BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 41 OF 2023 (WZ)

===IN THE MATTER OF===

Arun Nathuram Gaikwad

... Applicant

=== *versus* ===

Secretary, Environment Department,

Government of Maharashtra and Others

... Respondents

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4.		**Environment Clearance granted to Yamuna Expressway Industrial Development Authority (YEIDA)** for the Project category under Schedule Entry 8 (b) of Environment Impact Assessment Notification, 2006.	**C**	
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Advocate for Applicant

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Secretary, Environment Department,

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... **Respondents**

WRITTEN SUBMISSIOND BY MR. ADITYA PRATAP, ADVOCATE ON BEHALF OF APPLICANT – ARUN NATHURAM GAIKWAD IN RESPONSE TO THE ORDER DATED 16TH FEBRUARY 2024 OF THIS HON'BLE TRIBUNAL IN O.A. NO. 41/2023

MOST RESPECTFULLY SHOWETH:

1. INTRODUCTION

1.1 The written submissions are presented for the kind perusal of this Hon'ble Court with reference order dated 16th February 2024 from which the present proceeding

arises. A copy of which is hereto annexed as **"EXHIBIT – A".** The relevant extracts are stated hereunder:

> ***"3.*** *In response to this, the learned counsel for applicant has drawn our attention to page no.8 of the Original Application, wherein, in para no.2.2, it is stated by him that in a land admeasuring an area of 122.10 hectares, a Township and Area Development Project is being implemented by the Project Proponent, Mumbai Metropolitan Region Development Authority (MMRDA).*
>
> ***4.*** *We are of the view that MMRDA cannot be a Project Proponent because it is a planning authority. Therefore, the said planning authority would be giving land to the individual builders, who will require to obtain prior EC, if the provided total BUA exceeds 20,000 sq. mtrs."*
>
> ***5.*** *In this regard, the learned counsel for applicant submits that there are large number of Judgments of Hon'ble Supreme Court. As per the interpretation made by the Hon'ble Supreme Court in these Judgments, this kind of construction would fall in the category of township and area development project, which would require prior EC to be obtained under Schedule –I (8)(b) by the Planning Authority. We direct the learned Counsel for applicant to place these Judgments of Hon'ble Supreme Court before us, for which he seeks a weeks's time….."*

1.2 If the Tribunal finds that Mumbai Metropolitan Region Development Authority (MMRDA) cannot be a Project

Proponent, then no question arises as to the requirement to obtain Environment Clearance by Planning Authority. However if the court finds in contradiction then this kind of construction would fall in the category of township and area development project, which would require prior EC to be obtained under Schedule –I (8)(b) by the Planning Authority.

1.3 Person to the aforesaid direction queries of this Hon'ble Court, the Applicant – Arun Gaikwad has proposed the following issues in that regard:

> **A.** What constitutes an Area Development Project?
>
> **B.** Whether a Development Authority, when undertaking the development of a layout, area development scheme, or township, need to secure prior environmental clearance, despite private builders being responsible for the construction of individual buildings and structures and obtaining their respective Environment Clearances?
>
> **C.** Whether there are any documented instances wherein Environmental Clearance has been obtained for Area Development Projects?
>
> **D.** Whether a subtle legal distinctions exist between Area Development Projects and Township Project?
>
> **E.** Whether does a town planning scheme require Prior Environment Clearance?

2) WRITTEN SUBMISSION OF APPLICANT IN AN ISSUE SPECIFIC MANNER:

2.1) GROUND NO. 1 – Area development initiatives are vital for promoting environmental awareness, yet it is essential to prioritize environmental preservation over economic interests. Proper management of such projects is necessary to mitigate any adverse environmental effects.

A. That the imperative to prioritize environment preservation over economic interests underscores the fundamental obligation to safeguard ecological integrity and mitigate adverse environmental impacts resulting from development projects.

B. In the case **G. Sundarrajan vs. Union of India & Ors., (2013) 6 SCC 620,** a copy of which is hereto annexed as **"EXHIBIT – E",** the Hon'ble Supreme Court observed that:

> ***"238.1.*** *In Intellectuals Forum, Tirupathi v. State of A.P. and others, it has been held that* ***merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What is required to be prescribed is the principle of***

sustainable development and find a balance between the developmental needs and the environmental degradation."

C. In **Narmada Bachao Andolan v. Union of India and others, (2000) 10 SCC 664,** a copy of which is hereto annexed as **"EXHIBIT – F",** a three-Judge Bench, while dealing with the public projects and policies, issued following directions: -

"254. While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of the project at the earliest, and (ii) ensuring compliance with the conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the government thereby protecting the rights under Article 21 of the Constitution. Keeping these principles in view, we issue the following directions:

***(1)** Construction of the dam will continue as per the award of the Tribunal.*

***(2)** .....*

(3) The Environmental Subgroup under the Secretary, Ministry of Environment and Forests, Government of India will consider and give, at each stage of the construction of the dam, environment clearance before

further construction beyond 90 meters can be undertaken

(4) *.....*

(5) *.....*

(6) *Even though there has been substantial compliance with the conditions imposed under the environment clearance NCA and the Environment Subgroup will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment....”*

D. Hence, in the light of aforesaid cases it is apt to assert that the primary objective of area development initiatives is to create a prosperous, resilient, and inclusive environment conducive to sustainable development, fostering the growth of individuals, businesses and communities within specified geographic boundaries.

2.2 GROUND NO. 2 – Under established legal precedent, it is obligatory for project proponents to obtain Prior Environmental Clearance for projects as per Environment Impact Assessment Notification, 2006. This obligation is rational and valid as planning authorities, acting as primary developers of the area, are tasked with ensuring

compliance before land allocation to individual builders.

A. The Environment Impact Assessment Notification of 2006 ascertains Prior Environment Clearance to be obtained for "Township and Area Development Projects" under Schedule Entry (8) (b). The threshold limit for such projects is:

> *"an area greater than and equal to 50 ha and or build up area greater than and equal to 1,50,000 sq meters."*

B. In the case above the Hon'ble National Green Tribunal ascertains the requirement to obtain Environment Clearance for the Auroville Universal Township even if the project is to be completed in multiple phases.

C. In **Manoj Kumar Misra vs. NCT of Delhi and Others**, **O.A. No. 479/2015**, a copy of which is hereto annexed as **"EXHIBIT – G",** the Hon'ble National Green Tribunal, as per order dated **5 August 2016** has stated that:

> *"Learned Counsel appearing on behalf of the Respondent No. 7, PWD, Govt. of NCT submits that Application for grant of Environment Clearance for the construction in question has been moved on 25th Jul, 2016 and the same is pending decision. This may perhaps bring to an end the controversy over the*

prayer clause (1) seeking directions to obtain Environment Clearance for the construction in question. Further case would survive as regards the other reliefs unless withdrawn."

D. In the aforementioned case, the Project Proponent is the Public Works Department under the Government of NCT of Delhi. This department is distinctly divided into three branches**.**

(i) Buildings and Roads
(ii) Irrigation, and
(iii) Public Health Engineering.

E. Provided that the Public Works Department serves as an entity responsible for the planning, construction, maintenance, and repair of all infrastructure and buildings, it is evident that Planning Authorities are mandated to obtain Environmental Clearance.

F. In **Mahagunapuram Apartments Owners Association v. Ghaziabad Development Authority and Others, 2021 SCC OnLine NGT 2059,** a copy of which is hereto annexed as **"EXHIBIT – H",** the Hon'ble National Green Tribunal gave following order:

*"**5**. We have heard learned counsels for the applicant, State PCB and GDA. Learned Counsel for the applicants point out contradiction in the report which on the one hand seeks time for compliance, on the other falsely states that there is*

compliance on erroneous and repeatedly rejected basis, contrary to the stand of the PCB and earlier orders of this Tribunal. ***It is patent that the EC condition has still not been complied with for which GDA needs to be held accountable. Order of the State PCB for payment of compensation and taking further measures has also not been complied with. State PCB needs to take coercive measures. GDA in coordination with any other concerned authority needs to take immediate steps for compliance of mandate of law."***

G. In the aforesaid order the Hon'ble National Green Tribunal has well established the requirement for Development Authority, i.e., Ghaziabad Development Authority (GDA) to procure Environment Clearance. Hence, the assertion of this Tribunal that Planning Authority is exempt from obtaining Environment Clearance lacks substantive justification.

2.3 GROUND 3: A plethora of documented instances reveal the procurement of Environmental Clearance by Planning Authorities acting as Project Proponents. Therefore, the Applicant – Arun Gaikwad contention regarding the necessity for Prior Environment Clearance by

the Mumbai Metropolitan Development Authority (MMRDA) carries legal merit.

A. The Project Proponent is responsible for obtaining Prior Environmental Clearance. Below are examples where Environmental Clearance is granted by the Regulatory Authority.

B. The **Central Public Works Department, on behalf of Customs Department, Government of India, Mumbai** has been granted Environment Clearance (EC) for the concerned, hereto annexed as "**EXHIBIT – B"**. The relevant specifications of the project are:

> **1) Name of Project** – Proposed Residential Cum Commercial Project – CUSTOM ENCLAVE at C.S. No. 146, Salt Pan Division, F/N Ward, Wadala, Mumbai
>
> **2) Project Category** – 8 (b) B1 Townships and Area Development Projects
>
> **3) Project Proponent –** Executive Engineer & Senior Manager (C), Central Public Works Department, On behalf of Customs Department, Governemnt of India, Mumbai
>
> **4) Plot Area (sq.m**.) – 2,26,013.49 sq. m (As per PRC) and 2,21,303.28 sq.m (As per site consition)

C. The **Yamuna Expressway Industrial Development Authority (YEIDA)** has been granted Environment Clearance (EC) for the concerned project,

hereto annexed as "**EXHIBIT – C"**. The relevant specifications of the project are:

1) **Project Name** – The Development of Medical Device Park at Village – Rabpura & Muradgadi, Sector -28, YEIDA, District – Gautam Budh Nagar, Uttar Pradesh.

2) Project Category – 8(b) B1 Townships and Area Development Projects

3) Developer of the Project – Yamuna Expressway Industrial Development Authority

4) Total Plot Area – 350 Acres (141.64 ha.)

D. The City and Industrial Development Corporation of Maharashtra (CIDCO) is a New Town Development Authority for NAVI Mumbai as per MRTP Act. It has been granted Environment Clearance for the project under category 8 (b) B1, i.e., Township and Area Development Projects, hereto annexed as **"EXHIBIT – D".** The relevant specifications of the project are:

1) Project Name – Navi Mumbai International Airport – Area Development of Pushpak Nagar at Dapoli, Navi Mumbai.

2) Project Proponent – Shri K.T. Magare, Executive Engineer (AP – Pushpak – II), M/s CIDCO Ltd.

3) Project Type – Area Development

4) Total Plot Area – Township Gross Area 222.30 ha.

E. The Eastern bench of National Green Tribunal in a petition, **Ashis Kothari vs. The Ministry of Environment Forest & Climate Change & Ors, Appeal No. 32/2022**, a copy of which is hereto annexed as **"EXHIBIT – I",** filed against clearance given to the Great Nicobar Island Project held that:

> *"**33.** However, there are some unanswered deficiencies pointed out by the appellants which need to be addressed. By way of instance, it is pointed out that out of 20668 coral colonies, 16150 are proposed to be translocated without any mention of threat to remaining 4518 coral colonies. It is pointed out that ICRZ Regulations prohibit destruction of corals. Further, data collected for impact assessment is only of one season as against requirement of three seasons. It is also shown that part of the project is in CRZ IA area where Port is prohibited.* ***These aspects may call for revisiting the EC by a High-Powered Committee (HPC) which we propose to constitute.*** *The same will be headed by Secretary, MoEF&CC, GoI. Other members will be Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, Central Pollution Control Board, nominee of Vice Chairman of Niti Aayog, nominee of Secretary, Ministry of Shipping and Director, Wildlife Institute of India. Secretary, MoEF&CC may appoint a nodal officer, not below the rank of Joint Secretary, for facilitating*

functioning of the Committee. The Committee may meet within two weeks from today and finalise its proceedings within two months. It will be open to the Committee to associate any other institution/expert. ***In the light of report of the Committee, the EC or its conditions may be re-looked into by the competent authority. Till then, further work in pursuance of impugned EC may not proceed except for the work which may not be of irreversible nature. "***

F. That in the aforesaid order the Hon'ble National Green Tribunal directed constitution of High-Powered Committee under the Environment Secretary for a re-look at Environment Clearance given to the Great Nicobar Project. Relevant details of the project:

1) **Project Category**: 7(e) Ports, harbours; 1(d) Power Plant; 8(b) Township and Area Development

2) **Project Proponent**: Andaman Nicobar Island Integrated Development Corporation Ltd.

2) **Total area** – 16610 ha.

G. That the abovementioned instances substantiate Applicant – Arun Gaikwad contention concerning the requisite Prior Environment Clearance by the Mumbai Metropolitan Development Authority (MMRDA), carries legal validity.

2.4 GROUND 4: **Area development projects typically serve as the preliminary phase in**

township planning. However, variations may arise where the nature and goals of these projects differ significantly from subsequent township development stages, necessitating subtle legal considerations.

A. The relationship between township and area development projects is symbiotic. A township project typically involves the establishment of a self-contained community that integrates residential, commercial, and social amenities within a designated area. On the other hand, area development projects encompass broader initiatives aimed at improving infrastructure, amenities, and overall development within a specific region or locality.

B. In **Re: Construction of Park at Noida Near Okhla Bird Sanctuary Anand Arya And Another vs. Union of India and Others, (2011) 1 SCC 744,** a copy of which is hereto annexed as **"EXHIBIT – J",** the Hon'ble Supreme Court observed that:

> *"**65**. It is extremely difficult to accept the contention that the categorization under Items 8(a) and 8(b) has no bearing on the nature and character of the project and is based purely on the build-up area. **A building and construction project is nothing but addition of structures over the land. A***

township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project. Further, and area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project maybe completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park."

66**. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. **To that limited extent there may be a quantitative correlation between items 8(a) and 8(b).** But it must be realized that the converse of the illustration given by Mr. Bhushan may not be true. **For example, a project which is by its nature and character an "Area Development

project" would not become a "Building and Construction project" simply because it falls short of the threshold mark under item 8 (b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under."

C. In the case mentioned above, the Hon'ble Supreme Court defines the subtle but material difference between township and area development projects given under item 8 (b) of Environment Impact Assessment Notification, 2006. It states that Area Development Project can either be the first step in township planning or maybe entirely independent of the township development project.

D. In the matter of **Vikrant Kumar Tongad vs. Delhi Tourism and Transportation Corporation and Others, 2015 SCC OnLine NGT 3,** a copy of which is hereto annexed as **"EXHIBIT – K",** the Hon'ble National Green Tribunal, Principal Bench New Delhi observed that:

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean

environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the

project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof.

39. *In light of the peculiar facts and circumstances of the case and the reasons afore-recorded, we dispose of this application with the following directions:*

1. We hold that construction of a 'bridge' or similar activity covering a build up area ≥ 1,50,000 sq. mtrs. and/or covering an area of ≥ 50 hectares, would be covered under Entry 8(b) of the Schedule to the Regulations of 2006.

2. We direct Respondent No. 1 to obtain Environmental Clearance for the project in question. Such application would be submitted within a period of three weeks from the pronouncement of this Judgment.

3*. The SEIAA shall consider the said application as Category 'B' project and would dispose it of by passing appropriate orders in accordance with law upon submission of Environmental Impact*

Assessment Report and in any case not later than six months from today.

4. Though the major part of the project has already been completed, we do not direct demolition thereof in public interest. However, we direct SEIAA to put such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, biodiversity and environmental flow of River Yamuna and its floodplain.

5. *We also direct that the SEIAA may impose conditions containing remedial measures to be taken by the Project Proponent to ensure that there is no environmental degradation.*

6. We direct MoEF to comply with the directions issued by the Hon'ble Supreme Court in para 84 of the case of In Re: Construction of Park at NOIDA Near Okhla Bird Sanctuary v. Union of India (UOI), (2011) 1 SCC 744.

E. That in the case above the Hon'ble National Green Tribunal examined and interpreted the scope of "Area Development Project". It states that construction of a 'bridge' or similar activity covering a buildup area ≥ 1,50,000 sq. mtrs. And/or covering an area of ≥ 50 hectares, would be covered under Entry 8(b) and not under Entry 7(f) of the Schedule to the Regulations of 2006.

F. Thus, it is conclusive to assert that there have been several occasions where our judicial system has

acknowledged the importance and necessity of Environmental Clearance to be obtained by various Planning or Development Authorities.

2.5 GROUND 5: Township planning schemes require prior environmental clearance to comply with environmental regulations, evaluates ecosystem impacts, and ensures public health and safety.

A. As aforementioned, Schedule 1 entry in 8(a) and 8(b) are qualified as Category B projects under EIA Notification, 2006 and requires Prior Environment Clearance. Schedule Entry 8(b) pertains to:

> *"Township and Area Development Projects"*

B. In the case **Navroz Kersasp Mody and Another V. Auroville Foundation and others, O.A. No. 239/2021,** a copy of which is hereto annexed as **"EXHIBIT – L",** the Hon'ble National Green Tribunal, Southern Zone, Chennai the material point urged as follows:

> ***113.*** *So under such circumstances, without disturbing the development already taken place, if any further development will have to be done in respect of construction or other development****, the***

1st Respondent is not entitled to proceed with the project and the 1st Respondent has to prepare a proper layout of the township showing the existing structures already made and also future constructions and its extent, plinth area of construction and nature of activities that they are expected to incorporate, the quantity of waste that is to be generated, the water requirement, how they are going to meet all those aspects and the facilities to be provided for disposal of the waste generated and in the industrial zone, what is the nature of industries to be intended for and how the waste likely to be generated including effluents, if any, are to be dealt with in an environment friendly manner, after preparing the EIA Report on these aspects. *If they want to do the work in phased manner, dividing the activities, they must also mention in how many phases they are going to complete it and each phase, what is the nature of work that they are going to undertake, etc.*

114. We are not in agreement with the stand taken by the MoEF&CC, as they came to the conclusion that the project was started even prior to 1994 Notification and that will fall within the exempted category of 2004 Notification, without ascertaining the ground reality and relying only on the information collected from the 1st Respondent. But at the same time, they also mentioned that if any

other activities will have to be done and industrial or other zones will have to be established even within the township, then they will have to apply for Environmental Clearance (EC) for that purpose. If it is in exempted category as according to them, then there is no necessity for obtaining Environmental Clearance (EC), as the entire plan has been considered by them. But that was not the case here.

115. So under such circumstances, the stand taken by the MoEF & CC that no Environmental Clearance (EC) is required appears to be without considering the ground reality and also without considering the documentary evidence, if any, available in this regard. Even, they do not have a case that they have verified the documents and satisfied that there was approved township plan prepared in the practical sense which was put into action even prior to 1994 and prior to 2004 Notifications."

C. In the case above the Hon'ble National Green Tribunal held that a proper layout of township is to be prepared and the to apply for Environment Clearance (EC) as the township project falls under Item 8 (b) of the EIA Notification, 2006 as amended from time to time.

Date: 25 **February 2024**

Place: Mumbai

Advocate for Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 41 OF 2023 (WZ)

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Secretary, Environment Department,

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Date: 25 **February of 2024**

Place: Mumbai

Advocate for Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 41 OF 2023 (WZ)

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=== *versus* ===

Secretary, Environment Department,

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... Respondents

MEMO OF ADDRESS

The following are the particulars of the address of the Advocate for the Complainant:

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Regn: MAH/1733/2013

Yours Truly,

Aditya Pratap,

Advocate for Complainant

Date: _25_ February of 2024

Place: Mumbai

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 41 OF 2023 (WZ)

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****

WRITTEN SUBMISSIOND BY MR. ADITYA PRATAP, ADVOCATE ON BEHALF OF APPLICANT – ARUN NATHURAM GAIKWAD

****

Dated this ____ day of February, 2024

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EXHIBIT - A

Item No.3 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No.41/2023(WZ)

Arun Nathuram Gaikwad

.....Applicant

Versus

Secretary, Envt. Dept., Govt. of Maharashtra & Ors.

....Respondent(s)

Date of hearing: 16.02.2024

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant	:	Mr. Aditya Pratap, Advocate
Respondent(s)	:	Mr. Aniruddha Kulkarni, Advocate for R-1/Envt. Deptt. & R-6/SEIAA- Maharashtra Mr. Rahul Garg, Advocate for R-5/MoEF&CC

ORDER

1. From the side of the applicant, learned counsel Mr. Aditya Pratap has appeared.

2. Today, from the side of respondent No.5-MoEF&CC, learned counsel Mr. Rahul Garg has appeared, who has drawn our attention to the site inspection report of Wadala Notified Area, conducted by the respondent No.6-MoEF&CC, which is annexed at page nos.295 to 300 of the paper book, wherein, in conclusion, it is recorded that the Wadala Notified Area has been notified and layout was sanctioned in 1985 and the development was initiated from 1985 onwards. The construction of buildings, especially in Phase-I, were carried out by the individual Project Proponents between 1995 to 2017 and the total built-up area for the same were less than 20,000 sq. mtrs. After the Plan was revised in 2010, in Phase-II, one block had been allotted to M/s. Macrotech Developers Ltd. (Lodha Crown Buildmart Pvt. Ltd.) and the developers had obtained EC for the constructions. No other developments/constructions took place after 2019

revised plan. Further, MMRDA will dispose off the plots (when vacated) through tendering, as per MMRDA Disposal Regulations, 1977 and Environmental Clearance on individual plots will be insisted from the Project Proponent, if applicable.

3. In response to this, the learned counsel for applicant has drawn our attention to page no.8 of the Original Application, wherein, in para no.2.2, it is stated by him that in a land admeasuring an area of 122.10 hectares, a Township and Area Development Project is being implemented by the Project Proponent, Mumbai Metropolitan Region Development Authority (MMRDA).

4. We are of the view that MMRDA cannot be a Project Proponent because it is a planning authority. Therefore, the said planning authority would be giving land to the individual builders, who will require to obtain prior EC, if the provided total BUA exceeds 20,000 sq. mtrs.

5. In this regard, the learned counsel for applicant submits that there are large number of Judgments of Hon'ble Supreme Court. As per the interpretation made by the Hon'ble Supreme Court in these Judgments, this kind of construction would fall in the category of township and area development project, which would require prior EC to be obtained under Schedule –I (8) (b) by the Planning Authority. We direct the learned counsel for applicant to place these Judgments of Hon'ble Supreme Court before us, for which he seeks a week's time. We allow the said time by way of last opportunity because the matter is lingering since 11.04.2023 on the point of admission.

