhi High Court reported in 92 ITR 394.

2. The year of assessment is 1961-62. The return was due by September 28, 1961, but the same was neither filed within that time, nor was any extension asked for. The assessee filed the return on May 3, 1962 — beyond more than seven months of the due date. With effect from April 1, 1962, the Income Tax Act of 1961 ('1961 Act' for short) had come into force. The Income Tax Officer took proceedings under Section 271(1)(a) of the 1961 Act and imposed a penalty of Rs 4060 for failure to furnish the return within the time on a finding that the assessee had not been prevented by any reasonable cause for not complying with the statutory obligation to make the return. The assessee challenged the imposition of penalty by preferring an appeal to the Appellate Assistant Commissioner who refused to interfere and dismissed the appeal. On further appeal, the Appellate Tribunal held that penalty was leviable under the 1961 Act but the amount of penalty had to be quantified according to the provisions of Section 28 of the Income Tax Act, 1922 ('1922 Act' for short). Applying the provisions of the 1922 Act, the Tribunal reduced the penalty to Rs 400. At the instance of the Revenue the following question was referred to the High Court under Section 256(1) of the 1961 Act :

Whether, on the facts and in the circumstances of the case, the Tribunal was in law competent to reduce the penalty levied under Section 271(1)(a) to a figure lower than the sum equal to 2% of the tax for every month during which the default continued but not exceeding in the aggregate 50% of the tax ?

The High Court answered the reference in favour of the Revenue and against the assessee.

3. Though the quantum of penalty is small, the question of law is of substantial importance, and covers an aspect which often arises for determination before the tax authorities and the High Courts.

4. Provisions of three sections, one of the 1922 Act and two of the 1961 Act, are relevant for the decision of the point at issue. Section 28 of the 1922 Act, as far as relevant, provided :

Penalty for concealment of income or improper distribution of profits.—(1) If the Income Tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of Section 22 or Section 34 or has without reasonable

cause failed to furnish it within the time allowed and in the manner required by such notice, or

- (b) * * *
 (c) * * *

he or it may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income tax and super tax, if any, payable by him, a sum not exceeding one and a half time that amount, . . .

5. The two sections relevant to the point of the 1961 Act are Sections 271 and 297. Section 271 is the corresponding provision of Section 28. Sub-section (1)(a) thereof is the relevant provision. It provides :

If the Income Tax Officer is satisfied that any person—

- (a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139 or by notice given under sub-section (2) of Section 139 or Section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of Section 139 or by such notice, as the case may be, or

- (b) * * *
 (c) * * *

he may direct that such person shall pay by way of penalty,—

- (i) (a) * * *
 (b) in any other case, in addition to the amount of the tax, if any, payable by him, a sum equal to 2% of the assessed tax for every month during which the default continued.

Section 297(1) repealed the 1922 Act. Sub-section (2), as far as relevant, provided :

Notwithstanding the repeal of the Indian Income Tax Act, 1922 (hereinafter referred to as the repealed Act),—

- (a) to (e) * * *
 (f) any proceeding for the imposition of a penalty in respect of any assessment completed before the first day of April 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed ;
 (g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962, or any earlier year, which is completed on or after the

first day of April 1962, may be initiated and any such penalty may be imposed under this Act ; . . .

6. It is sufficient to take note of the position that under the 1922 Act liability to make a return was contingent upon service of notice under Section 22 while under the 1961 Act every person having a taxable income has under Section 139 the liability to make a return within the time provided by the Act. On the facts of the case before us, clause (j) of Section 297(2) of the 1961 Act is not attracted because the return was filed on May 3, 1962, and assessment was made subsequent to April 1, 1962.