Put up this matter for admission on 26.02.2024

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 16, 2024
Original Application No.41/2023(WZ)
P.Kr

ENVIRONMENTAL CLEARANCE

PARIVESH (Pro-Active and Responsive Facilitation by Interactive, and Virtuous Environmental Single-Window Hub)

Government of India
Ministry of Environment, Forest and Climate Change
(Issued by the State Environment Impact Assessment Authority(SEIAA), Maharashtra)

To,

The Executive Engineer And Senior Manager C

EXECUTIVE ENGINEER & SENIOR MANAGER (C), CENTRAL PUBLIC WORKS DEPARTMENT, ON BEHALF OF CUSTOMS DEPARTMENT, GOVERNMENT OF INDIA, MUMBAI

3rd Floor, B wing, Kendriya Sadan, Antop Hill. -400037

Subject: Grant of Environmental Clearance (EC) to the proposed Project Activity under the provision of EIA Notification 2006-regarding

Sir/Madam,

This is in reference to your application for Environmental Clearance (EC) in respect of project submitted to the SEIAA vide proposal number SIA/MH/MIS/68269/2021 dated 05 Mar 2022. The particulars of the environmental clearance granted to the project are as below.

1.	**EC Identification No.**	**EC23B039MH151437**
2.	**File No.**	SIA/MH/MIS/68269/2021
3.	**Project Type**	New
4.	**Category**	B1
5.	**Project/Activity including Schedule No.**	8(b) Townships and Area Development projects.
6.	**Name of Project**	Proposed Residential Cum Commercial Project – CUSTOM ENCLAVE at C.S No. 146, Salt Pan Division, F/N Ward, Wadala, Mumbai.
7.	**Name of Company/Organization**	EXECUTIVE ENGINEER & SENIOR MANAGER (C), CENTRAL PUBLIC WORKS DEPARTMENT, ON BEHALF OF CUSTOMS DEPARTMENT, GOVERNMENT OF INDIA, MUMBAI
8.	**Location of Project**	Maharashtra
9.	**TOR Date**	10 Jan 2022

The project details along with terms and conditions are appended herewith from page no 2 onwards.

(e-signed)
Pravin C. Darade , I.A.S.
Member Secretary
SEIAA - (Maharashtra)

Date: 06/06/2023

Note: A valid environmental clearance shall be one that has EC identification number & E-Sign generated from PARIVESH.Please quote identification number in all future correspondence.

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STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

No. SIA/MH/MIS/68269/2021
Environment & Climate
Change Department
Room No. 217, 2nd Floor,
Mantralaya, Mumbai- 400032.

To
Executive Engineer & Senior Manager (C),
Central Public Works Department,
On Behalf of Customs Department,
Government of India,
C.S No. 146, Salt Pan Division,
F/N Ward, Wadala, Mumbai.

Subject : Environmental Clearance for Proposed Residential cum Commercial Project- Custom Enclave situated at C.S No. 146, Salt Pan Division, F/N Ward, Wadala, Mumbai by Executive Engineer & Senior Manager (C), Central Public Works Department, On Behalf of Customs Department, Government of India, Mumbai.

Reference : Application no. SIA/MH/MIS/68269/2021

This has reference to your communication on the above-mentioned subject. The proposal was considered by the SEAC-2 in its 181st meeting under screening category 8 (b) B1 as per EIA Notification, 2006 and recommend to SEIAA. Proposal then considered in 260th (Day-2) meeting of State Level Environment Impact Assessment Authority (SEIAA) held on 03.05.2023.

2. Brief Information of the project submitted by you is as below:-

Sr. No.	Description	Details	
1	Proposal Number	**SIA/MH/MIS/68269/2021**	
2	Name of Project	Proposed Residential Cum Commercial Project – CUSTOM ENCLAVE at C.S No. 146, Salt Pan Division, F/N Ward, Wadala, Mumbai.	
3	Project category	8 (b) B1	
4	Type of Institution	Private	
5	Project Proponent	Name	Executive Engineer & Senior Manager (C), Central Public Works Department, On Behalf of Customs Department, Government Of India, Mumbai
		Regd. Office address	3rd floor- 'B' wing, Kendriya Sadan, Antop Hill, Mumbai
		Contact number	-
		e-mail	gopal@saaindia.net

6	Consultant			Sneha Hi-Tech Products NABET Accredited Certificate No. NABET/EIA/2124/RA0235 dated 05.04.2022			
7	Applied for			New			
8	Location of the project			C.S No. 146, Salt Pan Division, F/N Ward, Wadala, Mumbai.			
9	Latitude and Longitude			Latitude: 19° 1'4.43"N Longitude: 72°52'26.59"E			
10	Plot Area (sq.m.)			2,26,013.49 sq. m (As per PRC) 2,21,302.28 sq.m (As per site condition)			
11	Deductions (sq.m.)			61,789.063 sq.m			
12	Net Plot area (sq.m.)			1,59,513.217 sq.m			
13	Ground coverage (m^2) & %			18,066.52 sq.m (11.3% on net plot)			
14	FSI Area (sq.m.)			1,44,271.37 sq.mt.			
15	Non-FSI (sq.m.)			65,646.57 sq.mt.			
16	Proposed built-up area (FSI + Non FSI) (sq.m.)			2,09,917.94 sq.mt.			
17	TBUA (m^2) approved by Planning Authority till date			In process			
18	Earlier EC details with Total Construction area, if any.			Not Applicable, as this is a fresh project			
19	Construction completed as per earlier EC (FSI + Non FSI) (sq.m.)			Not Applicable, as this is a fresh project			
20	**Previous EC / Existing Building**			**Proposed Configuration**			**Reason for Modification / Change**
	Building Name	**Configuration**	**Height (m)**	**Building Name**	**Configuration**	**Height (m)**	
				Wing A	St + P + 1st to 33rd floor	108.55	-
				Wing B	St + P + 1st to 27th floor	90.25	-
				Wing C	St + P + 1st to 27th floor	90.25	-
				Wing D	St + P + 1st to 29th floor	96.35	-
				Wing E	St + P + 1st to 29th floor	96.35	-
				Wing F	St + P + 1st to 27th floor	90.25	-
				Office bldg.	B + Gr (Pt)/St (Pt) + 3P + 1st to 16th floor	79.00	-
21	No. of Tenements & Shops			Quarter's: 769 nos. Service units: 289 nos. Office: 46,786.82 sq. m			
22	Total Population			Residential: 4423 nos. (Quarters: 3845 nos; Service units: 578 nos.)			

		Commercial: 2525 nos. Total: 6948 nos.		
23	Total Water Requirements CMD	495 KLD		
24	Under Ground Tank (UGT)	**Purpose**	**M3**	
		Soft water tank	50	
		Domestic water tank	50	
		Raw water tank	100	
		Fire water tank 1 & 2	2 x 150	
25	Source of water	MCGM/Recycled water		
26	STP Capacity & Technology	Capacity: 1 X 380 KLD, 1 X 70 KLD Technology: MBBR		
27	STP Location	Ground level		
28	Sewage Generation CMD & % of sewage discharge in sewer line	Sewage generation: 450 KLD % of sewage discharge in sewer line: 18.5%		
29	Solid Waste Management during Construction Phase	**Type**	**Quantity (Kg/d)**	**Treatment / disposal**
		Dry waste	17.5 kg/day	
		Wet waste	7.5 kg/day	
		Construction waste	25 kg/day	
30	Total Solid Waste Quantities with type during Operation Phase & Capacity of OWC to be installed	**Type**	**Quantity (Kg/d)**	**Treatment / disposal**
		Dry waste	1263 kg/day	Will be managed through recyclers.
		Wet waste	1579 kg/day	Biodegradable waste will be processed in OWC of capacities 1 X 300 kg/day, 1 X 1500 kg/day, and manure so obtained will be used for landscaping.
		E-Waste	4737 kg/day	Handed over to authorized vendors
		STP Sludge (dry)	9 kg/day	Used as manure
31	R.G. Area in sq.m.	RG required: 39,723.96 sq.mt		
		RG provided on Mother earth: 39,723.96 sq.mt		
		RG area on Ground: 39,723.96 sq.mt		
		Total: 39,723.96 sq.mt		
		Existing trees on plot: 148 nos.		
		Number of trees to be planted: a) In R G area: Proposed trees: 960 nos. b) In Miyawaki Plantation (with area): 1000 nos.		
		Number of trees to be cut: 38 nos.		
		Number of trees to be transplanted: 11 nos.		
32	Power requirement	During Operation Phase: Connected load: 14050 kW Demand load: 6590.7 kW		

<table>
<tr><td>33</td><td>Energy Efficiency</td><td colspan="4">a) Total Energy saving (%):25.71 %
b) Solar energy (%): 5.06 %</td></tr>
<tr><td>34</td><td>D.G. set capacity</td><td colspan="4">2 X 625 kVA, 1 X 500 kVA, 3 X 1500 kVA</td></tr>
<tr><td>35</td><td>No. of 4-W & 2-W Parking with 25% EV</td><td colspan="4">4 wheelers: 1483 nos.
377 nos. of car with EV facility.</td></tr>
<tr><td>36</td><td>No. & capacity of Rain water harvesting tanks /Pits</td><td colspan="4">2 nos. of tanks with capacity of 300 cum each</td></tr>
<tr><td>37</td><td>Project Cost in (Cr.)</td><td colspan="4">Rs. 2002.95 Cr</td></tr>
<tr><td>38</td><td>EMP Cost</td><td>Sr. no.</td><td>Particulars</td><td>Capital cost (Rs. In lacs)</td><td>O & M cost (Rs. In lacs)</td></tr>
<tr><td></td><td></td><td>1</td><td>Sewage Treatment Plant (STP)</td><td>75.00</td><td>3.75</td></tr>
<tr><td></td><td></td><td>2</td><td>Organic Waste Composting (OWC)</td><td>63.00</td><td>3.15</td></tr>
<tr><td></td><td></td><td>3</td><td>Rain Water Harvesting (RWH)</td><td>80.00</td><td>4.00</td></tr>
<tr><td></td><td></td><td>4</td><td>Energy Conservation</td><td>130.00</td><td>6.50</td></tr>
<tr><td></td><td></td><td>5</td><td>Landscaping</td><td>557.26</td><td>27.86</td></tr>
<tr><td></td><td></td><td>6</td><td>Environment Monitoring</td><td>-</td><td>3.00</td></tr>
<tr><td></td><td></td><td>7</td><td>Disaster management</td><td>60.6</td><td>12.12</td></tr>
<tr><td></td><td></td><td>8</td><td>Environment Management Cell</td><td>-</td><td>10.20</td></tr>
<tr><td></td><td></td><td colspan="2">Total</td><td>965.86</td><td>70.58</td></tr>
<tr><td>39</td><td>CER Details with justification if any as per MoEF&CC circular dated 01/05/2018</td><td colspan="4">NA, per Memorandum 22-65/2017-IA-III dated 25th February 2021</td></tr>
<tr><td>40</td><td>Details of Court Cases/litigations w.r.t the project and project location, if any.</td><td colspan="4">No</td></tr>
</table>

3. Proposal is a new construction project. In the minutes of SEIAA details of plan approval dated 16.05.2023 for Office/ Commercial building is not included. Now, it is revised per MCGM approval dated 16.05.2023. The proposal has been considered by SEIAA in its 260th (Day-2) meeting and decided to accord Environment Clearance to the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to implantation of following terms and conditions-

Specific Conditions:

A. SEAC Conditions-

1. PP to submit IOD/IOA/Concession Document/Plan Approval or any other form of documents as applicable clarifying its conformity with local planning rules and provisions as per the Circular dated 30.01.2014 issued by the Environment Department, Govt. of Maharashtra.
2. PP to obtain following NOCs & remarks:
   a)Water supply; b) Sewer connection; c) SWD NOC; d) CFO NOC; e) Tree NOC; d) HTL NOC; e) Mangrove Cell NOC; f) Salt Commissioner NOC.
3. PP to maintain 6.0 Mtr. distance between STP and UGT.
4. PP to submit co-ordinated services layout showing adequate distance between various environmental services.
5. PP to maintain 6.0 Mtr. distance between STP and Transformer.
6. PP to submit details of Water Treatment Plant (WTP).
7. PP to either maintain distance adequate between STP, WTP & UGT as per norms or relocate WTP of office building elsewhere in the project.
8. PP to plant mangrove associated trees in the Miyawaki plantation within the project as per the biodiversity study carried out during preparation of EIA report & accordingly revise Miyawaki plantation plan.
9. PP to reduce retrieval time for human evacuation in case of disaster/emergency in the project.

B. SEIAA Conditions-

1. This EC is restricted for height up to 100 m for Wing A as per Civil Aviation NOC.
2. PP to keep open space unpaved so as to ensure permeability of water. However, whenever paving is deemed necessary, PP to provide grass pavers of suitable types & strength to increase the water permeable area as well as to allow effective fire tender movement.
3. PP to achieve at least 5% of total energy requirement from solar/other renewable sources.
4. PP Shall comply with Standard EC conditions mentioned in the Office Memorandum issued by MoEF& CC vide F.No.22-34/2018-IA.III dt.04.01.2019.
5. SEIAA after deliberation decided to grant EC for – FSI area of 112558.93 m2, Non FSI area of 43294.97m2 and total BUA of 155853.90 m2. (Plan approval No.P-9390/2021/(146)/F/NORTH/SALTPAN/IOD1/NEW dated 21.04.2023, P-9391/2021/(146)/F/North/SaltPan, dated-16.05.2023) (Restricted as per approval).

General Conditions:

a) Construction Phase :-

I. The solid waste generated should be properly collected and segregated. Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.

II. Disposal of muck, Construction spoils, including bituminous material during construction phase should not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in the approved sites with the approval of competent authority.

III. Any hazardous waste generated during construction phase should be disposed of as per applicable rules and norms with necessary approvals of the Maharashtra Pollution

Control Board.

IV. Adequate drinking water and sanitary facilities should be provided for construction workers at the site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.

V. Arrangement shall be made that waste water and storm water do not get mixed.

VI. Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices.

VII. The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority.

VIII. Permission to draw ground water for construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.

IX. Fixtures for showers, toilet flushing and drinking should be of low flow either by use of aerators or pressure reducing devices or sensor based control.

X. The Energy Conservation Building code shall be strictly adhered to.

XI. All the topsoil excavated during construction activities should be stored for use in horticulture / landscape development within the project site.

XII. Additional soil for levelling of the proposed site shall be generated within the sites (to the extent possible) so that natural drainage system of the area is protected and improved.

XIII. Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.

XIV. PP to strictly adhere to all the conditions mentioned in Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 as amended during the validity of Environment Clearance.

XV. The diesel generator sets to be used during construction phase should be low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air and noise emission standards.

XVI. Vehicles hired for transportation of Raw material shall strictly comply the emission norms prescribed by Ministry of Road Transport & Highways Department. The vehicle shall be adequately covered to avoid spillage/leakages.

XVII. Ambient noise levels should conform to residential standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.

XVIII. Diesel power generating sets proposed as source of backup power for elevators and common area illumination during construction phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use low sulphur diesel is preferred. The location of the DG sets may be decided with in consultation with Maharashtra Pollution Control Board.

XIX. Regular supervision of the above and other measures for monitoring should be in place

all through the construction phase, so as to avoid disturbance to the surroundings by a separate environment cell /designated person.

B) Operation phase:-

I. a) The solid waste generated should be properly collected and segregated. b) Wet waste should be treated by Organic Waste Converter and treated waste (manure) should be utilized in the existing premises for gardening. And, no wet garbage will be disposed outside the premises. c) Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.

II. E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules, 2016.

III. a) The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for operation. Treated effluent emanating from STP shall be recycled/ reused to the maximum extent possible. Treatment of 100% grey water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP. b) PP to give100 % treatment to sewage /Liquid waste and explore the possibility to recycle at least 50 % of water, Local authority should ensure this.

IV. Project proponent shall ensure completion of STP, MSW disposal facility, green belt development prior to occupation of the buildings. As agreed during the SEIAA meeting, PP to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line No physical occupation or allotment will be given unless all above said environmental infrastructure is installed and made functional including water requirement.

V. The Occupancy Certificate shall be issued by the Local Planning Authority to the project only after ensuring sustained availability of drinking water, connectivity of sewer line to the project site and proper disposal of treated water as per environmental norms.

VI. Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.

VII. PP to provide adequate electric charging points for electric vehicles (EVs).

VIII. Green Belt Development shall be carried out considering CPCB guidelines including selection of plant species and in consultation with the local DFO/ Agriculture Dept.

IX. A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.

X. Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise breaks-up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted for other purposes.

XI. The project management shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the Marathi language of the local concerned within seven days of issue of this letter, informing that

the project has been accorded environmental clearance and copies of clearance letter are available with the Maharashtra Pollution Control Board and may also be seen at Website at parivesh.nic.in

XII. A copy of the clearance letter shall be sent by proponent to the concerned Municipal Corporation and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent.

XIII. The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely; SPM, RSPM. SO2, NOx (ambient levels as well as stack emissions) or critical sector parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.

C) General EC Conditions:-

I. PP has to strictly abide by the conditions stipulated by SEAC& SEIAA.

II. If applicable Consent for Establishment" shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.

III. Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that construction of the project has been started without obtaining environmental clearance.

IV. The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.

V. The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.

VI. No further Expansion or modifications, other than mentioned in the EIA Notification, 2006 and its amendments, shall be carried out without prior approval of the SEIAA. In case of deviations or alterations in the project proposal from those submitted to SEIAA for clearance, a fresh reference shall be made to the SEIAA as applicable to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any.

VII. This environmental clearance is issued subject to obtaining NOC from Forestry & Wild life angle including clearance from the standing committee of the National Board for Wild life as if applicable & this environment clearance does not necessarily implies that Forestry & Wild life clearance granted to the project which will be considered separately on merit.

4. The environmental clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this clearance does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.

5. This Environment Clearance is issued purely from an environment point of view without prejudice to any court cases and all other applicable permissions/ NOCs shall be obtained before starting proposed work at site.

6. In case of submission of false document and non-compliance of stipulated conditions, Authority/ Environment Department will revoke or suspend the Environment clearance without any intimation and initiate appropriate legal action under Environmental Protection Act, 1986.

7. Validity of Environment Clearance: The environmental clearance accorded shall be valid as per EIA Notification, 2006, amended from time to time.

8. The above stipulations would be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and rules there under, Hazardous Wastes (Management and Handling) Rules, 1989 and its amendments, the public Liability Insurance Act, 1991 and its amendments.

9. Any appeal against this Environment clearance shall lie with the National Green Tribunal (Western Zone Bench, Pune), New Administrative Building, 1st Floor, D-Wing, Opposite Council Hall, Pune, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

Pravin Darade
(Member Secretary, SEIAA)

Copy to:

1. Chairman, SEIAA, Mumbai.
2. Secretary, MoEF & CC, IA- Division MOEF & CC
3. Member Secretary, Maharashtra Pollution Control Board, Mumbai.
4. Regional Office MoEF & CC, Nagpur
5. District Collector, Mumbai City.
6. Commissioner, Municipal Corporation of Greater Mumbai
7. Regional Officer, Maharashtra Pollution Control Board, Mumbai.

Signature Not Verified
Digitally signed by Shri Pravin C. Darade , I.A.S.
Member Secretary
Date: 6/6/2023 7:45:32 PM

ENVIRONMENTAL CLEARANCE

PARIVESH (Pro-Active and Responsive Facilitation by Interactive, and Virtuous Environmental Single-Window Hub)

Government of India
Ministry of Environment, Forest and Climate Change
(Issued by the State Environment Impact Assessment Authority(SEIAA), Uttar Pradesh)

To,

The Assistant General Manager
YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY
1st Floor, Commercial Complex, P-2, Sector-Omega-1, Greater Noida, City, Gautam Buddha Nagar, Uttar Pradesh -201308

Subject: Grant of Environmental Clearance (EC) to the proposed Project Activity under the provision of EIA Notification 2006-regarding

Sir/Madam,

This is in reference to your application for Environmental Clearance (EC) in respect of project submitted to the SEIAA vide proposal number SIA/UP/MIS/76666/2022 dated 31 Aug 2022. The particulars of the environmental clearance granted to the project are as below.

1.	**EC Identification No.**	**EC22B039UP176211**
2.	**File No.**	7076
3.	**Project Type**	New
4.	**Category**	B1
5.	**Project/Activity including Schedule No.**	8(b) Townships and Area Development projects.
6.	**Name of Project**	
7.	**Name of Company/Organization**	YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY
8.	**Location of Project**	Uttar Pradesh
9.	**TOR Date**	15 Jul 2022

The project details along with terms and conditions are appended herewith from page no 2 onwards.

Date: 30/11/2022

(e-signed)
Member Secretary
Member Secretary
SEIAA - (Uttar Pradesh)

Note: A valid environmental clearance shall be one that has EC identification number & E-Sign generated from PARIVESH.Please quote identification number in all future correspondence.

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State Level Environment Impact Assessment Authority, Uttar Pradesh

Directorate of Environment, U.P.
Vineet Khand-1, Gomti Nagar, Lucknow- 226010
E-Mail- doeuplko@yahoo.com, seiaaup@yahoo.com
Phone no- 0522-2300541

Reference- MoEFCC Proposal no- SIA/UP/MIS/76666/2022 & SEIAA, U.P File no-7076

Sub: Environmental Clearance for Proposed Development of "Medical Device Park" at Village- Rabpura & Muradgadi, Sector-28, Greater Noida, Uttar Pradesh, M/s Yamuna Expressway Industrial Development Authority.

Dear Sir,

This is with reference to your application / letter dated 05-05-2022, 23-05-2022, 31-08-2022, 23-09-2022 on above mentioned subject. The matter was considered by 687th SEAC in meeting held on 23-09-2022 and 659th SEIAA in meeting held on 14-10-2022.

A presentation was made by the project proponent along with their consultant M/s Ascenso Enviro Pvt. Ltd to SEAC on 23-09-2022.

Project Details Informed by the Project Proponent and their Consultant

The project proponent, through the documents and presentation gave following details about their project –

1. The environmental clearance is sought for Development of "Medical Device Park" at Village- Rabpura & Muradgadi, Sector-28, Greater Noida, Uttar Pradesh, M/s Yamuna Expressway Industrial Development Authority.
2. Total land area of the park is 350 Acres (141.64 Ha.) while the estimated available area for allotment to Medical Device Units is 245 Acres.
3. The terms of reference for the project proposal were issued by SEIAA, U.P. vide letter no. 135/Parya/SEIAA/7076/2022, dated 15/07/2022.
4. Salient features of the project:

Details	As per Proposal
Type of Project	The Development of Medical Device Park at Village- Rabpura & Muradgadi, Sector-28, YEIDA, District-Gautam Budh Nagar, Uttar Pradesh.
Developer of the Project	Yamuna Expressway Industrial Development Authority
Location	Village- Rabpura & Muradgadi, Sector-28, YEIDA, District-Gautam Budh Nagar, Uttar Pradesh.
Project Cost (Crore)	Rs.439.49 Crores
Total Plot Area	350 Acres (141.64 ha.)
Development Area	245 Acre (99.148 ha.)
Proposed Green Area	17.85 Acres
Estimated Population	24202 persons (Including Floating Population)
Total Water Consumption	4.2 MLD, Source: - Ground water (for potable purpose only)
Total waste water generation	3.70 MLD
Power Requirement	45 MW (UP Electricity Board)

STP Capacity ETP Capacity	5 MLD 0.5 MLD
Solid waste details	3630.30 kg/day

5. Area details of the project:

Land Use Category	Area %	Area in Acres	Area in Sq. mtr
Industrial plots	55%	192.85	7,80,437
Common Facility	8%	28	1,13,312
Commercial	1%	3.5	14,164
Institutional	3%	10.5	42,492
Public and Semi-Public (Govt, Medical, Religious Place, etc)	3%	10.5	42,492
Open and Green Areas	5%	17.85	72,236
Roads & Parking + green areas	22%	78.4	3,17,274
Warehousing & logistics	2%	8.4	33,994
Total	**100%**	**350**	**1416401**

6. Type of industries proposed to come in medical device park:

S. No.	Type of Industry
1	Manufacturing of Anaesthesia Workstation, and Haemodialysis kit and Needle & Kit
2	Manufacturing of Orthopaedic Implants
3	Manufacturing of Endoscopic, Gastroenterology and Cardiology Medical Devices (Esophagel Stent, Biliary Stent, Colorectal Stent, Duodenal/Pyloric Stent, Tracheal/Bronchial Stent, ERCP Guidewire, Plastic Biliary Stents)
4	Manufacturing of Spinal Implants
5	Manufacturing of X-Ray Machine
6	Manufacturing of ICU Ventilator, Oxygen Concentrator, Air compressor
7	Manufacturing of ECG Machine
8	Manufacturing of Spinal, Neurosurgery and Trauma Management Implant
9	Manufacturing of PTCA Stents and Coronary Stents
10	Manufacturing of Haemodialysis Kit, CVC Kit, AVF Needle
11	Manufacturing of Anaesthesia kit and Dialysis kit
12	Manufacturing of Anaesthesia Machine, Anaesthesia workstations, Anaesthesia Vaporizer
13	Manufacturing of Oxygen Concentrator, Automatic External Defibrillator (AED), Patient Monitor
14	Manufacturing of Heart Lungs Bypass Unit Tube, Blood Cardioplegia Delivery System
15	Manufacturing of Cancer Care Equipment (Video Colposcope for Cancer diagnosis & Chemotherapy Device)
16	Manufacturing of Cardiac Catheter

1. The project proposal falls under category–8(b) of EIA Notification, 2006 (as amended).

Based on the recommendations of the State Level Expert Appraisal Committee Meeting (SEAC) held on 23-09-2022 the State Level Environment Impact Assessment Authority (SEIAA) in its Meeting held 14-10-2022 and decided to grant of environmental clearance on the proposal as above alongwith standard environmental clearance conditions prescribed by MoEF&CC, GoI and following additional conditions:

Additional Conditions:

1. Plating / industrial effluent should be collected at one place, so that it doesn't remain scattered all over the industrial park, and be treated accordingly.
2. The project proponent shall submit within the next 3 months the details of solar power plant and solar electrification details within the project.
3. The project proponent shall ensure to plant broad leaf trees and their maintenance. The CPCB guidelines in this regard shall be followed.
4. The project proponent shall submit within the next 3 months the details on quantification of year wise CER activities along with cost and other details. CER activities must not be less 2% of the project cost. The CER activities should be related to mitigation of Environmental Pollution and awareness for the same.
5. The project proponent shall submit within the next 3 months the details of estimated construction waste generated during the construction period and its management plan.
6. The project proponent shall submit within the next 3 months the details of segregation plan of MSW.
7. The project proponent shall ensure that waste water is properly treated in STP and maximum amount should be reused for gardening flushing system and washing etc. For reuse of water for irrigation sprinkler and drip irrigation system shall be installed and maintained for proper function. Part of the treated sewage, if discharged to sewer line, shall meet the prescribed standards for the discharge.
8. Under any circumstances untreated sewage shall not be discharged to municipal sewer line.
9. The project proponent will ensure that proper dust control arrangements are made during construction and proper display board is installed at the site to inform the public the steps taken to control air pollution as per the Construction and Demolition Waste Management Rules.
10. The project proponent shall install micro solar power plants, toilets in nearby villages, public place or school from CER fund of the project for which E.C is granted in addition to and water harvesting pits and carbon sequestration parks / designed ecosystems.
11. A certificate from Forest Department shall be obtained that no forest land is involved and if forest land is involved the project proponent shall obtain forest clearance and permission of Central and State Government as per the provisions of Forest (conservation) Act, 1980 and submit before the start of work.
12. In compliance to Hon'ble Supreme Court order dated 13/01/2020 in IA no. 158128/2019 and 158129/2019 in Writ petition no. 13029/1985 (MC Mehta Vs GOI and others) anti-smog guns shall be installed to reduce dust during excavation.
13. If the proposed project is situated in notified area of ground water extraction, where creation of new wells for ground water extraction is not allowed, requirement of fresh water shall be met from alternate water sources other than ground water or legally valid source and permission from the competent authority shall be obtained to use it.
14. Provision for charging of electric vehicles as per the guidelines of GoI / GoUP should be submitted within the next 3 months.
15. PP should display EC granted to them on their website. 6-monthly compliance report should be displayed on their website.
16. Units coming up in this area will take individual ECs as per the prevailing provisions / statute.
17. Under the project, different purposes of area/land has been allotted, it is mandatory that a separate Environmental Clearance shall be taken by the project/activity having built-up area more than 20,000 sqm and also those industry/activity covered under the provision of EIA Notification 2006, (as amended).

18. The YEIDA should ensure that 33% area of the total plot area should be developed as green area with native place while allotting the land to the individual unit. YEIDA should ensure its compliance.
19. Project proponent is advised to explore the possibility and getting the cement in container rather through the plastic bag.
20. Project proponent should ensure that there will be no use of "Single use of Plastic" (SUP).
21. In compliance to Hon'ble Supreme Court order dated 13/01/2020 in IA no. 158128/2019 and 158129/2019 in Writ petition no. 13029/1985 (MC Mehta Vs. GoI and others) anti-smog guns shall be installed to reduce dust during excavation.
22. The project proponent shall comply the use of fuel for backup power as per guidelines by "Commission of Air Quality Management in NCR", directions of courts and CPCB shall be strictly adhered regarding DG sets (cleaner fuel as PNG/CNG/permissible fuel in NCR). The project proponent shall follow the orders/guidelines issued by Hon'ble Court(s)/Competent authorities from time to time.
23. The proponent should provide the electric vehicle charging stations in industrial area as per the competent authority guideline.
24. YEIDA to provide a facility for electronic waste recycling in an 'Integrated Industrial Township'.
25. YEIDA to provide the captive facility of Municipal Solid Waste and hazardous waste treatment and disposal to its residential and industrial township. The location of the site and area for MSW and Hazardous Waste in the layout plan to be defined.
26. YEIDA to provide the Common Effluent Treatment Plant (CETP) on the basis of Zero Liquid Discharge (ZLD) technology for the industrial waste.
27. Revised plan for conservation of water and to replenish ground water resources of area, rainwater harvesting system as well as recharging system to be submitted and presented.
28. YEIDA shall provide the dual pipeline network in the project for utilisation of treated water of STP and CETP for different purposes and also provide the monitoring mechanism for the same.
29. YEIDA to provide the list of industries as per discussion held during the meeting dated 23/09/2022.

Standard Environmental Clearance Conditions prescribed by MoEF&CC:

1. Statutory compliance:
    1. The project proponent shall obtain all necessary clearance/ permission from all relevant agencies including town planning authority before commencement of work. All the construction shall be done in accordance with the local building byelaws.
    2. The approval of the Competent Authority shall be obtained for structural safety of buildings due to earthquakes, adequacy of firefighting equipment etc as per National Building Code including protection measures from lightning etc.
    3. The project proponent shall obtain forest clearance under the provisions of Forest (Conservation) Act, 1986, in case of the diversion of forest land for non-forest purpose involved in the project.
    4. The project proponent shall obtain clearance from the National Board for Wildlife, if applicable.
    5. The project proponent shall obtain Consent to Establish / Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.
    6. The project proponent shall obtain the necessary permission for drawl of ground water / surface water required for the project from the competent authority.
    7. A certificate of adequacy of available power from the agency supplying power to the project along with the load allowed for the project should be obtained.

8. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable, by project proponents from the respective competent authorities.
9. The provisions of the Solid Waste (Management) Rules, 2016, e-Waste (Management) Rules, 2016, and the Plastics Waste (Management) Rules, 2016 shall be followed.
10. The project proponent shall follow the ECBC/ECBC-R prescribed by Bureau of Energy Efficiency, Ministry of Power strictly.

2. Air quality monitoring and preservation:
    1. Notification GSR 94(E) dated 25.01.2018 of MoEF&CC regarding Mandatory Implementation of Dust Mitigation Measures for Construction and Demolition Activities for projects requiring Environmental Clearance shall be complied with.
    2. A management plan shall be drawn up and implemented to contain the current exceedance in ambient air quality at the site.
    3. The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g. PM10 andPM25) covering upwind and downwind directions during the construction period.
    4. Construction site shall be adequately barricaded before the construction begins. Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height).Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.
    5. Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.
    6. Wet jet shall be provided for grinding and stone cutting.
    7. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.
    8. All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.
    9. The diesel generator sets to be used during construction phase shall be low sulphur diesel type and shall conform to Environmental (Protection) prescribed for air and noise mission standards.
    10. The gaseous emissions from DG set shall be dispersed through adequate stack height as per CPCB standards. Acoustic enclosure shall be provided to the DG sets to mitigate the noise pollution. The location of the DG set and exhaust pipe height shall be as per the provisions of the Central Pollution Control Board (CPCB) norms.
    11. For indoor air quality the ventilation provisions as per National Building Code of India.
3. Water quality monitoring and preservation:
    1. The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.
    2. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
    3. Total fresh water use shall not exceed the proposed requirement as provided in the project details.
    4. The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent.

The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.

5. A certificate shall be obtained from the local body supplying water, specifying the total annual water availability with the local authority, the quantity of water already committed, the quantity of water allotted to the project under consideration and the balance water available. This should be specified separately for ground water and surface water sources, ensuring that there is no impact on other users.
6. At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
7. Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc and other for supply of recycled water for flushing, landscape irrigation car washing, thermal cooling, conditioning etc. shall be done.
8. Use of water saving devices/ fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan.
9. Use of water saving devices/ fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan.
10. Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
11. The local bye-law provisions on rain water harvesting should be followed. If local byelaw provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.
12. A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.
13. All recharge should be limited to shallow aquifer.
14. No ground water shall be used during construction phase of the project.
15. Any ground water dewatering should be properly managed and shall conform to the approvals and the guidelines of the CGWA in the matter. Formal approval shall be taken from the CGWA for any ground water abstraction or dewatering.
16. The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.
17. Sewage shall be treated in the STP with tertiary treatment. The treated effluent from STP shall be recycled/re-used for flushing, AC make up water and gardening. As proposed, not related water shall be disposed in to municipal drain.
18. No sewage or untreated effluent water would be discharged through storm water drains.
19. Onsite sewage treatment of capacity of treating 100% waste water to be installed. The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.

20. Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odor problem from STP.
21. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Centre Public Health and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.

4. Noise monitoring and prevention:
    1. Ambient noise levels shall conform to residential area/commercial area/industrial area/silence zone both during day and night as per Noise Pollution (Control and Regulation) Rules, 2000. Incremental pollution loads on the ambient air and noise quality shall be closely monitored during construction phase. Adequate measures shall be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB / SPCB.
    2. Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.
    3. Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.
5. Energy Conservation measures:
    1. Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.
    2. Outdoor and common area lighting shall be LED.
    3. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.
    4. Energy conservation measures like installation of CFLs/ LED for the lighting the area outside the building should be integral part of the project design and should be in place before project commissioning.
    5. Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.
    6. Solar power shall be used for lighting in the apartment to reduce the power load on grid. Separate electric meter shall be installed for solar power. Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.
6. Waste Management :
    1. A certificate from the competent authority handling municipal solid wastes, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project shall be obtained.
    2. Disposal of muck during construction phase shall not create any adverse effect on the neighboring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.

3. Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Solid waste shall be segregated into wet garbage and inert materials.
4. Organic waste compost/ Vermiculture pit/ Organic Waste Converter within the premises with a minimum capacity of 0.3 kg /person/day must be installed.
5. All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
6. Any hazardous waste generated during construction phase, shall be disposed off as per applicable rules and norms with necessary approvals of the State Pollution Control Board.
7. Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include Fly Ash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.
8. Fly ash should be used as building material in the construction as per the provision of Fly Ash Notification of September, 1999 and amended as on 27th August, 2003 and 25th January, 2016. Ready mixed concrete must be used in building construction.
9. Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Rules, 2016.
10. Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.

7. Green Cover:
    1. No tree can be felled/transplant unless exigencies demand. Where absolutely necessary, tree felling shall be with prior permission from the concerned regulatory authority. Old trees should be retained based on girth and age regulations as may be prescribed by the Forest Department. Plantations to be ensured species (cut) to species (planted).
    2. A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide canopy cover are desirable. Water intensive and/or invasive species should not be used for landscaping.
    3. Where the trees need to be cut with prior permission from the concerned local Authority, compensatory plantation in the ratio of 1:10 (i.e. planting of 10 trees for every 1 tree that is cut) shall be done and maintained. Plantations to be ensured species (cut) to species (planted). Area for green belt development shall be provided as per the details provided in the project document.
    4. Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.
8. Transport:
    1. A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.
        a. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.
        b. Traffic calming measures.
        c. Proper design of entry and exit points.
        d. Parking norms as per local regulation.
    2. Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards be operated only during non-peak hours.

3. A detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within a 05 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 05 Kms radius of the site in different scenarios of space and time and the traffic management plan shall be duly validated and certified by the State Urban Development department and the P.W.D./ competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments.

9. Human health issues :
    1. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.
    2. For indoor air quality the ventilation provisions as per National Building Code of India.
    3. Emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.
    4. Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.
    5. Occupational health surveillance of the workers shall be done on a regular basis.
    6. A First Aid Room shall be provided in the project both during construction and operations of the project.
10. Corporate Environment Responsibility:
    1. The project proponent shall comply with the provisions contained in this Ministry's OM vide F.No. 22-65/2017-IA.III dated 1st May 2018, as applicable, regarding Corporate Environment Responsibility.
    2. The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe for standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest / wildlife norms / conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or shareholders / stake holders. The copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of six-monthly report.
    3. A separate Environmental Cell both at the project and company head quarter level, with qualified personnel shall be set up under the control of senior Executive, who will directly to the head of the organization.
    4. Action plan for implementing EMP and environmental conditions along with responsibility matrix of the company shall be prepared and shall be duly approved by competent authority. The year wise funds earmarked for environmental protection measures shall be kept in separate account and not to be diverted for any other purpose. Year wise progress of implementation of action plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.
11. Miscellaneous:
    1. The project proponent shall prominently advertise it at least in two local newspapers of the District or State, of which one shall be in the vernacular language within seven days indicating that the project has been accorded environment clearance and the details of MoEFCC/SEIAA website where it is displayed.

2. The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.
3. The project proponent shall upload the status of compliance of the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.
4. The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the ministry of Environment, Forest and Climate Change at environment clearance portal.
5. The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.
6. The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.
7. The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.
8. The project proponent shall abide by all the commitments and recommendations made in the EIA/EMP report, commitment made during Public Hearing and also that during their presentation to the Expert Appraisal Committee.
9. No further expansion or modifications in the plant shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (MoEF&CC).
10. Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of Environment (Protection) Act, 1986.
11. The Ministry may revoke or suspend the clearance, if implementation of any of the above conditions is not satisfactory.
12. The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time bound manner shall implement these conditions.
13. The Regional Office of this Ministry shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data / information/monitoring reports.
14. The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and Rules and any other orders passed by the Hon'ble Supreme Court of India / High Courts and any other Court of Law relating to the subject matter.
15. Any appeal against this EC shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

Concealing factual data and information or submission of false/fabricated data and failure to comply with any of the conditions stipulated in the Prior Environmental Clearance attract action under the provision of Environmental (Protection) Act, 1986.

This Environmental Clearance is subject to ownership of the site by the project proponents in confirmation with approved Master Plan for G.B.Nagar. In case of violation; it would not be effective and would automatically be stand cancelled.

The project proponent has to ensure that the proposed site in not a part of any no-development zone as required/prescribed/identified under law. In case of the violation this permission shall automatically deemed to be cancelled. Also, in the event of any dispute on

ownership or land use of the proposed site, this Clearance shall automatically deemed to be cancelled.

Further project proponent has to submit the regular 6 monthly compliance report regarding general & specific conditions as specified in the E.C. letter and comply the provision of EIA notification 2006 (as Amended).

These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006 including the amendments and rules made thereafter.

Copy, through email, for information and necessary action to –

1. **The Principal Secretary, Department of Environment, Forest and Climate Change, Government of Uttar Pradesh, Lucknow (email – soenvups@rediffmail.com)**
2. **Joint Secretary, Ministry of Environment, Forest and Climate Change, Government of India, 3rd Floor, Prithvi-Block, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-110003 (email – sudheer.ch@gov.in)**
3. **Deputy Director General of Forests (C), Integ rated Regional Office, Ministry of Environment, Forest and Climate Change, Kendriya Bhawan, 5th Floor, Sector "H", Aliganj, Lucknow – 226020 (email – rocz.lko-mef@nic.in)**
4. **District Magistrate G.B.Nagar.**
5. **Member Secretary, Uttar Pradesh Pollution Control Board, TC-12V, Paryavaran Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010 (email – ms@uppcb.com)**
6. **Copy to Web Master for uploading on PARIVESH Portal.**
7. **Copy for Guard File.**

(Ajay Kumar Sharma)
Member Secretary, SEIAA

Signature Not Verified
Digitally signed by Member Secretary
Member Secretary
Date: 11/30/2022 5:38:48 PM

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

SEAC-2015/CR-151/TC-1
Environment department
Room No. 217, 2nd floor,
Mantralaya Annexe,
Mumbai- 400 032.
Dated: 5th November, 2015.

EXHIBIT - D

To,
Executive Engineer (AP-Pushpak-II)
CIDCO Ltd, Airport Office,
3rd Floor, Tower No. 10,
Belapur Railway Station Complex,
CBD Belapur, Navi Mumbai- 4006 14.

Subject: Environment clearance for Navi Mumbai International Airport- Area Development of Pushpak Nagar at Dapoli, Tal. Panvel, Navi Mumbai by M/s. CIDCO

Sir,

This has reference to your communication on the above mentioned subject. The proposal was considered as per the EIA Notification - 2006, by the State Level Expert Appraisal Committee-II, Maharashtra in its 33rd meeting and recommend the project for prior environmental clearance to SEIAA. Information submitted by you has been considered by State Level Environment Impact Assessment Authority in its 88h meeting.

2. It is noted that the proposal is considered by SEAC-II under screening category 8(b) B1 as per EIA Notification 2006.

Brief Information of the project submitted by you is as-

Name of Project	Navi Mumbai International Airport -Area Development of Pushpak Nagar at Dapoli, Navi Mumbai.
Name of Proponent	Shri. K. T. Magare Executive Engineer (AP-Pushpak-II) M/s. CIDCO Ltd.
Name of Consultants	M/s. Green Circle Inc.
Accreditation of consultant (NABET Accreditation)	NABET Accredited for Category B
Type of Project: Housing Project/Industrial Estate/SRA scheme/MHADA/Township or others	Area Development
Location of the Project	Pushpak Nagar at Dapoli, Navi Mumbai
Whether in Corporation/	Others

<table>
<tr><td>Municipal/other area</td><td></td></tr>
<tr><td>Applicability of the DCR</td><td>As per DCR of Navi Mumbai</td></tr>
<tr><td>Note on the initiated work (If applicable)</td><td>Not Applicable</td></tr>
<tr><td>LOI / NOC from MHADA/ Other approvals (If applicable)</td><td>Not Applicable</td></tr>
<tr><td>Total Plot Area</td><td>Township Gross area 221.30 ha.</td></tr>
<tr><td>Deductions</td><td>-</td></tr>
<tr><td>Net Plot area</td><td>-</td></tr>
<tr><td>Net Permissible FSI</td><td>-</td></tr>
<tr><td>Proposed Built up area (FSI & Non FSI)</td><td>N.A
<table>
<tr><th>Sr. No</th><th>Land use</th><th>Area (Ha)</th><th>Forest Area(Ha)</th><th>Total</th><th>%</th></tr>
<tr><td>1</td><td>Residential</td><td>93.64</td><td>17.22</td><td>110.86</td><td>50.10</td></tr>
<tr><td>2</td><td>Residential+ commercial</td><td>10.22</td><td>0.0</td><td>10.22</td><td>4.62</td></tr>
<tr><td>3</td><td>Social Facilities</td><td>20.40</td><td>0.0</td><td>20.40</td><td>9.22</td></tr>
<tr><td>4</td><td>Transport</td><td>57.17</td><td>5.33</td><td>62.50</td><td>28.24</td></tr>
<tr><td>5</td><td>Green , open and water body</td><td>17.32</td><td>0.0</td><td>17.32</td><td>7.83</td></tr>
<tr><td></td><td>Total</td><td>198.75</td><td>22.55</td><td>221.30</td><td>100</td></tr>
</table></td></tr>
<tr><td>Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)</td><td>N.A</td></tr>
<tr><td>Estimated cost of the project</td><td>Rs. 560 crore (Approximately)
<table>
<tr><th>Sr. No.</th><th>Elements</th><th>Amount (Rs. In Crores)</th></tr>
<tr><td>I</td><td>Physical Infrastructure Works</td><td></td></tr>
<tr><td>a</td><td>Land Development</td><td>160.00</td></tr>
<tr><td>b</td><td>Peripheral & Internal roads including pathways</td><td>120.00</td></tr>
<tr><td>c</td><td>Storm Water Drain</td><td>76.00</td></tr>
<tr><td>d</td><td>Sewerage System</td><td>33.00</td></tr>
<tr><td>e</td><td>Water Supply</td><td>45.00</td></tr>
<tr><td>f</td><td>Street lighting</td><td>10.00</td></tr>
<tr><td>II</td><td>Social Infrastructure Works</td><td></td></tr>
<tr><td>a</td><td>(Educational , Health / Medical, Community Centre, Bus Shelter, Gardens & Parks etc.)</td><td>40.00</td></tr>
<tr><td>III</td><td>City Scale</td><td></td></tr>
</table></td></tr>
</table>

	a	Water Supply (MBR/ESR / Fidder main)	18.00
	b	Sewerage (STP /SPH)	35.00
	c	Power Infrastructure	13.00
	d	Miscellaneous	10.00
		TOTAL :	560.00
No. of buildings & its configurations	N.A		
Number of tenants and shops	1200 eligible airport project affected families will be in the township with physical & social infrastructure. Projected Population Estimate = 0.18 millon		
Number of expected residents / users	As above		
Tenant density per hector	750/ ha.		
Height of the building	Not Applicable		
Right of way (Width of the road from the nearest fire station to the proposed building(s))	N.A		
Turning radius for easy access to the fire tender movement from all around the building excluding the width for the plantation	N.A		
Existing structure(s)	No.		
Details of the demolition with disposal (If applicable)	Not Applicable		
Total Water Requirement	Development phase: (Construction Purpose) Source: Tanker Domestic : 6 m3/day Operation phase: Estimated water demand: 60 MLD		
Rain Water Harvesting (RWH)	Roof Top Harvesting: Plot Area - 230 Ha Developable Area – 121 Ha Developable Area under > 300 sq m =98 Ha Roof Top harvesting Quantity (98X2.5X.85) – 208.25 M Cubic Metre Surface Run-off Quantity: Gross Area _- 230 Ha Developable Area – 121 Ha Remaining Area for surface runoff (230-121): 109 Ha Catchment Area - 109 Ha		