7. The Income Tax Officer found that there was default for a little more than seven months. He imposed penalty at the rate of 2% as provided in Section 271(1)(a) of the 1961 Act and raised a demand of Rs 4060. That demand had been upheld in appeal. The Tribunal did not refer to the provisions of Section 271(1)(a) while reducing the penalty to Rs 400 but the reduction was directed on the basis that the assessee was ill and had been absent from headquarters on that account. Before the High Court the Revenue had taken the stand that there was statutory prescription in the matter of imposition of penalty and the Act having provided that the penalty shall be a sum equal to 2% of the assessed tax for every month during which the default continued, a sum equal to the prescribed rate had to be imposed and could not be reduced. The High Court accepted the stand of the Revenue and found support for its conclusion by relying upon Section 297(2)(j) of the 1961 Act and holding that Section 271(1) of that Act was applicable to the levy of penalty for defaults committed under the 1922 Act. According to the High Court the words "such penalty" occurring in clause (g) of Section 297(2) of the 1961 Act related to penalty which was referred to in the earlier part of that clause, namely, penalty imposable under Section 271 of the 1961 Act and had no reference to penalty under Section 28 of the 1922 Act. It was of the further view that the word 'may' under Section 297(1) of the 1961 Act vested in the Income Tax Officer discretion either to levy or not to levy a penalty but if he did decide to levy one, he had no option but to levy penalty at the prescribed rate. In the instant case, the Income Tax Officer was, therefore, obliged to levy penalty at the rate of 2% per month subject to a maximum of 50% of the demanded tax. Exercising the same powers as the Income Tax Officer did, the Appellate Tribunal had no jurisdiction to reduce the penalty to a sum lesser than the prescribed rate. Support for the conclusion of the High Court was drawn from a Constitution Bench decision of this Court in *Jain Brothers v. Union of India*¹.

1. (1970) 77 ITR 107 : (1969) 3 SCC 311 : AIR 1970 SC 778

8. In *Jain Brothers case*¹ this Court mainly examined and decided about the vires of Section 297(1)(g) as also the justification of fixing the commencement of the Act of 1961 with effect from April 1, 1962. Challenge was on the basis of Article 14 of the Constitution. This Court took the view that it was for the legislature to fix the date when a particular statute would come into force and with the repealing of the 1922 Act Parliament was fully competent and it was within its legislative jurisdiction to fix April 1, 1962, as the date of commencement of the 1961 Act. The validity of Section 297(2) and in particular clauses (f) and (g) thereof was upheld. The Court held that penalty proceedings were not necessarily a continuation of the assessment proceedings. It was well settled that in fiscal enactments the legislature has a larger discretion in the matter of classification so long as there was no departure from the rule that persons included in a class are not singled out for special treatment. It was not possible to say that while applying the penalty provisions contained in the Act of 1961 to cases of persons whose assessments were not completed after April 1, 1962, any class has been singled out for special treatment. It was obvious that for the imposition of penalty it was not the assessment year or the date of the filing of the return that was important but it was the satisfaction of the income tax authorities that a default had been committed by the assessee which attracted the provisions relating to penalty. Whatever be the stage at which the satisfaction was reached, the scheme of Sections 274(1) and 275 of the Act of 1961 was that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for the purpose of penalty is the date of such completion, and the satisfaction of the authority that proceedings for levy of penalty be initiated.

9. Under Section 28 of the 1922 Act the upper limit of penalty only was provided and there was no prescription of any particular rate as found in Section 271(1)(a) of 1961 Act. That penalty contemplated under the respective sections of the two Acts is quasi-criminal in character is not disputed. Mr Dholakia for the appellant canvassed before us that in *Jain Brothers case*¹ the challenge raised by the assessee was not examined with reference to the provisions of Article 20(1) of the Constitution. Under sub-article (1) of Article 20 no person is to be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. According to counsel, when there was default in furnishing the return within September 28, 1961, the breach had occurred and the assessee had exposed himself to be visited with penalty. That was a time when the Act of 1922 was in force. Therefore, for levying penalty on the assessee resort should have been made to

the provisions of Section 28 of the 1922 Act and not to Section 271(1)(a) of 1961 Act. If the 1922 Act applied, in the absence of a prescription of any particular rate or the minimum, it was open to the Tribunal to reduce the penalty in the manner it has done and no objection could be raised to the reduction of the quantum of penalty. In *Jain Brothers case*¹ the conclusions of a three Judge Bench in *ITO v. M. Damodar Bhat*², were quoted with approval. In *Damodar Bhat case* this Court had said :

In other words, the procedure of the new Act will apply to the cases contemplated by Section 297(2)(j) of the new Act mutatis mutandis.