	Surface Run-off Quantity (109x2.5x.0.4)– 109 Cubic Metre Thus total 317.25 cubic meter per year of water can be obtain from the rain water harvesting which translate about 10 cubic meter water per day.
UGT tanks	N.A
Storm water drainage	The total discharge from the township: 164.00 cubic meter/sec, From south: 36.00 cubic meter/sec From north.: 78.00 cubic meter/sec Internal : 50 cubic meter / sec Internal Drain size: 0.5 mt.(W) X 0.5 mt. (D) Peripheral drain size: 1.2 mt. (W) X 0.5 (D)
Sewage and Wastewater	Sewage generation : 45 m^3/day STP technology : SBR technology. No. and Capacity of STP : 1Nos.of capacity 45 MLD Location of the STP : On Ground
Solid waste Management	Waste generated in Development phase: Approximately 75 kg/day of solid waste will be generated . Out of which 45 kg/day will be biodegradable & around 30 kg/day will be non biodegradable which will be hand over to authorize vendor. Waste generation in the operation Phase: Solid Waste Generation – 45 T The method of treatment adopted for solid waste is of Aerobic composting by windrow method A Municipal Solid Waste (MSW) treatment plant at Chal Taloja, which located more than 14 km away from the township, capacity of treating a solid waste is 365 MT/day, with a compost capacity of 45 MT.
Green Belt Development:	Gross area of Pushpak nagar: 230 Ha. Provision of Green belt / space as per land use plan of Pushpak nagar (A): 24.07 Ha Green belt / space roads (B): 10.88 Ha. Total Gree belt / space (A + B): 34.95 Ha. % of Green belt / space; 15.20 %

Energy	Development phase: Diesel:1100 Electricity: Nil Operation phase: Total Demand – 20 MVA Source – State Electricity Board One Sub-station of 132 KV / 33 KV Underground power cables of 11 / 33 KV with SCADA system

Environmental Management plans Budgetary Allocation:
(EMP cost during construction phase)

No.	Item	Rate	Amount (Rs. In Lakhs)
1	Provision of sanitation at construction site	Lump sum	5.00
2	Barrier around the construction yard	Lump sum	5.00
3	Firefighting equipment	Lump sum	2.00
4	Air and noise pollution safety gadgets	Lump sum	2.5.00
5	Solid waste management (Dust bins and incinerators)	Lump sum	2.5.00
6	Mobile health unit	Lump sum	2..00
7	Accidents/Safty	Lump sum	2..00
Grand Total			20

EMP cost during Operation phase:

Sr. No.	Parameter to be monitored during construction phase	Locations	Capital Cost (Rs. Lakh)
1	Air Pollution monitoring control	4 locations	4.00
2	Noise Pollution monitoring control	3 locations	2.00
3	Water Pollution monitoring control	3 locations	1.50
4	Meteorological Monitoring	One location @ L.S	1.50
5	Miscellaneous	L.S	9.00
Total			20

Traffic Management
Traffic management through local traffic police & road authority.
The MMC right of way at Pushapk Nagar has 126 M consisting of 41m space for Nation Highway for Inter-city traffic followed by buffer space 10 M and service road of 18m for intra traffic towards the North side.
In south side 44m space is reserved in which 20 M land is for Metro for commuter traffic and 11M space on either side of Metro is earmarked for regional traffic.
Abutting this a buffer space of 11M for utilities followed by service road of 18 M for local traffic.

CRZ/RRZ obtain ,if any: NA

Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas / inter-State boundaries:
Karnala sanctuary is 8 km

3. The proposal has been considered by SEIAA in its 88th meetings & decided to accord environmental clearance to the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to implementation of the following terms and conditions :

General Conditions for Pre- construction phase:-

(i) This environmental clearance is issued only for area development of Pushpak Nagar.
(ii) This environmental clearance is issued subject to condition that individual buildings having more than 20,000 sq.m area will apply for Environmental Clearance independently.
(iii) PP to provide turning radius of 9m for fire tender movement,.
(iv) This environmental clearance is issued subject to land use verification. Local authority / planning authority should ensure this with respect to Rules, Regulations, Notifications, Government Resolutions, Circulars, etc. issued if any. Judgments/orders issued by Hon'ble High Court, Hon'ble NGT, Hon'ble Supreme Court regarding DCR provisions, environmental issues applicable in this matter should be verified. PP should submit exactly the same plans appraised by concern SEAC and SEIAA. If any discrepancy found in the plans submitted or details provided in the above para may be reported to environment department. This environmental clearance issued with respect to the environmental consideration and it does not mean that State Level Impact Assessment Authority (SEIAA) approved the proposed land use.
(v) E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules, 2011.
(vi) This environmental clearance is issued subject to utilization of excess treated water.
(vii) Occupation certificate shall be issued to the project only after ensuring availability of drinking water and connectivity of the sewer line to the project site.
(viii) This environmental clearance is issued subject to obtaining NOC from Forestry & Wild life angle including clearance from the standing committee of the National Board for Wild life as if applicable & this environment clearance does not necessarily implies that Forestry & Wild life clearance granted to the project which will be considered separately on merit.
(ix) PP has to abide by the conditions stipulated by SEAC & SEIAA.
(x) The height, Construction built up area of proposed construction shall be in accordance with the existing FSI/FAR norms of the urban local body & it should ensure the same along with survey number before approving layout plan & before according commencement certificate to proposed work. Plan approving authority should also ensure the zoning permissibility for the proposed project as per the approved development plan of the area.
(xi) "Consent for Establishment" shall be obtained from Maharashtra Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.
(xii) All required sanitary and hygienic measures should be in place before starting construction activities and to be maintained throughout the construction phase.

General Conditions for Construction Phase-

(i) Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets,

mobile STP, safe drinking water, medical health care, crèche and First Aid Room etc.

(ii) Adequate drinking water and sanitary facilities should be provided for construction workers at the site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.

(iii) The solid waste generated should be properly collected and segregated. dry/inert solid waste should be disposed off to the approved sites for land filling after recovering recyclable material.

(iv) Disposal of muck during construction phase should not create any adverse effect on the neighboring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.

(v) Arrangement shall be made that waste water and storm water do not get mixed.

(vi) All the topsoil excavated during construction activities should be stored for use in horticulture / landscape development within the project site.

(vii) Additional soil for leveling of the proposed site shall be generated within the sites (to the extent possible) so that natural drainage system of the area is protected and improved.

(viii) Green Belt Development shall be carried out considering CPCB guidelines including selection of plant species and in consultation with the local DFO/ Agriculture Dept.

(ix) Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.

(x) Construction spoils, including bituminous material and other hazardous materials must not be allowed to contaminate watercourses and the dumpsites for such material must be secured so that they should not leach into the ground water.

(xi) Any hazardous waste generated during construction phase should be disposed off as per applicable rules and norms with necessary approvals of the Maharashtra Pollution Control Board.

(xii) The diesel generator sets to be used during construction phase should be low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air and noise emission standards.

(xiii) The diesel required for operating DG sets shall be stored in underground tanks and if required, clearance from concern authority shall be taken.

(xiv) Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards and should be operated only during non-peak hours.

(xv) Ambient noise levels should conform to residential standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.

(xvi) Fly ash should be used as building material in the construction as per the provisions of Fly Ash Notification of September 1999 and amended as on 27th August, 2003. (The above condition is applicable only if the project site is located within the 100Km of Thermal Power Stations).

(xvii) Ready mixed concrete must be used in building construction.

(xviii) The approval of competent authority shall be obtained for structural safety of the buildings due to any possible earthquake, adequacy of fire fighting equipments etc. as per National Building Code including measures from lighting.

(xix) Storm water control and its re-use as per CGWB and BIS standards for various applications.

(xx) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.

(xxi) The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority.

(xxii) The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for operation. Discharge of this unused treated affluent, if any should be discharge in the sewer line. Treated effluent emanating from STP shall be recycled/refused to the maximum extent possible. Discharge of this unused treated affluent, if any should be discharge in the sewer line. Treatment of 100% gray water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP.

(xxiii) Permission to draw ground water and construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.

(xxiv) Separation of gray and black water should be done by the use of dual plumbing line for separation of gray and black water.

(xxv) Fixtures for showers, toilet flushing and drinking should be of low flow either by use of aerators or pressure reducing devices or sensor based control.

(xxvi) Use of glass may be reduced up to 40% to reduce the electricity consumption and load on air conditioning. If necessary, use high quality double glass with special reflective coating in windows.

(xxvii) Roof should meet prescriptive requirement as per Energy Conservation Building Code by using appropriate thermal insulation material to fulfill requirement.

(xxviii)Energy conservation measures like installation of CFLs /TFLs for the lighting the areas outside the building should be integral part of the project design and should be in place before project commissioning. Use CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/rules of the regulatory authority to avoid mercury contamination. Use of solar panels may be done to the extent possible like installing solar street lights, common solar water heaters system. Project proponent should install, after checking feasibility, solar plus hybrid non conventional energy source as source of energy.

(xxix) Diesel power generating sets proposed as source of back up power for elevators and common area illumination during operation phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of

stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use low sulphur diesel. The location of the DG sets may be decided with in consultation with Maharashtra Pollution Control Board.

(xxx) Noise should be controlled to ensure that it does not exceed the prescribed standards. During nighttime the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.

(xxxi) Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.

(xxxii) Opaque wall should meet prescriptive requirement as per Energy Conservation Building Code, which is proposed to be mandatory for all air-conditioned spaces while it is aspiration for non-air-conditioned spaces by use of appropriate thermal insulation material to fulfill requirement.

(xxxiii) The building should have adequate distance between them to allow movement of fresh air and passage of natural light, air and ventilation.

(xxxiv) Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings.

(xxxv) Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that construction of the project has been started without obtaining environmental clearance.

(xxxvi) Six monthly monitoring reports should be submitted to the Regional office MoEF, Bhopal with copy to this department and MPCB.

General Conditions for Post- construction/operation phase-

(i) Project proponent shall ensure completion of STP, MSW disposal facility, green belt development prior to occupation of the buildings. As agreed during the SEIAA meeting, PP to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line No physical occupation or allotment will be given unless all above said environmental infrastructure is installed and made functional including water requirement in Para 2. Prior certification from appropriate authority shall be obtained.

(ii) Wet garbage should be treated by Organic Waste Converter and treated waste (manure) should be utilized in the existing premises for gardening. And, no wet garbage will be disposed outside the premises. Local authority should ensure this.

(iii) Local body should ensure that no occupation certification is issued prior to operation of STP/MSW site etc. with due permission of MPCB.

(iv) A complete set of all the documents submitted to Department should be forwarded to the Local authority and MPCB.

(v) In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Department.

(vi) A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.

(vii) Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise breaks-up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted for other purposes and year-wise expenditure should reported to the MPCB & this department.

(viii) The project management shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the Marathi language of the local concerned within seven days of issue of this letter, informing that the project has been accorded environmental clearance and copies of clearance letter are available with the Maharashtra Pollution Control Board and may also be seen at Website at http://ec.maharashtra.gov.in.

(ix) Project management should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the MPCB & this department, on 1st June & 1st December of each calendar year.

(x) A copy of the clearance letter shall be sent by proponent to the concerned Municipal Corporation and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent.

(xi) The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely; SPM, RSPM. SO_2, NOx (ambient levels as well as stack emissions) or critical sector parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.

(xii) The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.

(xiii) The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.

4. The environmental clearance is being issued without prejudice to the action initiated under EP Act or any court case pending in the court of law and it does not mean that project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble court will be binding on the project proponent. Hence this

clearance does not give immunity to the project proponent in the case filed against him, if any or action initiated under EP Act.

5. In case of submission of false document and non compliance of stipulated conditions, Authority/ Environment Department will revoke or suspend the Environmental Clearance without any intimation and initiate appropriate legal action under Environmental Protection Act, 1986.

6. The Environment department reserves the right to add any stringent condition or to revoke the clearance if conditions stipulated are not implemented to the satisfaction of the department or for that matter, for any other administrative reason.

7. **Validity of Environment Clearance**: The environmental clearance accorded shall be valid for a period of 7 years as per MoEF&CC Notification dated 29th April, 2015.

8. In case of any deviation or alteration in the project proposed from those submitted to this department for clearance, a fresh reference should be made to the department to assess the adequacy of the condition(s) imposed and to incorporate additional environmental protection measures required, if any.

9. The above stipulations would be enforced among others under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and rules there under, Hazardous Wastes (Management and Handling) Rules, 1989 and its amendments, the public Liability Insurance Act, 1991 and its amendments.

10. Any appeal against this environmental clearance shall lie with the National Green Tribunal (Western Zone Bench, Pune), New Administrative Building, 1st Floor, D-, Wing, Opposite Council Hall, Pune, if preferred, within 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

(Malini Shankar)
Member Secretary, SEIAA

Copy to:

1. Shri. R. C. Joshi, IAS (Retd.), Chairman, SEIAA, Flat No. 26, Belvedere, Bhulabhai desai road, Breach candy, Mumbai- 400026.

2. Shri. Jagdish Joshi, Chairman, IAS (Retd.). SEAC-III, Flat no. 3, Tahiti chs. Juhu Vers Ova Link Road, Andheri (W), Mumbai- 400 053.

3. Additional Secretary, MOEF, 'MoEF & CC, Indira Paryavaran Bhavan, Jorbagh Road, Aliganj, New Delhi-110003.

4. The CCF, Regional Office, Ministry of Environment and Forest (Regional Office, Western Region, Kendriya Paryavaran Bhavan, Link Road No- 3, E-5, Ravi-Shankar Nagar, Bhopal- 462 016). (MP).

5. IA- Division, Monitoring Cell, MoEF & CC, Indira Paryavaran Bhavan, Jorbagh Road, Aliganj, New Delhi-110003.

6. Managing Director, MSEDCL, MG Road, Fort, Mumbai

7. Collector, Raigad.

8. Managing Director, CIDCO, CIDCO Bhavan, CBD Belapur, Navi Mumbai

9. Commissioner, Municipal Corporation, Navi Mumbai.

10. Member Secretary, Maharashtra Pollution Control Board, with request to display a copy of the clearance.

11. Regional Office, MPCB, Navi Mumbai.

12. Select file (TC-3)

(EC uploaded on 17|11|2015)

CIDCO PUSHPAK NAGAR AREA DEVELOPMENT PROJECT IN 2011

CIDCO PUSHPAK NAGAR AREA DEVELOPMENT PROJECT IN 2016

CIDCO PUSHPAK NAGAR AREA DEVELOPMENT PROJECT IN 2024

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(2013) 6 Supreme Court Cases 620 : 2013 SCC OnLine SC 432

In the Supreme Court of India

(BEFORE K.S.P. RADHAKRISHNAN AND DIPAK MISRA, JJ.)

G. SUNDARRAJAN . . Appellant;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Civil Appeals No. 4440 of 2013[±] with Nos. 4441 of 2013[±], 4442 of 2013[±±] and 4443 of 2013[±±], decided on May 6, 2013

A. **Constitution of India — Arts. 21, 47, 48-A, 51-A(g), 38, 32, 136, 226 and 142 — Nuclear Power — National nuclear policy and development of nuclear energy — Features of, and compliance with philosophical and jurisprudential principles and tests — Right to life, safety and environmental/ecological protection — Possibility of considerable economic development when weighed against risk of feared radiological hazards/detriment — If justifies establishment and expansion of nuclear power plants (NPP) — Opinion of experts as to adequacy of safety measures — Scope of judicial review — Primacy of expert opinion — Establishment of KKNPP [Kudankulam NPP (nuclear power plant)] Units 1 to 6, whether violates abovesaid rights, requiring closure of KKNPP**

— KKNPP complying with all statutory provisions, rules, regulations and safety guidelines and standards set by Indian and foreign expert bodies — Indian and foreign expert bodies having cleared KKNPP project by considering every aspect and all eventualities (internal, external, manmade and natural) for both present and future generations — All expert bodies being unanimous that KKNPP complied with latest safety standards as per national and international norms — There being continuous monitoring of KKNPP by national and international bodies for ensuring that standards with regard to safety and other aspects are being maintained — Task force constituted after occurrence of Fukushima Nuclear Reactor accident in Japan also cleared KKNPP by considering latest safety issues and tsunami factors, etc. — Even then expert committee of AERB recommended 17 safety measures by way of abundant caution of which 12 recommendations had already been implemented and remaining were to be implemented in a phased manner — KKNPP being in tune with national nuclear policy and 1962 Atomic Energy Act i.e. for the welfare of the people, for achieving economic development and alleviation of poverty, etc.

— National nuclear policy and KKNPP project, held (*per curiam*), are justifiable, viable, valid and in tune with the principles of sustainable development, principle of intergenerational equality, principle of greatest

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good of the greatest number and latest principles and codes of nuclear safety standards set up and confirmed by national and international experts

Page: 621

— In light of the above, held (*per curiam*), KKNPP cannot be directed to be closed down — It has got all required clearances, NOCs and approvals — Establishment of KKNPP project is valid and courts cannot go into the safety standards set by experts — A handful of Judges cannot interfere with policy decisions framed by elected representatives of the people — Court has to respect national nuclear policy of the country reflected in the Atomic Energy Act and the same has to be given effect to for the welfare of the people and the country's economic growth and it is with these objectives in mind that KKNPP has been set up — But when it is a question of right to life and safety of citizens, the courts must undertake an exercise to allay the fears expressed by people because nuclear accidents have taken place and it is natural for people to be apprehensive about a nuclear disaster — Therefore, additional detailed directions issued (*per curiam*) to ensure safety: (a) complete dedication by all to avert nuclear disaster, (b) continuous monitoring by authorities, (c) safe storage and transportation of nuclear waste i.e. spent nuclear fuel (SNF), (d) disaster management, preparedness, education and training of personnel/public functionaries, (e) discharge of corporate social responsibility (CSR), etc., and (f) final, valid and proper clearance before commissioning (*see in detail* paras 244.1 to 244.15 for the directions)

— Held (*per Radhakrishnan, J.*), a balance has to be struck — Nuclear energy is a viable and sustainable source of energy and it is necessary to increase country's economic growth — India cannot afford to be a nuclear isolated nation — No doubt there are apprehensions about impact of nuclear installations on life and property, environment, flora and fauna, marine life, nuclear waste disposal, health, displacement of people, etc. which has a direct link with Art. 21, Constitution of India and the environmental laws of the country — But national policy-makers consider nuclear energy as an important element in India's energy mix — KKNPP has been set up as a part of India's national policy to develop, control and use of atomic energy for peaceful purpose i.e. for generation of electricity, which is for the welfare of the people of India and achieve economic development and remove poverty — Nuclear technologies and techniques can offer vital benefits for improving human well being like health care, radio therapy, food security, agricultural advantages to present and future generations — To sustain rapid economic growth, it is necessary to double the supply of energy — Justification for

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establishing KKNPP, therefore has been vindicated — Apprehension, however legitimate it may be, cannot override the justification of the project — Once the justification test is satisfied, the apprehension test is bound to fail — Further, KKNPP is being established not to negate right to life but to protect right to life guaranteed under Art. 21 — Petitioner's contention that establishment of KKNPP will make an inroad into right to life guaranteed under Art. 21 of the Constitution, therefore has no basis — On the other hand, it will only protect the right to life guaranteed under Art. 21 of the Constitution for achieving a larger public interest and will also achieve the object and purpose of the 1962 Atomic Energy Act

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— Held [*per Misra, J.* (*concurring*)], issues as to what nuclear safety standards should be followed is to be found in the statutes, rules and regulations and has to be addressed by policy-makers — Courts cannot assume the role of approving authority for safety measures — As regards nuclear safety, AERB and MoEF are in total control of things — However, it is the highest concern of Supreme Court to ensure that a devastating nuclear disaster is avoided at all costs — Disaster management cannot remain in paper — Development needs of present generations should not be at the cost of safety of future generations — Principle of larger public interest at the cost of smaller inconvenience to smaller number of people is not applicable to present case — It is not a case of the land oustees or a case of "some inconvenience" or the loss caused to property — Safety, security and life come within Art. 21 and no jettisoning is permissible — Therefore, the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse — The grammar has to be totally different — Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it would be a disaster affecting the living — The life of some cannot be sacrificed for the purpose of the eventual larger good

— Atomic Energy Act, 1962 — Ss. 16, 17, 22, 23, 24, 27, 30, 3, 5, 2 and Preamble — Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987 — Rr. 2 to 5, 7 to 11 and 14 — Tort Law — Disaster Management Act, 2005 — Chs. 2 to 10 and Ss. 3 to 6, 11 to 14, 18, 23, 31 and 37 — National Disaster Management Guidelines, 2009 (2009 Guidelines) — Environment (Protection) Act, 1986 — Ss. 3(1), 3(2)(v), 23 and Notis. dt. 27-1-1994, 19-2-1991 & 12-2-2011 — Environment (Protection) Rules, 1986 — Rr. 5 (3)(d) and 84 — Air (Prevention and Control of Pollution) Act, 1981 — S. 25

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— Expression "consent to establish" — Implications — Water (Prevention and Control of Pollution) Act, 1974 — S. 21 — Expression "consent to operate" under — Implications — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 — Rr. 2(b) and 3 — Hazardous Wastes (Management and Handling) Rules, 1989 — R. 2(c) — Atomic Energy (Radiation Protection) Rules, 1971, Rr. 13, 15 and 16

B. **Infrastructure Laws — Energy and Power — Nuclear Power — National nuclear policy and KKNPP — Fairness and reasonableness of policy decisions and findings by experts, held (*per curiam*), are not amenable to judicial review — Therefore, issue in present case as to what would be the effect of KKNPP on human health, marine life and ecology have to be addressed by policy-makers who are elected representatives of the people and the experts appointed for the purpose — Such issues are not dealt with by courts — But court can examine the safety standards being followed by a nuclear power plant such as KKNPP to allay the fears expressed by the people — Courts can interfere if a policy violates law or procedure (which is not the case here) — Courts can interfere if a policy is absolutely capricious, unreasonable and arbitrary or if a policy violates the basic structure of the Constitution (which is not the case here) — Court cannot sit in judgment on the views expressed by the technical and scientific bodies in setting up of a**

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nuclear power plant such as KKNPP and on its safety and security — Evidence Act, 1872 — S. 45 — Administrative Law — Judicial Review — Exclusion of judicial review — Policy/Policy decision/Policy matter

C. **Infrastructure Laws — Energy and Power — Alternative/Non-conventional Energy Sources — Development of, world over — Apprehensions about — Safety concern is a human concern**

D. **Civil Liability for Nuclear Damage Act, 2010 — Preamble, SOR, Ss. 4 to 7, 9, 16, 19, 27, 35 and 36 — Provisions under for: (a) speedy disposal of claims, (b) liability for both victims and environmental degradation, (c) strict liability principle, (d) no-fault liability principle, discussed — Effect and relevance for issue as to whether KKNPP should be closed down or not — Tort Law — Strict/No-fault liability**

E. **Tort Law — Disaster Management Act, 2005 — Ss. 3 to 6, 11 to 14, 18, 23, 31 and 37 — National Disaster Management Guidelines, 2009 framed under — Effect and relevance for issue as to whether KKNPP should be closed down or not**

F. **Infrastructure Laws — Energy and Power — Nuclear Power — Atomic Energy Act, 1962 — Preamble and Ss. 27, 16, 17, 23 & 27 — Objectives of 1962 Act and various codes and guidelines framed by AERB and other**

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national and international bodies, considered — These codes and safety guidelines are meant to protect life and property of people including protection of environment guaranteed under Art. 21 of the Constitution — Codes of AERB relating to 4 kinds of nuclear emergency, considered — Codes of AERB deal with responsibilities of both operating organisation of NPP as well as responsibilities of public authorities — Features of AERB codes include, continuity of responsibility, DGR for high-level radioactive wastes (requiring long years of isolation), predisposal measures, NSDF and philosophy of SNF management

G. **Infrastructure Laws — Energy and Power — Nuclear Power — Site selection of nuclear plant (KKNPP in this case) — Judicial notice taken of, regarding care, caution and diligence of all concerned in site selection of KKNPP — Site Selection Committee (SSC) constituted by DAE while selecting KKNPP made a detailed study as per safety standards laid down by AERB — SSC study included: (a) studies relating to seismicity, geology, metrology, environmental setting, all eventualities (natural, manmade, external and internal), (b) caution regarding proximity to sensitive sites like airports & military installations, etc., and (c) study relating to scope of implementation of public emergency procedures, etc. — Site selection for KKNPP was after survey and consideration by experts — KKNPP has the most modern design features for adequate core cooling even under off-normal conditions like total loss of electric power**

H. **Infrastructure Laws — Energy and Power — Nuclear Power — Nuclear spent fuel (SNF) — Reprocessing capacity in India — As per experts, India is capable of reprocessing SNF — Uranium resource availability in India is limited — Without reprocessing of SNF, achievable nuclear power in India is 10,000 MWe, but with reprocessing, this can be**

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increased to 2,75,000 MWe by 2052 — 97% of SNF is capable of being reused/reprocessed and regarding removing of remaining 3% of SNF experts say that if the minor actinides are "partitioned" or removed, the rest of the waste is dominated by FPs having a half-life of about 30 yrs and so in 10 half-lives (300 yrs) it will have negligible activity and the partitioned minor actinides can then be "transmuted" or burnt by inducing fission in fast breeder reactors or in accelerator driven systems (ADS)

I. **Infrastructure Laws — Energy and Power — Nuclear Power — Nuclear spent fuel (SNF) — Storage of SNF — Need of deep geological repository (DGR) and away from rector storage (AFR), held (*per curiam*), is mandatory — Negligence of NPCIL in this regard, noticed — Therefore, directed *per curiam*, that NPCIL should start immediate planning for a**

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permanent DGR for storing high level radioactive wastes requiring isolation for thousands of years

J. **Infrastructure Laws — Energy and Power — Nuclear Power — KKNPP — Exclusion zone and emergency zone — Safety measures regarding, ensured by authorities, discussed**

K. **Infrastructure Laws — Energy and Power — Nuclear Power — Atomic Energy Act, 1962 — Ss. 16, 17, 22, 23, 24, 27, 30, 3, 5, 2 and Preamble — Statutes with which 1962 Act should be read in tandem**

L. **International Law — International Conventions — Convention on Nuclear Safety adopted on 17-6-1994 — Preamble and Arts. 10, 14, 16 and 19 — India being a signatory, effect (*per Misra, J.*) — Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management dated 5-9-1997 — Chs. 2 to 4 and Arts. 3, 11, 15, 22 and 23 — India not being a signatory, but relevance of said Convention pointed out (*per Misra, J.*)**

(Paras 221 to 224)

M. **Doctrines and Maxims — Harmonious construction of maxims — Maxim *salus populi (est) suprema lex* (regard for public welfare is the highest law) and maxim *salus reipublicae suprema lex* (safety of the State is the supreme law and in case of any conflict, an individual must yield to the collective interest), prescribed (*per Misra, J.*)**

N. **Interpretation of Statutes — External Aids — Foreign decisions and foreign law — US Price-Anderson Act, 1957, German Atomic Energy Act (1959), Swiss Federal Law on the Exploitation of Nuclear Energy for Peaceful Purposes and Protection from Radiation (1959) and Japanese Law on the Compensation of Nuclear Damage (1961), considered**

The appellants opposed the nuclear power plant at Kudankulam in Tamil Nadu (KKNPP) on grounds of safety and environmental protection.

The appellants submitted that the people of the plant area have a fundamental right under Article 21 of the Constitution to move the Court for issues relating to their safety and security. And that Nuclear Power Corporation of India (NPCIL) is bound to implement the 17 recommendations of Task Force relating to safety and security measures. The appellants also complained that issues relating to disaster management and storage and disposal of radioactive waste have not been adequately taken care of.

The Atomic Energy Regulatory Board (AERB) submitted that all necessary safety standards as prescribed by it have been adopted by NPCIL by anticipating all eventualities and causes (both technical causes and natural causes) and also by

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keeping in view the earlier disaster at Fukushima.

NPCIL gave the details of safety measures undertaken. NPCIL submitted that some of the recommendations of the Task Force have been complied with and the rest would be complied with in a phased manner.

The Central Government submitted that about 97% of the spent nuclear fuel (SNF) used in the nuclear power plants (NPPs) is reusable. And that the remaining 3% of the spent fuel consists of various fission products (FPs) and minor actinides (MAs). And that each NPP has a water storage pool for storage of SNF, namely, "spent fuel storage bay" (SFSB). Those pools are temporary storage facilities for recyclable fuel and are essentially water filled concrete vaults with SS lining, having the arrangement for storing SNF in racks. They are designed, constructed and operated as per the AERB guidelines and requirements. And that the transportation of SNF is governed by the regulations specified by AERB and international requirements given in the International Atomic Energy Agency (IAEA) Regulations for Safe Transport of Radioactive Material, 2005. And that the Department of Atomic Energy is also aware of the importance of safety and security and takes utmost care to ensure that the management and transport is carried out safely, following the internationally recognised norms and regulations and that the same is done under the supervision of AERB and the Government of India.

Dismissing the appeals and declining to direct closure of KKNPP but with additional directions to ensure safety, the Supreme Court

Held :

Per Radhakrishnan, J.

It is not for courts to determine whether a particular policy or a particular decision taken in fulfilment of a policy, is fair or reasonable.

(Paras 15, 1 and 12 to 14)

Vacher & Sons Ltd. v. *London Society of Compositors*, 1913 AC 107 : (1911-13) All ER Rep 241 (HL); *Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL); *M.P. Oil Extraction* v. *State of M.P.*, (1997) 7 SCC 592; *Ugar Sugar Works Ltd.* v. *Delhi Admn.*, (2001) 3 SCC 635; *Dhampur Sugar (Kashipur) Ltd.* v. *State of Uttaranchal*, (2007) 8 SCC 418; *Delhi Bar Assn.* v. *Union of India*, (2008) 13 SCC 628, *relied on*

The courts are concerned only with the manner in which the policy decisions have been taken i.e. whether a decision can be said to be tainted with "procedural impropriety". Unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, the court's interference is not called for. Further, the courts also cannot stand in the way of the Union of India honouring its inter-Governmental agreement entered into between India and Russia for setting up KKNPP.

(Paras 15.2 to 15.5)

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The Supreme Court can, however, focus its attention on various other issues raised in these appeals in the light of the provisions of the 1962 Act, rules and regulations framed thereunder, international conventions, covenants entered into by India with other countries, AERB Code of Practices and Safety Guides, experts' opinion, environmental and other related laws. Part I of this judgment deals with the safety and security of NPP, international conventions and treaties,

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KKNPP Project, NSF and its management and transportation, deep geological repository (DGR), civil liabilities, disaster management authority (DMA), corporate social responsibility (CSR) and other related issues. Part II mainly focuses on the environmental issues, coastal regulatory zones (CRZ), desalination plant, impact of radiation on ecosystem, expert opinions, etc.

(Para 16)

A lot of scientific literature, expert opinions, etc. have been produced to show the dangers from and the harm that a nuclear power plant/KKNPP may cause to human health, environment, marine life and so on not only on the present generation but on future generation as well. Further, it was also pointed out that due to growing nuclear accidents and the resultant ecological and other dangers, many countries have started retreating from their forward nuclear programmes. These issues are to be addressed to the policy-makers and not to the courts because the destiny of a nation is shaped by the people's representatives and not by a handful of Judges, unless there is an attempt to tamper with the fundamental constitutional principles or basic structure of the Constitution. The Supreme Court is however, deeply concerned with the safety and security of the people of this country, its environment, its flora and fauna, its marine life, ecology, biodiversity and so on which the policy-makers cannot, in the guise of national policy, mutilate or rob: in such an event the courts can unveil the mask and find out the truth for the safety, security and welfare of the people and the mother earth.

(Paras 24 to 26)

IAEA Regulation for Safe Transport of Radioactive Material, 2005, *referred to*

Safety and security of the people and the nation are of paramount importance when a nuclear plant is being set up and it is vital to have in place all safety standards in which public can have full confidence to safeguard them against risks which they fear and to avoid serious long-term or irreversible environmental consequences.

(Para 27)

Parliament, probably is very much concerned with the safety and security of its people and its environment. People's comfort, happiness, prosperity and the economic growth of the nation is always its concern. The 1962 Act deals with a

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sensitive subject. Various codes of practice, safety guidelines and the decision taken in various international conventions and the guidelines laid down by various international agencies followed by India are meant to protect the life and property of people including the environment, guaranteed under Article 21 of the Constitution of India.

(Paras 49, 50, 29 to 48 and 17)

People's Union for Civil Liberties v. *Union of India*, (2004) 2 SCC 476, *relied on*

A Site Selection Committee (SSC) constituted by DAE after surveying various sites, selected Kudankulam in Tirunelveli District of Tamil Nadu as the most suitable place for locating NPP. NPCIL also made a detailed study of the selected site in the light of the Code of Practice framed by AERB regarding safety in NPP siting. In evaluating the suitability of a site for locating an NPP, the effect of external events (natural and man-induced) on the plant; effect of plant on environment and population; and implementation of emergency procedures particularly protective countermeasures in the public domain, had to be addressed. SSC study also included the assessment of seismicity, location of faults, geology, foundation conditions, meteorology, potential of flooding (from tsunami, storm surge, etc. at coastal sites and from rain, upstream dam break, etc. at inland sites), proximity to airports, military installations, facilities storing explosive and toxic substances, etc. The environmental setting comprising of

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biodiversity including flora and fauna, marine ecology, etc. in the region was also evaluated. SSC had taken care of all those aspects before making its recommendations to the Government. NPCIL, the Union of India and other statutory authorities had taken care to follow the practice laid down by AERB on safety in NPP site. KKNPP is of a most modern design. The design features in NPP assures adequate core cooling under off-normal conditions including total loss of electric power. NPP, has been divided into three stages, first stage comprises of building PHWRs and using natural uranium. The second stage includes setting up fast breeder reactors backed by reprocessing plants and plutonium-based fuel fabrication plants. The third stage is based on the thorium-uranium-233 cycle.

(Paras 51 to 55)

[**Ed.**: MSL is short for "mean sea level". Reference might be made to safety features presented by NPCIL in MS Power Point Format (ppt format of size 7742 KB) on the following site as verified on 13-6-2013. www.npcil.nic.in/pdf/Insight_of_Safety_features_of_KKNPP.ppt. Slide 19 of said presentation shows that the tsunami of 26-12-2004 had not surged above 3 metres of MSL. Whereas the pump, turbine, reactor and other installations of KKNPP are located above 7.5 metres of MSL. Further, Slide 20 also shows that the NPP site is located at distance of 1500 km from the tsunamigenic fault (where tsunamis originate). Thus if there a tsunami it

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would lose its energy by the time it strikes Kudankulam site.]

Radioactive waste is generated during operation, maintenance and decommissioning of nuclear and radiation facilities. Radioactive waste is to be managed in a manner that ensures compliance with the fundamental principles of radiation protection and environmental safety. A code on the "Management of Radioactive Waste" issued by AERB on 22-6-2007 (2007 Code) specifies basic requirements for the safe management of radioactive waste from nuclear and radiation facilities. The 2007 Code specifically states that deep geological disposal methodology of high-level radioactive solid waste requiring long time isolation of thousands of years from biosphere is presently under development. Safe management of radioactive waste requires clear allocation and continuity of responsibilities, which is provided for in the 2007 Code. The 2007 Code also deals with predisposal measures, near surface disposal facility (NSDF), deep geological repository (DGR) and the principles and philosophy of radioactive waste management.

(Paras 56 to 62)

"Management of Radioactive Waste" Code issued by AERB on 22-6-2007 in particular Paras 2.2, 3.2.6, 4, 5, Appendices A to D and Annexures I and II, *referred to*

India has got the capability for reprocessing SNF, experts say. Trombay plant reprocesses the spent fuel from research reactors with the capacity of 60 tons per year. The plants at Tarapur and Kalpakkan process off-site fuels from PHWRs with operating capacity of 100 tons per year each. Additional reprocessing facilities are being set up. With the limited resources of uranium available in India, the indigenous achievable NP is estimated to be 10,000 MWe by PHWR, without reprocessing. With the help of reprocessing, the achievable capacity could go up to 63,000 MWe imported LWR and recycling LWR fuel to 2,75,000 MWe, by 2052. NPCIL has, therefore, taken up the stand that reprocessing of spent fuel is the key to the country's three-stage nuclear power programme. 97% of SNF is capable of being reused, but what has to be done with regard to the remaining 3% SNF, is a moot question, since it is not reusable, which consists of various fission products and minor actinides. This 3% waste

comprises of minor actinides which have a long half-life of lakhs of years. Experts, however, say that if the minor actinides are "partitioned" or removed, the rest of the waste is dominated by FPs having a half-life of about 30 years and so in 10 half -lives (300 years) it will have negligible activity and the partitioned minor actinides can then be "transmuted" or burnt by inducing fission in fast breeder reactors or in accelerator driven systems (ADS).

(Paras 63 to 74)

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State of New York v. *Nuclear Regulatory Commission*, Case No. 11-1045, decided on 8-6-2012 (US CA), *distinguished*

Human Rights (Environmental Pollution in Baluchistan), In re, PLD 1994 SC 102, *considered*

"Storage and Disposal of Spent Fuel and High-Level Radioactive Waste" Principles by IAEA; AERB Safety Guide to AERB Management of Radioactive Waste Code, 2007; Report of 15-member team in December 2011 on Spent Fuel Management, *referred to*

AERB, way back in 1989, had recommended to have an away from rector storage (AFR) facility at KKNPP for prolonged storage of SNF while granting siting clearance. Noticeably, NPCIL does not seem to have a long-term plan, other than, stating and hoping that in the near future, it would establish a DGR. The Atomic Energy Act, especially Section 17, envisages present and future safety of our NPPs and the lives and environment around. NPCIL and the Union of India must have a hard look at the environmental consequences of its action of setting up of NPPs, hence a permanent DGR is of utmost importance, which they should plan now.

(Paras 75 to 78)

AERB Safety Code on "Management of Radioactive Waste" of 2007, *referred to*

We are all exposed to the naturally occurring radiation in our daily lives like cosmic radiation, radiation from earth's crust and radiation generating equipments like x-ray, CT scan, angiography and angioplasty, etc. Production and use of nuclear energy also is bound to create a little bit of marginal radiation which seldom can be prevented.

(Para 79)

The statutory safety standards, etc. issued by AERB and buttressed by the technical assistance provided by IAEA, NEA, World Association of Nuclear Operations (WANO), etc. are being followed in India in respect of 20 operating power reactors which are existing in this country. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have therefore become a central part of nuclear law. Risks arising from NPP, do affect not merely the country which chooses to use that technology but can have catastrophic consequences to the neighbouring countries as well. Non-proliferation, disarmament and peaceful use are stated to be the three pillars of all the international conventions. Nuclear technologies and techniques, can offer vital benefits for improving human well being, like health care, radio therapy, food security, agricultural advantages to the present and future generation.

(Para 80)

The Prime Minister of India, ordered a fresh review of all safety of NPPs, on 11-3-2011, immediately after the accident at Fukushima NPP, Japan with respect to external events. The task force constituted by NPCIL found that KKNPP had already incorporated all safety standards, including passive systems to ensure reactor

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shutdown. The Expert Committee of AERB, LWR in its final report dated 31-8-2011 gave 17 safety measures by way of abundant caution. A comparative chart giving the status and implementation of the Post-Fukushima AERB Recommendations indicates that twelve recommendations have already been complied with. The Supreme Court is convinced that KKNPP design incorporates

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advanced safety features complying with the current standards of redundancy, reliability, independence and prevention of common cause failures in its safety systems. Design also takes care of anticipated operational occurrences (AOO), design basis accidents (DBA) and beyond design basis accidents (BDBA) like station blackout (SBO), anticipated transients without scram (ATWS), metal water reaction in the water core and provision of core catcher to take care of core degradation. The design also includes the provisions for withstanding external events like earthquake, tsunami/storm, tidal waves, cyclones, shock waves, aircraft impact on main buildings and fire. The 17 recommendations were made after the Fukushima accident, the cause of which is a natural phenomenon. The facts would indicate that tsunamigenic zone along the east coast of India is more than 1300 km away from the nearest NPP site (Madras/Kalpakkam) and about 1000 km away from Kudankulam. The possibility of hitting tsunami at Kudankulam, as the one that hit Fukushima, seems to be very remote.

(Paras 81 to 87)

Task Force Report submitted on March 2011; Task Force Interim Report submitted on 11-5-2011; Report of Aerbsc-EE (High-Level Committee), dated 31-8-2011; The Final Report of Expert Committee of AERB, LWR dated 31-8-2011, *referred to*

The Government of India, constituted a 15-member expert group to provide clarifications on the issue raised by the agitators by interacting with the forum provided by the State Government comprising of two State Government nominees and four representatives of the people. Public hearing was held and views and suggestions made for and against the project were heard. The Government of Tamil Nadu also appointed an Expert Committee headed by former President of AEC along with three other experts. In addition to the various reports, the Russian Nuclear Safety Authority also known as GosAtomNadzor (GAN) reviewed and cleared the safety analysis report of KKNPP Units 1 and 2, which forms the basis of the licensing safety review.

(Paras 88 to 91)

Detailed Report in December 2011 prepared by 15-member Committee appointed by Government of India; Report dated 31-12-2012 of the Expert Group appointed by State Government, *referred to*

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Developing modern sources for energy through NPPs carry the problem of potential damage, which might flow from a nuclear catastrophe. Several nuclear energy generating countries have adopted their own legislation on the issue of civil and criminal liability. Few of such legislations followed the basic principle of imposing legal liability on a strict liability basis on the operator of a nuclear installation coupled with the limitation on liability. India's Civil Liability for Nuclear Damage Act, 2010 (the Nuclear Liability Act) mainly rests on the various international conventions. The Nuclear Liability Act aims to provide a civil liability for nuclear damage and prompt compensation to victims of a nuclear incident. The Nuclear Liability Act states that the liability of the operator is to the tune of Rs 1500 crores and the maximum liability to rupee equivalent of 300 million SDRs, though the Nuclear Liability Act, speaks of no-fault liability.

(Paras 92 to 95)

The person carrying on activity which is hazardous or inherently dangerous is liable to make good the losses caused to any other person by his activity, irrespective of the fact that he took reasonable care while carrying on his activity. The absolute or strict liability principle extends not only to compensate the victims of pollution, but also the cost of restoring environmental degradation.

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The principle of strict liability, precautionary principle, polluter pays, etc., find their expression in Articles 21, 47, 48-A, 51-A(*g*) of the Constitution of India.

(Paras 97 to 98)

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37; *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *Union Carbide Corpn. (2)* v. *Union of India*, (1989) 2 SCC 540 : 1989 SCC (Cri) 416; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584; *Duke Power Co.* v. *Carolina Environmental Study Group*, 57 L Ed 2d 595 : 438 US 59 (1978), *considered*

Paris Convention of 1960; Brussels Supplementary Convention Act, 1963; IAEA's Vienna Convention on Civil Liability for Nuclear Damage, 1963, *referred to*

Sustainable development and corporate social responsibility (CSR) are inseparable twins, integrated into the principles of inter and intragenerational equity, not merely human-centric, but ecocentric. The Department of Public Enterprises (DPE), recently, issued the Comprehensive Guidelines on CSR for Central Public Sector Enterprises, which includes NPCIL, to create, through the Board resolution, a CSR budget as a specific percentage of net profit of the previous year. CSR is envisaged as a commitment to meet its social obligations. CSR strategy has to be put in practice in line with the millennium development goals as lodged by the United Nations and adopted by the Government of India in the 11th Five-Year Plan i.e.