In *Jain Brothers case*¹ the Court held that “similarly the provisions of Section 271 of the Act of 1961 will apply mutatis mutandis to proceedings relating to penalty initiated in accordance with Section 297(2)(g) of that Act”.

10. Learned counsel for the appellant has taken the stand that the observations in *Damodar Bhat case*² which were approved by the five Judge Bench in *Jain Brothers case*¹ related only to the procedural part of it and this Court did not decide the question of quantum.

11. The contention of Mr Dholakia that in providing a prescribed rate of penalty for imposition under Section 271(1)(a) of the 1961 Act there has been breach of Article 20(1) of the Constitution cannot be accepted. A five Judge Bench of this Court in *K. So'want Singh v. State of Punjab*³, examined a similar submission at great length keeping Article 20 of the Constitution in view. In the matter before the Constitution Bench this question arose for consideration in view of the fact that no minimum sentence of fine had been provided under Section 420 of the Indian Penal Code which was the law in force at the time of the occurrence but the provisions of Ordinance No. 29 of 1943 made imposition of a minimum fine compulsory. Inam, J. who spoke for the Constitution Bench, at page 113 of the report stated :

In the present case even if it be assumed that Section 10 of the Ordinance was an ex post facto law in that in the matter of penalty a minimum sentence of fine was directed to be imposed by a court whereas at the time that the appellant committed the offence, Section 420 contained no such provision, what is prohibited under Article 20 of the Constitution is the imposition of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The total sentence of fine -- 'ordinary' and 'compulsory' --- in the

2. (1969) 71 ITR 806 (1969) 2 SCR 29 : AIR 1969 SC 408

3. (1960) 2 SCR 89 : AIR 1960 SC 266 · 1960 Cri LJ 410

present case cannot be said to be greater than that which might have been imposed upon the appellant under the law in force at the time of the commission of the offence, because the fine which could have been imposed upon him under Section 420 was unlimited. A law which provides for a minimum sentence of fine on conviction cannot be read as one which imposes a greater penalty than that which might have been inflicted under the law at the time of the commission of the offence where for such an offence there was no limit as to the extent of fine which might be imposed.

12. Mr Dholakia candidly accepts that his submission is contrary to the ratio of the decision. It is conceded that under Section 28 of the 1922 Act in the facts of the case a fine of more than Rs 4060 (being within the limit of $\frac{1}{2}$ times of the tax amount) could have been levied. While conceding to that extent, Mr Dholakia submits that the decision of the Constitution Bench of this Court in *Satwant Singh case*³ requires reconsideration as it has not taken into account the ratio of an important decision of the United States Supreme Court in the case of *Elbert B. Lindsay v. State of Washington*⁴. We are bound by the decision of the Constitution Bench. It has held the field for a quarter of a century without challenge and non-consideration of an American decision which apparently was not then cited before this Court does not at all justify the submission at the Bar for a reconsideration of the decision of this Court in *Satwant Singh case*³. On the ratio of *Jain Brothers case*¹, the following conclusions are reached :

- (a) Though the default occurred in September, 1961 the date relevant for the purpose of initiating proceedings for imposition of penalty is when, following the assessment made, the Income Tax Officer decided to initiate penalty proceedings ;
- (b) The proper provision to apply for dealing with the situation relating to penalty is as provided in Section 271(1)(a) of the 1961 Act.

13. The question that remains for consideration now is as to whether the default of non-filing of the return within the time stipulated by law is not a continuing offence. This aspect is relevant in the matter of imposition of penalty and its quantification. In the decision of his Court in *CWT v. Suresh Sethi*⁵, the default related to non-filing of the return under Section 18(1)(a) of the Wealth Tax Act. The law relating

4. (1937) 81 L Ed 1182

5 (1981) 129 ITR 328 : (1981) 3 SCR 419 : (1981) 2 SCC 790 : 1981 SCC (Tax) 168

to penalty under that Act was amended in 1964 and again in 1969. These amendments were not retrospective. With reference to the application of these amendments the question as to whether the default was a single one or a continuing one fell for consideration. The amended Wealth Tax Act provided for imposition of penalty with reference to every month during which the default continued. This Court took the view that such a provision indicated the legislative intention that a multiplier had to be adopted for determining the quantum of penalty and did not have the effect of making the default a continuing one. The default having already occurred prior to the enforcement of the amendments, the amending provisions had no application. Dealing with the point this Court observed : [SCC p. 798, para 11, SCC (Tax) pp. 175-6, para 11]

A liability in law ordinarily arises out of an act of commission or an act of omission. When a person does an act which law prohibits him from doing it and attaches a penalty for doing it, he is stated to have committed an act of commission which amounts to a wrong in the eye of law. Similarly, when a person omits to do an act which is required by law to be performed by him and attaches a penalty for such omission, he is said to have committed an act of omission which is also a wrong in the eye of law. Ordinarily a wrongful act or failure to perform an act required by law to be done becomes a completed act of commission or omission, as the case may be, as soon as the wrongful act is committed in the former case and when the time prescribed by law to perform an act expires in the latter case and the liability arising therefrom gets fastened as soon as the act of commission or of omission is completed. The extent of that liability is ordinarily measured according to the law in force at the time of such completion. In the case of acts amounting to crimes the punishment to be imposed cannot be enhanced at all under our Constitution by any subsequent legislation by reason of Article 20(1) of the Constitution which declares that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

There can be no dispute to what has been stated above. In *Suresh Seth case*⁵ this Court proceeded to say : [SCC pp. 798-9, para 11, SCC (Tax) p. 176, para 11]

In other cases, however, even though the liability may be enhanced it can only be done by a subsequent law (of course subject to the Constitution) which either by express words or by necessary implication provides for such enhancement. In the

instant case the contention is that the wrong or the default in question has been altered into a continuing wrong or default giving rise to a liability *de die in diem*, that is, from day to day. The distinctive nature of a continuing wrong is that the law that is violated makes the wrong doer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. It is reasonable to take the view that the court should not be eager to hold that an act or omission is a continuing wrong or default unless there are words in the statute concerned which make out that such was the intention of the Legislature. In the instant case whenever the question of levying penalty arises what has to be first considered is whether the assessee has failed without reasonable cause to file the return as required by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure provided in the Act. When the default is the filing of a delayed return the penalty may be correlated to the time lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default however is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day.

14. This conclusion has been seriously disputed by learned counsel for the Revenue and according to him the amended Wealth Tax Act and Section 271(1)(a) of the 1961 Act provides for a continuing default. A bench of this Court in *State of Bihar v. Deokaran Nenshi*⁶, while examining the provisions of Section 66 of the Mines Act, very appropriately drew the distinction between continuing offence and offences which take place when an act or omission is committed once and for all. Shelat, J. speaking for the court stated: [SCC p. 892, para 5, SCC (Cri) p. 116, para 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

6. (1973) 1 SCR 1004; (1972) 2 SCC 890; 1973 SCC (Cri) 114

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.

Under Regulation 3 read with Section 66 of the Mines Act failure to file the annual return by the appropriate date becomes an offence. There was no scope for applying the rule of *de die in diem*.

15. Venkataramiah, J. in *Suresh Seth case*⁵ quoted Lord Lindley in *Hole v. Chard Union*⁷, where the following observation had been made : [at SCC p. 799, para 11, SCC (Tax) p. 176, para 11]

What is a continuing cause of action ? Speaking accurately, there is no such thing ; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought.