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2007-2012, which could cover the areas of education, health, drinking water/sanitation, environment, solar lighting system, infrastructure for backward areas, community development and social empowerment, promotion of sports and traditional forms of arts and culture, generation of employment opportunities and livelihood to be a part of the national/local initiatives to provide reliefs/rehabilitation in terms of natural disaster, calamities, etc. NPCIL has allocated funds for providing health, education, infrastructural development under CSR at Kudankulam. Further Rs 500 crores has been allocated for the Neighbourhood Development Programme (NDP) around the nuclear plant at Kudankulam, which would be utilised for taking up various development works as part of CSR. NPCIL in association with the District Collector, Tirunelveli should take effective steps to discharge their CSR in accordance with the DPE Guidelines. Needless to say, there must be an effective and proper monitoring and supervision of the various projects undertaken under CSR, to the fullest benefit of the people who are residing in and around NPP.

(Paras 119 to 122)

Banwasi Seva Ashram v. *State of U.P.*, (1986) 4 SCC 753, *relied on*

[**Ed.**: For more details of the various safety measures and the bodies in charge of implementing the same *see also* paras 100 to 118.]

A balance has to be struck. Nuclear energy is a viable and sustainable source of energy and it is necessary to increase country's economic growth. India cannot afford to be a nuclear isolated nation, when most of the developed countries consider it as a major source of energy for their economic growth. Primary reason for opposition to nuclear plants seems to be on the issues of the impact of nuclear installations on life and property, environment, flora and fauna, marine life, nuclear waste disposal, health, displacement of people, etc. which has a direct link with Article 21 of the Constitution of India and the environmental laws of the country.

(Paras 123 and 124)

AERB, NPCIL, MoEF and all the Expert Committees are of the unanimous opinion that there will not be any deleterious effects due to radiation from the

operation of KKNPP Units 1 and 2 and that adequate safety measures have already been taken. Further there are many potential areas of radiation reflected in many uses of radioactive materials. Radioactive materials are used in hospitals, surgeries and so on. Mobile phone use, though minor, also causes radiation. Therefore, the "economic scientific benefits" have to be balanced with that of "minor radiological detriments" on the touchstone of our national nuclear policy. Economic benefit has to be viewed on a larger canvas which not only augment our economic growth but alleviate poverty and generate more employment.

(Paras 200 and 201)

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Report of the Department of Telecommunications, "Mobile Communication—Radio Wave and Safety" released in October 2012, *referred to*

NPCIL, while setting up the NPP at Kudankulam, has satisfied the environmental principles like sustainable development, corporate social responsibility, precautionary principle, inter/intragenerational equity and so on to implement our national policy to develop, control and use of atomic energy for the welfare of the people and for economic growth of the country. Crores of public money have already been spent for the development, control and use of atomic energy and hence, we have to put up with such "minor inconveniences", "minor radiological detriments" and "minor environmental detriments" in our lives because the benefits we reap from KKNPP are enormous since nuclear energy remains as an important element in India's energy mix which can replace a significant part of fossil fuels like coal, gas, oil, etc. Electricity is the heart and soul of modern life. Most of the States are in the grip of power cut; day and night, for a number of hours, which has adverse effect on their economic and industrial growth. To sustain rapid economic growth, it is necessary to double the supply of energy. Energy tariff is also increasing and nuclear power in the long run will be much cheaper than other forms of energy. The benefit of establishing KKNPP Units 1 to 6 has to be balanced with the right to life and property and the protection of environment including marine life. The production of nuclear energy is of extreme importance for the economic growth of our country and to alleviate poverty, generate employment, etc. While setting up a project of this nature, larger public interest has to be safeguarded rather than smaller violation of right to life guaranteed under Article 21 of the Constitution.

(Paras 201, 202, 204 and 198)

Justification for establishing KKNPP at Kudankulam, therefore, has been vindicated and all safety and security measures have already been taken, and necessary permissions and clearances have been obtained from all statutory authorities. Apprehension, however legitimate it may be, cannot override the justification of the project. Nobody on this earth can predict what would happen in future and to a larger extent we have to leave it to the destiny. But once the justification test is satisfied, the apprehension test is bound to fail. Apprehension is something we anticipate with anxiety or fear, a fearful anticipation, which may vary from person to person.

(Para 203)

The problems highlighted, while setting up a nuclear plant, are not unique to this nation, because other countries are also grappling with those situations. In an organised society, the right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity,

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sanitation and civil amenities like road, etc. so as to have easy access to his daily avocation. Nuclear power plant is being established not to negate right to life but to protect the right to life guaranteed under Article 21 of the Constitution. The petitioner's contention that the establishment of nuclear power plant at Kudankulam will make an inroad into the right to live guaranteed under Article 21 of the Constitution, therefore, has no basis. On the other hand, it will only protect the right to life guaranteed under Article 21 of the Constitution for achieving a larger public interest and will also achieve the object and purpose of the Atomic Energy Act.

(Paras 199, 199.1 to 199.8, 205 and 206)

Chameli Singh v. *State of U.P.*, (1996) 2 SCC 549; *S.* v. *France*, 3 RUOH (1991); *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 75 L Ed 2d 534 : 460 US 766 (1983), *relied on*

R. v. *Inspectorate of Pollution, ex p Greenpeace Ltd.*, (1994) 1 WLR 570 : (1994) 4 All ER 321 (CA); *R.* v. *Secy. of State for the Environment, ex p Greenpeace Ltd.*, (1994) 4 All ER 352; *R.* v. *Secy. of State for Environment, Food and Rural Affairs, ex p Friends on the Earth Ltd.*, 2002 Env L Rev 24 (CA); *R. (Marchiori)* v. *Environment Agency*, 2002 EWCA Civ 3 : (2002) 127 ILR 574; *R. (Greenpeace Ltd.)* v. *Secy. of State for Trade and Industry*, 2007 Env LR 29; *Alberta Wilderness Assn.* v. *Express Pipelines Ltd.*, (1996) 137 DLR (4th) 177 (FCA Can); *Inverhuron and District Ratepayers' Assn.* v. *Canada (Minister of the Environment)*, 2001 FCA 203 (Can), *approved*

AEC, DAE, BARC, AERB, NPCIL, TNPCB, the expert bodies, are all unanimous in their opinions that adequate safety and security measures have already been taken at KKNPP which are to be given due weight that they deserve. Further, they are all unanimous that the radiation as well as the discharge of water from NPP to the seashore will not have serious impact on the marine ecology or on marine life. Normally the court should be slow to interfere with the opinion expressed by the experts and it would normally be wise and safe for the courts to leave the decisions to experts who are more familiar with the problems which they face than the courts generally can be which has been the consistent view taken by the Supreme Court. The Court cannot sit in judgment on the views expressed by the technical and scientific bodies in setting up of KKNPP at Kudankulam and on its safety and security.

(Paras 207 to 210)

University of Mysore v. *C.D. Govinda Rao*, AIR 1965 SC 491; *State of Bihar* v. *Asis Kumar Mukherjee*, (1975) 3 SCC 602 : 1975 SCC (L&S) 51; *Dalpat Abasaheb Solunke* v. *B.S. Mahajan*, (1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528; *Central Areca Nut & Cocoa Mktg. & Processing Coop. Ltd.* v. *State of Karnataka*, (1997) 8 SCC 31; *Dental Council of India* v. *Subharti K.K.B. Charitable Trust*, (2001) 5 SCC 486; *Basavaiah* v. *H.L. Ramesh*, (2010) 8 SCC

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372 : (2010) 2 SCC (L&S) 640; *Avishek Goenka* v. *Union of India*, (2012) 5 SCC 275; *Woon Tan Kan* v. *Asian Rare Earth Sdn. Bhd.*, (1992) 4 CLJ 2207 (Malaysia), *relied on*

KKNPP has, therefore, been set up as part of India's national policy so as to develop, control and use of atomic energy for the welfare of the people of India. Policy-makers consider nuclear energy as an important element in India's energy mix for sustaining economic growth of natural and domestic use. For setting up the project, the project proponent has taken all safety requirements in site and off site and has followed the code of practices laid down by AERB, based on nationally and internationally recognised safety methods. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have become a central part of nuclear law. Adequate measures have, therefore, to be taken for storage of NSF at site, and also for the physical safety of stored NSF. Of the seventeen suggested safety measures, by AERB, LWR, twelve have

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already been implemented and the rest, in a phased manner have to be implemented which the experts say, are meant for extra security. DMP is already in place, so also the emergency preparedness plan, off site and on site and all programmes under CSR are progressing in the right direction with the cooperation and assistance of the District Administration. NPCIL, has also received necessary environmental clearance from MoEF, TNPCB, etc. for Units 1 to 6. No violation of CRZ is also noticed. Desalination plant is also established after following rules and regulations and there is no violation of CRZ. Experts say that there will be no impact on the marine ecosystem due to discharge of +7°C, CCW over and above the ambient temperature of the sea. Radiation impact on the ecosystem is also within the standard set by AERB, MoEF, EAC, Pollution Control Board, etc., so opined by the experts. In other words, all the expert teams are unanimous in their opinion of the safety and security of KKNPP both to life and property of the people and the environment which includes marine life. The Court has to respect national nuclear policy of the country reflected in the Atomic Energy Act and the same has to be given effect to for the welfare of the people and the country's economic growth and it is with these objectives in mind that KKNPP has been set up.

(Paras 211 and 212)

Per Dipak Misra, J. (concurring)

It is borne out from the material on record that two aspects have weighed with many a nation while thinking of a nuclear energy plant, namely, the caution and circumspection at the time of operation and how to deal with radioactive waste. It has been pointed out how the reuse of radioactive waste is done by a sophisticated method and the danger is kept at bay. On one hand, there is requirement of energy and the need of progress and development and, in a way, to compete with the

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progressive phenomenon of the other countries in many a sphere and, on the other, the likelihood of danger to be caused to the people of the locality and the effect-potentiality to affect the larger section of public because of disposal of radioactive waste and transportation.

(Para 220)

Convention on the Physical Protection of Nuclear Material (1979); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency; Convention on Nuclear Safety and Convention on Early Notification of a Nuclear Accident (1986), *referred to*

The conception of the parens patriae theory is the obligation of the State to protect and it takes into custody the rights and the privileges of its citizens for discharging its obligation. The maxim *salus populi (est) suprema lex* — regard for public welfare is the highest law. Reference may be made to the other maxim, i.e. *salus reipublicae suprema lex* i.e. safety of the State is the supreme law and in case of any conflict, an individual must yield to the collective interest. But, it should not be done at the cost of safety. At all times and at all quarters, sincere efforts are to be made to maintain and sustain the safety of the people. That has been spoken by the ancients when the Kings ruled and the same reigns supreme in a democratic set-up. True it is, there are exceptions, but the exceptions are to remain in the realm of exceptions only and should not be brought into play either at the whim or fancy of the executive. The purpose of saying is that the law has many a mansion and the mosaic of law covers many spectrums so that both the maxims, namely, *salus populi (est) suprema lex* and *salus reipublicae suprema lex*, can harmoniously coexist. The present case is one where there is need for

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nuclear energy for the welfare of the public and for other welfare of the people of India and for peaceful purpose. Definitely, the interest of the economy and the interest of safety are to be the real concerns of a welfare State.

(Paras 226 and 231)

Pritam Pal v. *High Court of M.P.*, 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356; *State of Karnataka* v. *Praveen Bhai Thogadia*, (2004) 4 SCC 684 : 2004 SCC (Cri) 1387; *Anderson* v. *Dunn*, 5 L Ed 242 : 19 US (6 Wheat) 204 (1821); *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613; *Union Carbide Corpn.* v. *Union of India*, (1989) 3 SCC 38, *relied on*

The concept of welfare State is a facet of Article 38 of the Constitution of India. It is the obligation of the State to see that the welfare of the people is appositely promoted. The words used in the Preamble of the 1962 Act are "welfare for the people" and "peace". There is a necessity for generation of electrical energy and regard being had to the hazards, there has to be guidance which the Acts, rules and

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notifications provide. The collective interests should not totally be thrown overboard for the development of the power sector. If the safety measures are adequately not taken and the apprehensions are not removed and the fear is not totally ostracised from the minds of the people of the locality, posterity may not recognise the same as a development or a progressive step. The conscientious and conscious policy decisions by the Government are to be taken with due care and consideration, keeping in mind the welfare of the people at large. True it is, when such policies are framed, especially for establishment of nuclear plants or such big projects, the safety measures become the primary concern and the same have to be adequately addressed to and taken care of. However, the courts, in exercise of power of judicial review, cannot assume the role of approving authority for laying safety measures, but, a significant one, what the regulatory authorities have stated are to be regarded as the primary and principal concern.

(Para 233)

Reference may be made to the report of AERB to review the safety of Indian nuclear power plants against external events of natural origin. A status report has been filed by NPCIL. An affidavit has been filed on 3-12-2012 and it is asserted therein that most of the recommendations have already been complied with. The Supreme Court has been apprised and assured of the fact that AERB and, in turn, MoEF are in total control of things and scrutiny is made and the same shall be looked into from time to time and all possible measures shall be taken to avoid any kind of accident.

(Paras 234 and 235)

It is the highest concern of the Supreme Court that a devastating nuclear disaster should be avoided at all costs by the people who are in charge of looking after the safety measures. All endeavours by all authorities are to be made to prevent, monitor and control. The concept of disaster management cannot be allowed to remain on paper. The administration has to be alive to the said situation. Taking care of the situation of the present alone is not the solution. The danger of the future should be seriously taken note of. The present generation has no right to enjoy by eating away the time of the future generation. The protection of the environment and the safety for the present generation in its connotative sense covers the posterity.

(Paras 236 and 237)

Generation of nuclear energy is a necessity in a progressive modern State. There is an enactment and notifications governing the field in various aspects. A policy decision has been taken to establish the nuclear plant at Kudankulam. Promotion of development and protection of environment are to be harmonised

at the same time. A balance should be struck between the ecology and environment on one hand and the projects of public utility on the other.

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(Paras 238 and 239)

Intellectuals Forum v. *State of A.P.*, (2006) 3 SCC 549; *Bombay Dyeing & Mfg. Co. Ltd. (3)* v. *Bombay Environmental Action Group*, (2006) 3 SCC 434; *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *T.N. Godavarman Thirumulpad (104)* v. *Union of India*, (2008) 2 SCC 222; *M.C. Mehta* v. *Union of India*, (2009) 6 SCC 142; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 10 SCC 606, *relied on*

If a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. But the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property. The dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different. It needs to be clarified that the said discussion is not about the ecology and environment, but it may be noted that the proportionality of risk may not be "zero" regard being had to the nature's unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good.

(Paras 240 to 242)

True it is, the prayer is for the total closure of the plant and the Court has not acceded to the said prayer but the appellant's noble effort is appreciated to put forth the grievance of the local people and the necessity of adequate safety measures as is perceived. In such cases, it is the bounden duty of the Supreme Court to remind the authorities to remain always alert without any complacency. AERB as the regulatory authority and MoEF are obliged to perform their duty that safety measures are adequately taken before the plant commences its operation. That is the trust of the people in the authorities which they can ill afford to betray, and it shall not be an exaggeration to state that safety in a case of this nature in any one's hand has to be placed on the pedestal of "constitutional trust".

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(Para 243)

G. Sundarrajan v. *Union of India*, WP No. 22253 of 2012, order dated 31-8-2012 (Mad); *G. Sundarrajan* v. *Union of India*, (2012) 6 MLJ 529, *affirmed with directions*

O. **Infrastructure Laws — Energy and Power — Nuclear Power — KKNPP — NOC and clearances for Units 1 and 2 and CRZ compliance — Need for obtaining strict environmental clearance, stressed — Environmental clearance granted by various authorities, considered — The**

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following bodies had cleared KKNPP with conditions: (a) Site Selection Committee of DAE, (b) Nine-member committee for regulating coasts gave clearance to KKNPP, (c) TNSEC granted clearance with 31 conditions specified, (d) PM office also gave clearance to KKNPP subject to MoEF ensuring safeguards relating to CRZ, (e) MoEF accorded approval to KKNPP subject to conditions specified, (f) AERB granted clearance subject to conditions specified

P. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Nuclear Power Plants — KKNPP Units 1 and 2 — 1991 and 1994 EIA Notifications under Ss. 3(1) and 3(2)(v), 1986 Act r/w R. 5(3)(d), 1986 Rules and Sch. I and Explanatory Note 8 to 1994 Notification — Applicability — EIA Noti. dt. 19-2-1991 (1991 EIA Notification) and 27-1-1994 (1994 EIA Notification) held are not applicable to KKNPP Units 1 and 2 — Rationale for, explained — KKNPP had been granted environmental clearance by various authorities prior to 1991 EIA Notification — 1991 EIA Notification did not prohibit projects already in operation and prior to date of issue of notification — 1994 Notification requires fresh environmental clearance and public hearing for expansion and modernisation because NPPs are covered under Sch. I — But in view of Expln. Note 8 to 1994 EIA Notification, said requirement would not be necessary for KKNPP Units 1 and 2 because plant capacity and sea water consumption always remained the same as envisaged in 1988 or 1998 Indo-Russian agreements — Further desalination plant is not also covered under Sch. I to 1994 EIA Notification — Further though a Circular dt. 23-7-1998 of MoEF clarified that environmental clearance issued prior to 1994 EIA Notification would not be valid for cases where work had not commenced before 1-8-1998, KKNPP Units 1 and 2 are not such projects as per the inspection of KKNPP done by MoEF on 31-8-2001 — Thus 1994 EIA Notification would not be applicable for KKNPP Units 1 and 2 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2)(v) — Environment (Protection) Rules, 1986, R. 5(3)(d)**

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Q. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Nuclear Power Plants — KKNPP — Condenser cooling water (CCW) of thermal plant in coastal areas — Norm that difference between temperature of received water and discharged should not exceed 7°C — Compliance with — Held, KKNPP Units 3 and 4 had complied with the requirements as per report of experts — TNPCB has also accorded consent to operate on 28-8-2012 for Units 1 and 2 by stipulating condenser cooling water discharge limit as 7°C as per the amended 1986 Rules — Therefore, contention raised by appellants that rise in temperature of receiving water due to rise in temperature of condenser cooling water would affect marine ecosystem, cannot be sustained — Environment (Protection) Rules, 1986, R. 84**

R. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Nuclear Power Plants — KKNPP Units 1 and 2 — NOC requirement under the Air Act and the Water Act — Held, environmental clearance or NOC cannot be equated to**

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"consent to establish" under S. 25 of the Air Act and "consent to operate" under S. 21 of the Water Act — Environmental clearance/NOC was granted to KKNPP Units 1 and 2 as early as on 26-12-1988 by T.N. State Environmental Committee (TNSEC) though TNPCB had granted "consent to establish" under S. 25 of the Air Act on 25-2-2004 and "consent to operate" under the Water Act on 28-8-2012 — KKNPP Units 1 and 2 are, therefore, entitled to get the benefit of Explanatory Note 8 to the 1994 EIA Notification — Further NPCIL, as part of the continuous process to ensure safety of environment made a rapid environmental impact assessment (REIA) of KKNPP Units 1 and 2 in the year 2001 and a comprehensive EIA report was submitted by NEERI in 2003 — The comprehensive EIA report submitted by NEERI in January 2003 was later implemented under the expert guidance of M.S. Swaminathan Research Foundation — Air (Prevention and Control of Pollution) Act, 1981 — S. 25 — Water (Prevention and Control of Pollution) Act, 1974 — S. 21 — Words and Phrases — "Consent to establish", "consent to operate"

S. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Nuclear Power Plants — Environmental clearance for Units 3 to 6 — Held, environmental clearance for Units 3 to 6 was given by MoEF subject to implementation of 20 stated conditions — Public hearing for Units 3 to 6 was held for fresh environmental clearance as per 2006 Notification — Issues discussed in public hearing, stated — Appellants, therefore, cannot contend that the procedure laid down under 1994 and 2006 EIA Notifications had not been followed while granting environmental clearance — Environment (Protection) Act, 1986 — Ss. 3(1) and 3(2)(v) — Environment (Protection) Rules, 1986, R. 5(3)(d)**

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Held :

The protection of the sea coasts in India calls for scientific care and diligence and following tsunami, cyclone, earthquake, etc., the protection of the sea coast has assumed added importance.

(Para 149)

MoEF in exercise of powers conferred under Sections 3(1) and 3(2)(*v*) of the Environment (Protection) Act, 1986 and Rule 5(3)(*d*) of the Environment (Protection) Rules, 1986 issued a Notification dated 19-2-1991 declaring certain coastal stretches as CRZ and regulating both prohibited and permitted activities in CRZ. However, it did not prohibit the project already in operation and granted clearance prior to the date of the issue of notification. With regard to the location of KKNPP within the prescribed 500 m within CRZ an exemption had already granted as per the then existing norms even prior to 1991 by the then Prime Minister of India by the communication dated 19-4-1989. Over and above, Para 2(1) of the 1991 CRZ Notification as amended by the Notification dated 12-4-2011, exempted projects of the Department of Atomic Energy. Therefore, KKNPP Units 1 and 2 have not violated the 1991 CRZ Notification.

(Paras 150 and 151)

MoEF issued a Notification dated 27-1-1994 directing that on and from the date of publication of that notification in the Official Gazette expansion or modernisation of any activity (if the resultant pollution load is to exceed the existing levels) or a new project listed in Schedule 1 of that notification shall not

be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the notification. The explanatory note under the notification dated 27-1-1994 also deals with exemption for project already initiated under Explanatory Note 8.

(Paras 152 and 154)

Schedule 1 of the notification refers to nuclear power project and related projects such as heavy water plants, nuclear fuel complex, rare earths, etc. and the same also deals with thermal power plant as well. The Central Government, later in exercise of the powers conferred under Section 23, Environment (Protection) Act, 1986 introduced Schedule IV into the 1994 Notification prescribing the procedure for public hearing. In the Circular dated 23-7-1998 of the MoEF, it was pointing out that the environment clearance issued prior to 1994 would not be valid in the cases, where work did not commence before 1-8-1998. MoEF inspected the site of KKNPP on 31-8-2001 and found that land acquisition had been completed and the construction work on various components such as township, Environmental and Health Research Centre and RO plant was in progress. Further, it was noticed that

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afforestation programme was undertaken by M.S. Swaminathan Research Foundation and that till August 2001, Rs 377.30 crores were spent for KKNPP on various activities. MoEF, noticing the above facts, vide its Letter dated 6-9-2001 clarified that environmental clearance granted on 9-5-1989 stands valid and that there is no need to conduct public hearing and seek fresh environmental clearance.

(Paras 155 to 158)

Therefore, the EIA Notification of 1994 would not apply to KKNPP Units 1 and 2. So far as KKNPP Units 1 and 2 are concerned, they had the relevant clearance from the State Government including the NOC from the State Pollution Control Board. KKNPP Units 1 and 2 stood exempted from the notification and Explanatory Note 8 to the notification and also the Circular issued by MoEF on 23-7-1998 make it more explicit. Plant capacity always remained 1000 MWs × 2, and the plant model V-412 remained to be as envisaged in the 1988 agreement and the 1998 supplementary agreement of 1988. Sea water consumption is 2,40,000 m3/Hr and it has undergone no change from what was envisaged before obtaining clearance from MoEF in 9-5-1989 till date and hence there is no necessity for a fresh clearance.

(Paras 159 and 160)

Prior environmental clearance is required only for those activities which are listed in Schedule 1 to the EIA Notification dated 27-1-1994 or the subsequent Notification dated 14-9-2006 which superseded the earlier Notification dated 27-1-1994. Desalination plant is not seen listed under the abovementioned notifications. Desalination plant functions on distillation (mechanical vapour compression) principle. Experts say the process would not cause any increase in pollution load due to desalination. The establishment of desalination plant, therefore, would not require any fresh environmental clearance, especially when the same has not been included in Schedule 1 to the EIA Notification dated 27-1-1994 or in the subsequent Notifications dated 14-9-2006, 6-1-2011, etc. except within CRZ — 1(*i*).

(Paras 160 to 165)

Rule 84 of the Environment (Protection) Rules, 1986 deals with the thermal power plant, which states that the resultant rise in temperature of receiving water shall not exceed 7°C over and above the ambient temperature of the receiving water body. Facts indicate that the limit prescribed under Rule 84 will equally be

applicable to nuclear power plant as well since the technology for condenser cooling in both, thermal as well as nuclear power plant is the same. Environmental impact was analysed in desalination and the experts of MoEF and TNPCB are unanimous in their views, that there would be no impact on the marine ecosystem if the resultant rise is within 7°C. Therefore, the contention raised by the appellants that the rise in temperature of receiving water due to rise in temperature of condenser cooling water would affect marine ecosystem, cannot be sustained.

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(Paras 168 and 169)

Report of July 2008 based on study conducted by the Institute of Ocean Management, Anna University; Report of August 2011 of Engineers India Ltd. along with CHFRI, *referred to*

Environmental clearance or NOC cannot be equated to "consent to establish" under Section 25 of the Air Act and "consent to operate" under Section 21 of the Water Act. The environmental clearance or NOC was granted to KKNPP Units 1 and 2 as early as on 26-12-1988 by the Tamil Nadu State Environmental Committee (TNSEC) though TNPCB had granted "consent to establish" under Section 25 of the Air Act on 25-2-2004 and "consent to operate" under the Water Act on 28-8-2012. KKNPP Units 1 and 2 are, therefore, entitled to get the benefit of Explanatory Note 8 to the EIA Notification dated 27-1-1994. Further NPCIL, as part of the continuous process to ensure safety of environment made a rapid environmental impact assessment (REIA) of KKNPP Units 1 and 2 in the year 2001 and a comprehensive EIA report was submitted by NEERI in 2003. The comprehensive EIA report submitted by NEERI in January 2003 was later implemented under the expert guidance of M.S. Swaminathan Research Foundation.

(Paras 171 to 174)

May 2002 Rapid EIA Report of NEERI of KKNPP Units 1 and 2; 2003 Comprehensive EIA Report of NEERI of KKNPP Units 1 and 2, *referred to*

KKNPP Units 3 to 6 got environmental clearance from MoEF in September 2008. Thereafter M/s Engineers India Ltd. (EIL), a Government of India undertaking and Central Marine Fisheries Research Institute (CHFRI) conducted a detailed study on the reactor system of KKNPP Units 3 to 6, impact on environment, existing environmental status, its prediction, and an environmental management plan report was submitted in August 2011. The report has also analysed the environmental impact on the marine ecosystem due to 7°C CCW water and concluded that it will have no impact on the marine ecosystem. EIA report was considered as Expert Appraisal Committee (EAC) report, while granting CRZ clearance for the additional Reactors 3 to 6 at KKNPP. CRZ clearance was granted by MoEF on 25-7-2012 after following the procedure laid down in the CRZ Notification of 2011. TNPCB accorded consent to operate vide proceeding dated 28-8-2012 incorporating stringent standard of 7°C for discharge of effluents from desalination plant.

(Paras 175 to 183)

SS-D/51916/C

Advocates who appeared in this case:

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The Judgments[‡‡] of the Court were delivered by

K.S.P. RADHAKRISHNAN, J.— Leave granted. We are in these appeals concerned with an issue of considerable national and international importance, pertaining to the setting up of a nuclear power plant in the south-eastern tip of India, at Kudankulam in the State of Tamil Nadu. The incidents occurred in Three Mile Island Power Plant, USA; Chernobyl, Ukraine, USSR; Fukushima, Japan; Union Carbide, Bhopal might be haunting the memory of the people living in and around Kudankulam, leading to large-scale agitation and emotional reaction to the setting up of the nuclear power plant (NPP) and its commissioning. The nature of potential adverse effects of ionising radiation, adds to fears and unrest which might not have been even thought of by Enrico Fermi, a Nobel Laureate in Physics in 1938, who was responsible for the setting up of the first nuclear reactor in a doubles squash court at Stagg Field, at Chicago University, USA. Since then, it is history, India has now 20 nuclear reactors, in place, and the world over about 439, but people still react emotionally, for more reasons than one, when a new one is being established.

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2. People's concern was mooted, even in the Constituent Assembly when it deliberated the issue before constituting India into a sovereign democratic republic and adopting and enacting the Constitution of India.

General

3. The Constituent Assembly discussed the formal legal framework to regulate atomic energy in the year 1948 and the legislation by the name Atomic Energy Act, 1948 (29 of 1948) was enacted. That Act envisaged the constitution of an Atomic Energy Commission (AEC) and a Department of Atomic Energy (DAE) and both were established in the year 1954. AEC is the apex body of the Central Government for atomic energy that provides direction on policies related to atomic energy. It consists of eminent scientists and technocrats, secretaries to different ministries, senior officials from the office of the Prime Minister. AEC has to report to the Prime Minister of India on various policies related to atomic energy. DAE deals with the development and implementation of nuclear power and related nuclear fuel cycle activities and research and development activities carried out in various units under it. Bhaba Atomic Research Centre (BARC), formerly AEE, was also established in the year 1954 and research reactors, namely, Apsara, Cirus and Dhruva were set up in the years 1956, 1960 and 1985 respectively. The control and development of atomic energy in the country and matters connected therewith were then regulated by Act 29 of 1948.

4. Parliament having taken note of the developments in the field of atomic energy and with a view to implement the future programme of expansion in the field, thought it necessary to have a comprehensive legislation dealing with atomic energy; consequently, Act 29 of 1948 was repealed and the Atomic Energy Act, 1962 (33 of 1962) (in short "the Act") was enacted which came into force on 29-1-1962. The Act has been enacted to provide for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes.

5. The Central Government, in exercise of the powers conferred under Section 27 of the Act, constituted the Atomic Energy Regulatory Board (AERB) vide Notification dated 15-11-1983 to carry out certain regulatory and safety functions envisaged under Sections 16, 17 and 23 of the Act. AERB has powers to lay down safety standards and frame rules and regulations in regard to the regulatory and safety requirements envisaged under the Act and have to report to AEC. The Act underwent amendment vide amending Acts 59 and 29 in the years 1986 and 1987 respectively. However, the major amendment was of the year 1987, vide amending Act 29 of 1987, by which the Central

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Government was empowered to produce and supply electricity from atomic energy.

6. For achieving the envisaged target of nuclear power generation, a nuclear power corporation or a government company was also decided to be set up which would design, construct and operate nuclear power stations in India. Following that, a separate public sector company, namely, Nuclear Power Corporation of India (NPCIL) with a view to design, build and operate nuclear reactors in the country was created in September 1987. NPCIL is a

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wholly-owned Government of India undertaking which functions under the administrative control of DAE.

National Policy

7. Parliament in unequivocal terms has pronounced its National Policy through the Act, that is to develop, control and use of atomic energy for the welfare of the people of India. The Central Government has also been entrusted with the power to provide for the control over radioactive substances or radiation generating plant and to provide for the production and supply of electricity from atomic energy, etc. The Central Government has also got the power to require any substance which contains uranium, plutonium or any of their isotopes and extract from that any substance which is essential to the atomic energy programme.

8. The Act, though, provides the basic regulatory framework for the regulation of nuclear related activity, we have other related laws which have to be applied and read in tandem like the Factories Act, 1948, the Electricity Act, 2003, the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Explosives Act, 1884, the Disaster Management Act, 2005, the Atomic Energy (Radiation Protection) Rules, 2004, the Industrial Radiography (Radiation Surveillance) Procedure, 1980, the Atomic Energy (Factories) Rules, 1996, the Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules, 1984, the Atomic Energy (Safe Disposal of Radioactive Waste) Rules, 1987, the Radiation Surveillance Procedures for Medical Applications of Radiation, 1989 and the Atomic Energy (Control of Irradiation of Food) Rules, 1996 and so on.

9. The Central Government, as per the Act, is legally obliged to develop a sound and adequate national policy in regard to atomic power

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and to coordinate such policy with the Central Electricity Authority (CEA) and the State Electricity Boards (SEBs) constituted under the Act for the generation of electricity in pursuance of such policy and to operate atomic power stations in the manner determined by it in consultation with the Boards or corporations concerned.

10. Section 22, which deals with the provisions for the generation of electricity, reads as follows:

"**22. *Special provisions as to electricity***.—(1) Notwithstanding anything contained in the Electricity (Supply) Act, 1948 (54 of 1948), the Central Government shall have authority—

(*a*) to develop a sound and adequate national policy in regard to atomic power, to coordinate such policy with the Central Electricity Authority and the State Electricity Boards constituted under Sections 3 and 5 respectively of that Act and other similar statutory corporations concerned with the control and utilisation of other power resources, to implement schemes for the generation of electricity in pursuance of such policy and to operate either by itself or through any authority or corporation established by it or a government company, atomic power

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stations in the manner determined by it in consultation with the Boards or Corporations concerned, with whom it shall enter into agreement regarding the supply of electricity so produced;

(*b*) to fix rates for and regulate the supply of electricity from atomic power stations either by itself or through any authority or corporation established by it or a government company, in consultation with the Central Electricity Authority;

(*c*) to enter into arrangements with the Electricity Board of the State in which an atomic power station is situated either by itself or through any authority or corporation established by it or a government company for the transmission of electricity to any other State:

Provided that in case there is difference of opinion between the Central Government or such authority or corporation or government company, as the case may be, and any State Electricity Board in regard to the construction of necessary transmission lines, the matter shall be referred to the Central Electricity Authority whose decision shall be binding on the parties concerned.

(2) No provision of the Indian Electricity Act, 1910 (9 of 1910), or any rule made thereunder or of any instrument having effect by

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virtue of such law or rule shall have any effect so far as it is inconsistent with any of the provisions of this Act.

(3) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of the Indian Electricity Act, 1910 (9 of 1910), and the Electricity (Supply) Act, 1948 (45 of 1948)."

11. As a sequel to that national policy, the Central Government, with the active cooperation of AEC, BARC, NPCIL, AERB, etc., have already set up about twenty operating power reactors in the country with installed nuclear capacity of 4780 MWe, which have been commissioned over the last four decades from the years 1969 to 2011. Seven more units with a capacity of 5300 MWe are under construction (commissioning). The latest one to be commissioned is at Kudankulam in the State of Tamil Nadu. The first nuclear power plant (NPP) in the country, Tarapur Atomic Power Station (TAPS) Units 1 and 2, based on boiling water reactors (BWR), was supplied by General Electric USA and became operational in the year 1969. Rajasthan Atomic Power Stations (RAPS) 1 and 2 with two units of 200 MWe were established in 1970s at Rawatbhata in Rajasthan with the technical cooperation of AECL (Canada). Later, in 1980s two units of 220 MWe Pressurised Heavy Water Reactors (PHWRs), Madras Atomic Power Stations 1 and 2 were constructed at Kalpakkam in Tamil Nadu. Later, India developed a standardised design of 220 MWe PHWRs. Four reactors of that standardised design were built, two each at Narora in Uttar Pradesh (Narora Atomic Power Stations 1 and 2) and Kakrapar in Gujarat (Kakrapar Atomic Power Project 1 and 2). Those plants became operational in 1990s. Later eight more units of standardised 220 MWe PHWRs were built, four each at Kaiga in Karnataka (Kaiga Generating Station Units 1-4) and Rawatbhata in Rajasthan (RAPS Units 3-6). India in 1990s undertook the design and development of 540 MWe PHWR. Two reactors based on that design became operational in 2005-2006 at Tarapur. India has also developed 700 MWe

design with limited boiling in the coolant channels. The construction of four such units was almost completed at Kakrapar and Rawatbhata sites. Currently, 500 MWe Prototype Fast Breeder Reactor (PFBR) is under construction at Kalpakkam. PFBR is built with the design and technology developed at Indira Gandhi Centre for Atomic Research (IGCAR). Over and above, India has now set up two PHWRs of VVER based NPPs (2 × 1000 MWe) at Kudankulam in Tamil Nadu with the cooperation of Russian Federation which is the subject-matter of this

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litigation.

12. India draws bulk of its electricity, above 64%, from thermal sources, especially coal. Hydropower comes second at 18% and then renewable sources provide small share at about 15%. We are informed that, at present, the share of nuclear energy is hardly 3% of India's total electricity production, while France accounts for 74.6% as in 2008. NPPs provide about 6% of the world's energy and 13%-14% of the world's electricity with US, France and Japan together accounting for about 50% of nuclear generated electricity. USA has 104 nuclear reactors and more than 1,00,000 MWe of electricity is produced by nuclear generation. International Atomic Energy Agency (IAEA) has reported that in the year 2007, there were 439 nuclear power reactors in operation in the world operating in thirty-one countries. DAE, it is reported, plans to increase its nuclear energy production to 20,000 MWe by 2020 and 63,000 by 2030.

13. The policy-makers consider that the nuclear energy remains as an important element in India's energy mix for sustaining economic growth of natural and domestic use. One of the reasons for preferring nuclear energy as an alternative source of energy is that it is a clean, safe, reliable and competitive energy source which can replace a significant part of the fossil fuels like coal, oil, gas, etc. Oil and natural gas resources might exhaust themselves. Coal is also not an effective substitution since forests are also no longer able to satisfy the energy requirements. Major source of electricity generation, about 66%, is still contributed by fossil thermal powers, like coal. To put into practice the national policy, India has already entered into various collaborations with most of the developed countries which have proved expertise and experience in the field of establishment and production of nuclear energy.

14. Economic growth and energy support have to go hand in hand, for the country's development for which India has entered into various collaboration agreements with USA, Canada, Russia, etc. and several NPPs have already been set up in the country. The Government of India, in implementation of its national policy, had made a joint statement with USA, called Indo-US Joint Statement, 2005, for a renewed global civil nuclear energy cooperation. A cooperation agreement called the 2007 Cooperation Agreement was also entered into between India and USA for the peaceful uses of nuclear energy. This was later followed by the Indo-France Joint Statement in September 2008. A joint statement was made in February 2010 with the United Kingdom. Above facts would indicate that in order to give effect to the national policy for development, control and use of atomic energy, India has

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entered into various bilateral treaties and arrangements with countries which have considerable expertise and experience. For establishing NPP at Kudankulam, India had entered into an inter-Governmental agreement with the erstwhile USSR in November 1988 followed by a supplementary agreement on 21-6-1998 signed by India and Russia which is in tune with India's national policy.

15. India's national policy has been clearly and unequivocally expressed by the legislature in the Atomic Energy Act. National and international policy of the country is to develop control and use of atomic energy for the welfare of the people and for other peaceful purposes. NPP has been set up at Kudankulam as part of the national policy which is discernible from the Preamble of the Act and the provisions contained therein. It is not for courts to determine whether a particular policy or a particular decision taken in fulfilment of a policy, is fair. The reason is obvious, it is not the province of a court to scan the wisdom or reasonableness of the policy behind the statute.

15.1. Lord MacNaughten in *Vacher & Sons Ltd.* v. *London Society of Compositors*[1] has stated: (AC p. 118)

> "… Some people may think the policy of the Act unwise and even dangerous to the community. … But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction."

15.2. In *Council of Civil Service Unions* v. *Minister for the Civil Service*[2] (AC p. 414 : All ER p. 954), it was held that *it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy are fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety"*.

15.3. This Court in *M.P. Oil Extraction* v. *State of M.P.*[3] held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.

15.4. Reference may also be made of the judgments of this Court in *Ugar Sugar Works Ltd.* v. *Delhi Admn.*[4], *Dhampur Sugar (Kashipur) Ltd.* v. *State of Uttaranchal*[5] and *Delhi Bar Assn.* v. *Union of India*[6].

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15.5. We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement.

Courts also cannot stand in the way of the Union of India honouring its inter-governmental agreement entered into between India and Russia.

16. We may, however, focus our attention on various other issues raised in these appeals in the light of the provisions of the Atomic Energy Act, rules and regulations framed thereunder, international conventions, covenants entered into by India with other countries, AERB Code of Practices and Safety Guides, experts' opinion, environmental and other related laws. In Part I of this judgment, we propose to deal with the safety and security of NPP, international conventions and treaties, KKNPP Project, NSF and its management and transportation, DGR, civil liabilities, DMA, CSR and other related issues and in Part II, we mainly focus on the environmental issues, CRZ, desalination plant, impact of radiation on ecosystem, expert opinions, etc.

PART I

17. KKNPP has been set up by NPCIL based on the Indo-Russian joint agreement under the guidance and supervision of AEC, BARC, AERB, MoEF, TNPCB, Central and State Governments, etc.

Arguments — for and against

18. Shri Prashant Bhushan, learned counsel appearing for the appellant in SLP (C) No. 27335 of 2012, submitted that having seen the experience at Three Mile Island (USA), Chernobyl in Russia and Fukushima in Japan, etc., safety of the people and the environment are of paramount importance and if the units are allowed to be commissioned before making sufficient safeguards on the basis of the recommendations made by the task force of NPCIL, it may lead to serious consequences which could not be remedied. The learned counsel submitted that unless the seventeen recommendations made by the task force appointed by NPCIL are implemented before commissioning the plant, serious consequences may follow. The learned counsel submitted that AERB and NPCIL are legally obliged to implement the recommendations and this Court sitting in this jurisdiction is bound to safeguard the life and property of the people residing in and near Kudankulam which is a fundamental right guaranteed to them under Article 21 of the Constitution of India.

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19. Mrs Nagasaila, learned counsel appearing for the eighth respondent in SLP (C) No. 27813 of 2012, also pointed out that sufficient safeguards have not been taken for the safe disposal of the radioactive waste and no site has so far been identified for the safe handling of radioactive waste, failing which it may cause serious health hazard. The learned counsel also pointed out that even, at the plant site, there is no proper facility for storage of spent fuel and high-level radioactive waste. The learned counsel also pointed out that no adequate measures have been taken to safeguard the life and property of the people in case of any potential disaster, in accordance with the disaster management plan.

20. The learned Attorney General appearing for AERB submitted that the plant has been set up after following all the safety standards laid down by

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AERB. The design of KKNPP incorporates advance safety features complying with current standards of redundancy, reliability, independence and prevention of common cause failures in its safety system. Further, it was also pointed out that the design takes care of anticipated operational occurrences (AOO), design basis accidents (DBA) and beyond design basis accidents (BDBA) like station black out (SBO), anticipated transients without scram (ATWS), metal water reaction, etc. Further, it was pointed out that the Board of AERB met on 23-3-2011 and took stock of safety and NPPs in the light of the Fukushima accident. AERB also constituted a High-Level Committee of Specialists to review and recommend safety upgrades as required to handle extreme external events of natural origin. The learned Attorney General also pointed out that KKNPP design also has several advanced safety features, including those for ensuring safety against external events of natural origin and for management of design basis as well as beyond design basis accidents. Further, it was pointed out that, over and above, steps are being taken to implement the 17 recommendations made by the task force of NPCIL and that, amongst them, few recommendations have already been implemented.

21. Shri Rohington Nariman, learned Solicitor General of India appearing for NPCIL, submitted that KKNPP is a 3+generation NPP and its design incorporates advanced safety features complying with current standards of redundancy, reliability, independence and prevention of common cause failures in its safety systems. The design includes provisions for withstanding external events like earthquake,

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tsunami/storm, tidal waves, cyclones, shock waves, aircraft impact on main buildings and fire. KKNPP also incorporates various additional safety features like quick boron injection system, passive heat removal system, second stage hydro accumulators, passive hydrogen re-combiners, annulus passive filtering system (passive system), core-catcher, etc. Details of further safety measures adopted have already been elaborately stated in the counter-affidavit filed by NPCIL on 26-9-2012. The learned Solicitor General submitted that KKNPP is absolutely safe even without the 17 recommendations made out of abundant caution by AERB. The learned Solicitor General submitted that the 17 recommendations of AERB would also be complied with in a phased manner, out of which 7 have already been implemented.

22. Shri Mohan Parasaran, learned Additional Solicitor General of India, appearing on behalf of Respondent 1, while referring to the affidavit filed by the Union of India, submitted with regard to the process, "Reprocessing and Disposal of Spent Fuel" that most of the spent fuel i.e. 97% is capable of being reused, the remaining 3% of the spent fuel consists of various fission products (FPs) and minor actinides (MAs). All MAs have varying half-lives/decay periods, the dominant amongst them have half-lives of the order of 1 lakh 70 thousand years. Each NPP has a water storage pool for storage of spent fuel, namely, "spent fuel storage bay" (SFSB). Those pools are temporary storage facilities for recyclable fuel and are essentially water filled concrete vaults with SS lining, having the arrangement for storing spent fuel in racks. They are designed, constructed and operated as per the AERB Guidelines and requirements.

23. It was also stated by Shri Parasaran that AERB safety guide, "Design of Fuel Handling and Storage Systems for Pressurised Heavy Water Reactors — AERB/SG/D-24" deals with the safety in design of storage of spent fuel. Further, it was also pointed out that the transportation of spent fuel is governed by the regulations specified by AERB in "Safety Code for the Transport of Radioactive Materials — AERB/SC/TR-1" and international requirements given in IAEA Regulation for Safe Transport of Radioactive Material, 2005. The learned Additional Solicitor General also submitted that the Department of Atomic Energy is also aware of the importance of safety and security and takes utmost care to ensure that the management and transport is carried out safely, following the internationally recognised norms and

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regulations and that the same is done under the supervision of AERB and the Government of India.

24. The Government of India's decision to establish NPP at Kudankulam, as already stated, cannot be questioned before this Court being part of a national policy. Lot of scientific literatures, expert opinions, etc. have been produced before us to show its dangers, harm it may cause to human health, environment, marine life and so on not only on the present generation but on future generation as well. Further, it was also pointed out that due to growing nuclear accidents and the resultant ecological and other dangers, many countries have started retreating from their forward nuclear programmes.