16. Some decisions of different High Courts were also quoted with approval by Venkataramiah, J. in support of the conclusion that the default had been committed on the last day allowed to file the return and there was no case of a continuing default. We are inclined to agree with counsel for the Revenue that the conclusion reached in *Suresh Seth case*⁵ is contrary to law. *Jain Brothers case*¹ was not referred to at all in *Suresh Seth case*⁵. On the facts found in *Suresh Seth case*⁵ where the returns for the assessment years 1964-65 and 1965-66 had been filed on March 18, 1971, and for which assessment was made on March 22, 1971, the ratio of *Jain Brothers case*¹ would have been fully applicable. Though *Jain Brothers case*¹ was with reference to the Income Tax Act, 1961, the provisions of Section 18(1)(a) of the Wealth Tax Act, as amended, brought in a similar provision and a sum equal to 2% of the tax for every month during which the default continued with an optimum of 50% of the tax due become payable. As rightly pointed out in *Jain Brothers case*¹, the question of imposition of penalty would arise only after assessment of tax is made and, therefore, in *Suresh Seth case*⁵ on the analogy of the ratio accepted by this Court in *Jain Brothers case*¹ the amended provisions would become applicable.

17. In *Words and Phrases*, Permanent Edition, under the head 'Continuing Offence', instances have been given which indicate that as long as the default continues the offence is deemed to repeat and,

7. (1894) 1 Ch D 293

therefore, it is taken as a continuing offence. As has been appropriately indicated in *Corpus Juris Secundum*, Vol. 85, p. 1027, accrual of penalty depends upon the terms of the statute imposing it and in view of the language used in Section 271(1)(a) of the 1961 Act, the position is beyond dispute that the legislature intended to deem the non-filing of the return to be a continuing default — the wrong for which penalty is to be visited, commences from the date of default and continues month after month until compliance is made and the default comes to an end. The rule of *de die in diem* is applicable not on daily but on monthly basis.

18. In *State v. A.H. Bhiwandiwalla*⁸, (a decision referred to in *Suresh Seth case*⁹), Gajendragadkar, J. (as he then was), after quoting the observations of Beaumont, C.J. in an earlier Full Bench decision of that Court observed :

Even so, this expression has acquired a well-recognised meaning in criminal law. If an act committed by an accused person constitutes an offence and if that act continues from day to day, then from day to day a fresh offence is committed by the accused so long as the act continues. Normally and in the ordinary course an offence is committed only once. But we may have offences which can be committed from day to day and it is offences falling in this latter category that are described as continuing offences.

19. The imposition of penalty not confined to the first default but with reference to the 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. Without sanction of law no penalty is imposable with reference to the defaulting conduct. The position that penalty is imposable not only for the first default but as long as the default continues and such penalty is to be calculated at a prescribed rate on monthly basis is indicative of the legislative intention in unmistakable terms that 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.

20. There are several statutory provisions where such default is stipulated to be visited with daily penalty. For instance, see *Ajit Kumar Sarkar v. Assistant Registrar of Companies*⁹, where the Calcutta High Court dealing with the provisions of Sections 159 and 162 of the Companies Act of 1956, held the liability to be a continuous one : *United Savings and Finance Co. Pvt. Ltd. v. Deputy Chief Officer*,

8. AIR 1955 Bom 161 : 56 Bom LR 1172. ILR 1955 Bom 192 : 1955 Cri LJ 666

9. 1979 Tax Law Reports 2001

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*Reserve Bank of India*¹⁰, where referring to Section 58-B(2) of the Reserve Bank of India Act it was held that refusal to comply with the terms of the said section created an offence and continued to be an offence so long as such failure or refusal persisted; *Oriental Bank of Commerce v. Delhi Development Authority*¹¹, where referring to the provisions of the Delhi Development Act of 1957, the Court held that the offence was a continuous one. In *G.D. Bhattar v. State*¹², it was pointed out that a continuing offence or a continuing wrong is after all a continuing breach of the duty which itself is continuing. If a duty continues from day to day, the non-performance of that duty from day to day is a continuing wrong. We are of the view that the legislative scheme under Section 271(1)(a) of the 1961 Act in making provision for a penalty coterminus with the default to be raised provides for a situation of continuing wrong.

21. In the instant case assessment was made on June 30, 1964, and proceedings for imposition of penalty were directed to be initiated that day. Provisions of Section 271(1)(a) of the 1961 Act were fully applicable and the demand of penalty was thus justified being within the limits of law. In our opinion the High Court had taken the right view and the appeal has, therefore, to be dismissed. In the facts of the case we direct parties to bear their own costs.

(1986) 1 Supreme Court Cases 458

(BEFORE A.P. SEN AND D.P. MADON, JJ.)

UNION OF INDIA AND ANOTHER .. Petitioners :

Versus

R.G. KASHIKAR AND ANOTHER .. Respondents.

Special Leave Petition (Civil) No. 12335 of 1985†,
decided on December 20, 1985

Labour and Services — Transfer of Central Government establishment to State Governments proposed — Status till actual transfer — National Fitness Corps, a Central Government undertaking actually transferred to administrative control of State Governments eleven years after the proposal — Held, the proposal by itself would not have the effect of rendering the Instructors working thereunder surplus at the Centre — Till completely absorbed in State Governments, the Instructors would continue to be Central Government employees and entitled to the benefits — Distinguishing them as a separate class and

10. 1980 Cri LJ 607 (Cal HC)

11. 1982 Cri LJ 2230 (Del HC)

12. AIR 1957 Cal 483 : 61 CWN 660 : 1957 Cri LJ 834

†From the Judgment and Order dated April 11, 1985 of the Karnataka High Court in Writ Petition No. 5450 of 1980

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 3-Judge Bench (2019) 18 Supreme Court Cases 494
 2019 (BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAIH, JJ.)
 March 5

MANTRI TECHZONE PRIVATE LIMITED .. Appellant; a

Versus

FORWARD FOUNDATION AND OTHERS .. Respondents. b

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 b

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 c

— 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 d

— 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 e

— 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) f

[**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.] g

[†] 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) h

MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION

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

a — 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)

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

c — 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 **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**

e — 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 —
f 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

g — 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 or likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

h

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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 reappraisal of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappraisal 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 reappraisal 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

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a 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*

b 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)

c 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)

d 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)

e 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)

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

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a 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 Sripama 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, b Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

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| | 2. 2016 SCC OnLine NGT 637, <i>Forward Foundation v. State of Karnataka</i> | 508e |
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| d | 6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, <i>Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.</i> | 516e-f |

The Judgment of the Court was delivered by

e 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 7-5-2015¹ and 4-5-2016² respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short “the Tribunal”).

f 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”).

g 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 4-5-2016². The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016² 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

h 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

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a 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”).

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d 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.

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h 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

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- a 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.
- b 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.
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- e 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.
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- g 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
- h Bellandur Lake and Agara Lake but there are no primary storm water drains

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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

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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 7-5-2015¹ 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.

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

(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

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a (10) In the event, the Committee is of the opinion that the adverse impacts noticed are redemable, 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.

b (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.

c (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.

d (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.

e (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.”

f 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 20-5-2015³ passed the following order: [*Core Mind Software & Services (P) Ltd. case*³, SCC OnLine SC paras 2-5]

g “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

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

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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 judgment¹ 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 6-4-2016⁴ 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.

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

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

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The Tribunal after hearing the parties passed an order dated 4-5-2016² 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, 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.

g 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 by CPCB/MoEF.

h 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

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 Balandur 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

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

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

b (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.

c (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.

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d 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.

e 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).

f **General directions**

g 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.

h 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 plan 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.

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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 Sajjan 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 4-5-2016² 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

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

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a 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.

c 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.

e 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.

f 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.

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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 *Chunital 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

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a seek reappraisal of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappraisal 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 reappraisal 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.

b 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 c 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.

d 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.

e 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 f the Tribunal has been cloaked with respect to restoration of the environment.

g 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.

h 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

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a 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.

b 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.

c 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.

d 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.

e 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

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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 observed¹ 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

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

a “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.”

c **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.

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

e **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.

f **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.

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

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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 4-5-2016²: (*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

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

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

a (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.

b 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.

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

d 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:

e 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.

f 62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016² 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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Please find the attachment

On behalf of

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Regards,

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