25. We have already indicated that these issues are to be addressed to the policy-makers and not to the courts because the destiny of a nation is shaped by the people's representatives and not by a handful of Judges, unless there is an attempt to tamper with the fundamental constitutional principles or basic structure of the Constitution.

26. We are, however, deeply concerned with the safety and security of the people of this country, its environment, its flora and fauna, its marine life, ecology, biodiversity and so on which the policy-makers cannot, in the guise of national policy, mutilate or rob: in such an event the courts can unveil the mask and find out the truth for the safety, security and welfare of the people and the mother earth.

Safeguards and security

27. Safety and security of the people and the nation are of paramount importance when a nuclear plant is being set up and it is vital to have in place all safety standards in which public can have full confidence to safeguard them against risks which they fear and to avoid serious long-term or irreversible environmental consequences. It is, therefore, necessary to examine at some length the safety standards already in place to allay the fears expressed at some quarters.

28. Let us first examine whether the project proponent has taken adequate safety requirements in site and off site of KKNPP and followed the Code of Practices laid down by AERB and nationally and internationally recognised safety methods. Before examining those issues, we have to first examine the role of AERB in the matter of setting up of nuclear plant and what are the codes and safety guides laid down by AERB for maintaining

high safety standards for setting up and for the functioning of nuclear plants in the country.

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AERB Safety Codes

29. AERB, as already indicated, was constituted by the Central Government in exercise of powers conferred under Section 27 of the Act to carry out certain regulatory and safety functions envisaged under Sections 16, 17 and 23 of the Act vide Notification dated 15-11-1983. The functions to be discharged by the Board have also been enumerated in the said notification which reads as follows:

"2. (*i*) Develop safety codes, guides and standards for siting, design, construction, commissioning, operation and decommissioning of the different types of plants, keeping in view the international recommendations and local requirements and develop safety policies in both radiation and industrial safety areas.

(*ii*) Ensure compliance by DAE and non-DAE installations of safety codes and standards during construction commissioning stages.

(*iii*) Advise AEC/DAE on technical matters that may specifically be referred to it in connection with the siting, design, construction, commissioning, operation and decommissioning of the plants under DAE.

(*iv*) Review from the safety angle requests for authorising/commissioning/operation of DAE projects/plants. Before authorisation of commissioning/operation of the plant/project is granted, the AERB will be satisfied by appropriate review of:

(*a*) final design analysis report prepared by the project plant;

(*b*) commissioning reports and results thereof; and

(*c*) proposed operating procedures and operational limits and conditions; that the plant/project can be operated without undue risk to the operating personnel and the population. For this purpose, AERB may ask for relevant additional supporting information.

(*v*) Review health and safety aspects of modifications in design/operation involving changes in the technical specification adopted in any of the DAE units.

(*vi*) Review operational experience in the light of the radiological and other safety criteria recommended by the International Commission on Radiological Protection, International Atomic Energy Agency and such other international bodies and adapted to suit Indian conditions, and thereby evolve major safety policies.

(*vii*) Prescribe acceptable limits of radiation exposure to occupational workers and members of the public and approve acceptable limits of environmental release of radioactive substances. (In the DAE units, the AERB shall also prescribe limits for environmental release of conventional pollutants).

(*viii*) Review the emergency preparedness plans prepared by the

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different DAE units, similar plans for non-DAE installations and during transport of large radioactive sources (e.g. irradiated fuel kilo/mega curie sources, fissile materials).

(*ix*) Promote research and development efforts for fulfilling the above functions and responsibilities.

(*x*) Review the training programme, qualifications and licensing policies for personnel by the project/plants.

(*xi*) Prescribe the syllabi for training of personnel in safety aspects at all levels.

(*xii*) Enforce rules and regulations promulgated under the Atomic Energy Act, 1962 for radiation safety in the country and under the Factories Act, 1948 for industrial safety in the units under the control of DAE.

(*xiii*) Maintain liaison with statutory bodies in the country as well as abroad regarding safety matters.

(*xiv*) Take such steps as necessary to keep the public informed on major issues of radiological safety significance.

(*xv*) Perform such other functions as may be assigned to it by the Atomic Energy Commission.

(*xvi*) Send reports periodically to Chairman, AEC on safety status including observance of safety regulations and standards and implementation of the recommendations in all DAE and non-DAE units. It will also submit an annual report of its activities to Chairman, AEC."

30. The Notification dated 15-11-1983 clearly states that the Board shall be assisted by DAE SRC and DRP BARC in the performance of its functions at Points (*ii*), (*iv*), (*v*) and (*xii*) mentioned above. AERB has also been entrusted with the powers of the competent authority to enforce the rules and regulations framed under the Act for radiation safety in the country. The powers have also been entrusted with AERB to administer the provisions of the Factories Act, 1948 and the industrial safety for the units of DAE as per Section 23 of the Act.

31. AERB under its programme of developing codes and safety guides issued four codes of practice covering the following topics, namely, (*i*) safety in nuclear power plant siting; (*ii*) safety in nuclear power plant design; (*iii*) safety in nuclear power plant operation; (*iv*) quality assurance for safety in nuclear power plants. Those codes are

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intended to establish the objectives and to set the minimum requirements that have been fulfilled to provide assurance that nuclear power plants will be sited, designed, constructed and operated without undue risk to personnel, public and environment.

32. The Code of Practice for Nuclear Power Plant Siting provides appropriate criteria and outlines the procedures to be applied to assess the suitability of a site for the location of nuclear power plant taking into account, the operational requirements and accidental conditions. The same has to be prepared following the criteria laid down by DAE for selection of site and the relevant IAEA documents under the nuclear safety standards (NUSS) programme specially the Code of Practice for Nuclear Power Plant Siting and similar documents from various leading countries. The Code of Practice on Safety in Nuclear Power Plant Siting was issued by AERB on 9-3-1990. The Code encompasses site-related characteristics, natural events and man-induced events specific to the site which will have a bearing on the

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safety of the plant and the radiological impact on the environment and population due to the location of NPP at the site. The Code also lays down appropriate criteria and outlines the procedures for assessing the suitability of a site taking into account the operational requirements and accident conditions. The Code also indicates the extent of site-related information required to be obtained and also defines site-related design bases. Certain man-induced events like war, acts of sabotage which can cause large-scale damage to the plant safety systems, however, are beyond the scope of the 1990 Code. In other words, the Code prescribes minimum requirements in siting considerations for limiting the radiological impact. The main aim is protection of man and his environment. The Code outlined the requirements for limiting doses to man.

33. AERB in October 1999 issued Guidance for the Preparation of Off-Site Emergency Preparedness Plans for Nuclear Installations. This document has been issued as a lead document to facilitate preparation of specific site manuals by the responsible organisation for emergency response plans at each site to ensure their preparedness to meet any eventuality due to site emergency in order to mitigate its consequences on the health and safety of site personnel. The document also takes cognizance of an earlier AERB publication on the subject: "Safety Manual on Off-Site Emergency Plan for Nuclear Installations" issued in the year 1988. While drafting this document, reference has also been

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made to the documents of IAEA and also the statutory requirements laid down in the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 as well as the amendments incorporated therein subsequently.

34. The purpose of these safety guidelines is to lay down the requirements of the regulatory body for the operating organisation and State public authorities in preparing an emergency response plan for off-site emergency for the nuclear installation. Radiological emergencies at the nuclear installations are mainly categorised as plant emergency alert; plant emergency; site emergency and off-site emergency. The operating organisation is responsible for handling the first three categories of emergencies, while the off-site emergencies involving radiation fallout in the public domain is handled by the State public authorities with the technical input and guidance from the operating organisation and the regulatory body.

35. The main objectives of these safety guidelines are stated hereunder:

35.1. To provide detailed guidelines for nuclear installations in the country on the essential components of off-site emergency preparedness and response plans at each installation taking into consideration any ongoing construction activities at the off-site.

35.2. To elaborate various aspects of the response plan such as: emergency organisation, emergency equipment and facilities needed outside the nuclear installation in order to protect the site personnel from risks of undue radiation exposure.

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35.3. To advise on other aspects such as: enforcement of off-site emergency plans, conduct of periodic off-site emergency drills to ensure readiness of the nuclear installation for handling off-site emergencies.

35.4. To indicate guidelines on off-site related factors, which may influence management of off-site emergencies.

35.5. To highlight the need for the operating organisation/plant management to establish and maintain communication lines between the site, the headquarters of the operating organisation, regulatory body and the State public authorities for prompt and effective use in times of off-site emergency.

36. AERB has also issued the document "Preparedness of the Operating Organisation for Handling Emergencies" at nuclear power

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plants in March 2000. This document supplemented the Code of Practice on Safety in NPP Operation (AERB/SC/O). The purpose of this document is to prescribe guidelines for the development of a state of preparedness for response to emergencies at nuclear power plants. The main objectives of this safety guide are given as follows:

36.1. To highlight to plant management the various categories of emergencies that could rise at NPP;

36.2. To focus on the contents of the emergency manuals in respect of resources and procedures to help respond adequately to emergency situations;

36.3. To emphasise the responsibilities of plant management regarding personnel, plant and site emergency and responsibilities of the State Government in respect of off-site emergency and need for close liaison between plant management and public authorities;

36.4. To bring out the importance of maintaining efficient and effective communication links among plant management, operating organisation, responsible organisation, regulatory body, State authorities and the Department of Atomic Energy Crisis Management Group (DAE-CMG); and

36.5. To develop the infrastructure including manpower and their training.

37. AERB issued another safety code in August 2000 on "Regulation of Nuclear and Radiation Facilities". This document has been issued to spell out the minimum safety related requirements/obligations to be met by a nuclear or radiation facility to qualify for the issue of regulatory consent at every stage leading to eventual operation. The Code also elaborates on the regulatory inspection and enforcement to be carried out by the regulatory body on such facilities. This document has also been prepared by AERB from the information contained in the relevant documents issued by IAEA under the NUSS programme especially the Code on "Governmental Organisation for Regulation of Nuclear Power Plants" (50-C-G).

38. The main objectives of the Code (50-C-G) are to ensure that:

38.1. Only such practices are permitted which are justified in terms of their societal and/or individual benefits;

38.2. Radiation protection is duly optimised in all nuclear/radiation facilities;

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38.3. Radiation doses to the personnel in these facilities, and to the members of the public in their vicinity, do not exceed the prescribed limits; and

38.4. The potential for accidental exposures from the facilities remains acceptably low.

39. The scope of the Code (50-C-G) also covers the various facilities and activities like mining and processing of radioactive ores and minerals; uranium/thorium processing and fuel fabrication plants, heavy water plants, research reactors, experimental reactors and critical assemblies, nuclear power plants, fuel reprocessing plants, radioactive waste management facilities, industrial facilities related to nuclear fuel cycle activities, transport of radioactive materials, medical applications of radiation, industrial and agricultural applications of radiation, research applications of radiation, and all other practices involving the handling of radioactive sources.

40. AERB also issued another safety guide on October 2002 on "Design of Fuel Handling and Storage Systems for Pressurised Heavy Water Reactors". The Code of Practice on Design for Safety in Pressurised Heavy Water Based Nuclear Power Plants (AERB/SC/D,1989) lays down the minimum requirements for ensuring adequate safety in plant design. The safety code issued in October 2002 is one of the series of guides. The objective of this safety guide is to specify the minimum requirements to be met in the design of fuel handling and storage system in PHWR. It is intended to be used by the designer to ensure safety of plant and personnel by providing adequate measures for prevention of accidents and mitigation of adverse consequences, should an accident occur. In other words, the scope of this guide includes the safety in design of equipment for handling and storage of new fuel, spent fuel and other irradiated core components, which are related to handling of fuel including handling and storage of failed or damaged fuel bundles. The guide also addresses the safety aspects in fuel handling control and instrumentation and auxiliary equipment related to the fuel handling system. Design provisions to facilitate inspection and testing of fuel handling and storage systems are also covered in that guide. The same has been prepared following the safety standards laid down by IAEA. The Code has been prepared by specialists in the field drawn from AERB, BARC, IGCAR and NPCIL.

41. Various codes and safety standards issued by AERB, referred to above, mainly deal with siting, design, construction, operation, quality assurance, decommissioning, etc. Safety codes and safety standards are formulated on the basis of nationally and internationally accepted safety criteria for design, construction and operation of specific equipment, systems, structures and components of nuclear and radiation facilities. Further, India has also entered into various bilateral

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treaties and is also a party to various international conventions on nuclear safety, physical protection of nuclear

material, nuclear accident, radiological emergency and so on. India, as already stated, is also governed by the safety and security standards laid down by IAEA. A brief reference to those conventions, treaties and IAEA may be apposite.

International conventions, bilateral treaties, etc.

42. India is not a signatory to the Nuclear Non-Proliferation Treaty (NPT). India is, however, party to various international conventions, such as:

42.1. The Convention on the Physical Protection of Nuclear Material, which was adopted on 26-10-1979 and was signed at Vienna and at New York on 3-3-1980. The Convention makes it legally binding for the State parties to protect nuclear facilities and material for peaceful domestic use, storage as well as transport. It also provides expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage and prevent and combat related offences.

42.2. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency was adopted by the general conference at its special Session 24-9-1986 to 26-9-1986 and was opened for signature at Vienna on 26-9-1986 and at New York on 6-10-1986.

42.3. The Convention on Nuclear Safety was adopted on 17-6-1994 by a diplomatic conference convened by IAEA at its headquarters from 14-6-1994 to 17-6-1994. The Convention was opened for signature on 20-9-1994.

42.4. The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the first legal instrument to directly address these issues on a global scale, was opened for signature on 29-9-1997 and entered into force on 18-6-2001.

42.5. The Convention on Early Notification of a Nuclear Accident establishes a notification system for nuclear accidents which have the potential for international transboundary release that could be of radiological safety significance for another State. The date of adoption is 26-9-1986.

43. India has also entered into various bilateral civil nuclear

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cooperation agreements. India has entered into a cooperation agreement with France for the construction of European Pressurised Reactors (EPR) power plants (10,000 MWe) at Jaitapur site in Maharashtra, which also comprises of cooperation in the areas of research, safety and security, waste management, education, etc., followed by various other commercial contracts as well. India and Canada have finalised the terms for their nuclear deal paving the way for Canadian firms to export uranium to India in the year 2010. Discussions are on for safe nuclear cooperation as well with Canada.

44. India has also signed civil nuclear deal with Mongolia for supply of uranium to India. MoUs on the Development of Cooperation on Peaceful Uses of Radioactive Minerals and Nuclear Energy have been signed by senior officials of the Department of Atomic Energy of both the countries. India has also entered into agreements with Namibia including one on civil

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nuclear energy which allows for supply of uranium from Namibia. Indo-Namibian Agreement for Peaceful Uses of Nuclear Energy allows for supply of uranium for setting up of nuclear reactors. India and Kazakhstan have also signed a pact on nuclear cooperation in April 2011 and agreed to have collaboration in nuclear energy for peaceful purposes. Discussions are on to execute a civil nuclear agreement with Argentina.

45. India and US issued an inter-US joint statement at Washington on 18-7-2005 which has located the final broad policy so as to actually facilitate and also outline the broad contours of a legally binding agreement. Some of the policy frameworks relate to preventing WMD proliferation, goals of prompting nuclear power and achieving nuclear energy, expeditious consideration of fuel steps for safeguarded nuclear reactors, etc. Nuclear 2007—an agreement for cooperation between India and US concerning peaceful uses of nuclear energy (the 2007 Cooperation Agreement) laid down certain binding obligations between the two countries. Though, India is not a party to any of the liability conventions, specifically, IAEA Vienna Convention on Civil Liability for Nuclear Damage, India has enacted the Civil Liability for Nuclear Damage Act, 2010 (the Nuclear Liability Act) which aims to provide a civil liability for nuclear damage and prompt compensation to the victims of a nuclear accident through no-fault liability to the operators.

International Atomic Energy Agency (IAEA)

46. IAEA is an independent international organisation situated in

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Vienna, Austria and is related to the United Nations system and its relationship with the United Nations is regulated by special agreement. The IAEA reports annually to the United Nations General Assembly and when appropriate, to the Security Council regarding non-compliance by States with their safeguards obligations as well as on matters relating to international peace and security. The IAEA works with its member States and multiple partners worldwide to promote safe, secure and peaceful nuclear technologies. The IAEA has the responsibility to help member States to put in place the necessary infrastructure needed to develop nuclear energy safely, securely and peacefully and it works with member States to coordinate research to design reactors that are economical, safe and proliferation-resistant.

47. The IAEA's object is to maximise the contributions from nuclear technologies to human well being while minimising their risks. Few facts and trends highlighted in the report prepared by an independent commission at the request of the IAEA in May 2008 highlights the ten key facts and trends which frame the nuclear opportunities and challenges the world now faces. The report highlights that to sustain rapid global economic growth, it is necessary to double the supply of energy and tripling supply of electricity by 2050. Further, it is stated that billions of poor people need energy and other life-saving and job creating technologies. The report also noticed that energy prices are increasing, a broader reliance on nuclear energy whose prices are

much less dependent on its fuel costs conceivably could help to ameliorate those tensions and risks. The report highlights that the world is still dependent on burning coal, oil and natural gas for 80% of its energy supply surging energy use causes surging emissions of greenhouse gases disrupting the climate with potentially catastrophic results. Nuclear energy, it is stated, is a readily expandable source of low-carbon baseload electricity and in the future might also help to meet other energy needs such as hydrogen production and water desalination.

48. The IAEA's International Project on Innovative Nuclear Reactor and Fuel Cycles (INPRO) brings many States together to consider approaches to safer, cheaper, more secure and more proliferation-resistant nuclear systems with effective management of nuclear waste. India is in partnership with IAEA and has incorporated many of its directives in the Code of Practice framed by AERB, hence there could be no compromise on safety and security of NPPs in the country. We have

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elaborately discussed the Safety and Security Code of Practices laid down by AERB, IAEA and its supports so as to allay the apprehension or fears expressed from various quarters on the safety and security of KKNPP and its effect on human life, property and environment and we notice that adequate and effective protection measures are in place.

49. Parliament, as we have already indicated, is very much concerned with the safety and security of its people and its environment. The Preamble of the Act pronounces in eloquent terms that it has been enacted for the development, control and use of atomic energy for the "welfare of the people of India". People's comfort, happiness, prosperity and the economic growth of the nation is always the concern of their representatives in Parliament. Safety and security of people in that process have to be in the uppermost mind of the legislature. Keeping in mind that concern, special provisions have been incorporated for safety and security. Reference has already been made to Section 17 of the Act which casts an obligation on the Central Government to ensure proper rules with regard to safety, which we have already examined at length. We have also examined both, nationally as well as internationally accepted guidelines for safety and security of the people of the nation and notice that those are being followed.

50. In *People's Union for Civil Liberties* v. *Union of India*[7], the Court held that the Atomic Energy Act deals with a sensitive subject. The statutory scheme contained in the provisions of the Act, the Rules framed thereunder, composition of AEC and AERB leave no manner of doubt that the effective functions of the nuclear power plants are sensitive in nature. Various codes of practice, safety guidelines, extensively discussed above and the decision taken in various international conventions and the guidelines laid down by various international agencies followed by India are meant to protect the life and property of people including the environment, guaranteed under Article 21 of the Constitution of India.

KKNPP Project

51. The Government of India, following its national nuclear policy, decided to set up an NPP in the southern part of the country. DAE, for that purpose constituted a Site Selection Committee (SSC) for selecting a suitable site in the Coromandel Coast of Tamil Nadu. The Committee, after surveying various sites, selected Kudankulam in Tirunelveli

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District of Tamil Nadu as the most suitable place for locating NPP. NPCIL also made a detailed study of the selected site in the light of the Code of Practice framed by AERB regarding safety in NPP siting. Kudankulam, the site located, is situated on the shore of Gulf of Mannar near the south-eastern tip of India in the coastal track at an elevation of +3 to +45m above MSL forming the southern fringe of soil covered plains. Most of the rivers in the area are seasonal and there are no major lakes, dams or ponds existing within 20 km radius around the project site. The climate in the area is arid and is similar to other coastal regions. As per IMD Station at Kanyakumari, the wind speed is in the range of 6 to 30 km/hr. The ambient temperature varies in the range of 21°C - 34°C, while the relative humidity ranges from 68% to 80%. Geologically, the site is made up of the Archean super group of crystalline rocks, sedimentary rocks of Precambrian origin and recent quaternary deposits. The geological profiles studied up to 80m depth indicates that the site comprises of highly metamorphosed rocks with granulated and amphibolites faces of charnokites belonging to the archean super group. NPP site is situated in the south of Pandian movable belt, the metamorphic rocks of which are the foundations of ancient platform.

52. The NPP site is situated in an area with expected earthquake intensity of up to V on the modified intensity scale. The site area falls within Seismic Zone II which is a moderately stable area as per the seismic zoning map (SZP) of India. The strongest earthquake near this area and within the Indian peninsula was Coimbatore earthquake of February 1900. The epicentre of this earthquake was situated at a radial distance of 300 km from the proposed NPP site. The site of the plant lies in Zone II of SZP of India, where shocks of intensity VI or magnitude 5 can occur. In the region, no shock of magnitude 5 is known to have occurred at less than 100 km distance from the plant site. Within the distance of 300 km, some 27 earthquakes of intensity IV to VIII or a magnitude ranging between 4 to 5.7 are known to have occurred from 1341 to 1972.

53. A detailed study was also conducted as to whether a site-plant interaction would reduce any radiological risk or others of an unacceptable magnitude. Radiological risk to nuclear plant due to external events should not exceed the range of radiological risk associated with accidents of internal origin and the possible radiological impact of an NPP on the environment should be acceptably low for normal operation and accident conditions and within the stipulated criteria for radiological safety. In evaluating the suitability of a site for locating an NPP, the effect of external events (natural and man-induced) on the plant; effect of plant on environment and population; and implementation of emergency procedures particularly

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protective counter-measures in the public domain, had to be addressed. SSC study also included the assessment of seismicity, location of faults, geology, foundation conditions, meteorology, potential of flooding (from tsunami, storm surge, etc. at coastal sites and from rain, upstream dam break, etc. at inland sites), proximity to airports, military installations, facilities storing explosive and toxic substances, etc. The environmental setting comprising of biodiversity including flora and fauna, marine ecology, etc. in the region was also evaluated. SSC had taken care of all those aspects before making its recommendations to the Government. NPCIL, Union of India and other statutory authorities had taken care to follow the practice laid down by AERB on safety in NPP site.

54. KKNPP consists of two VVER-1000 types of units having 1000 MWe rating each. VVER reactors being established at KKNPP belong to the family of Advance Pressurised Water Reactors (PWRs) and presently 439 nuclear reactors are under operation in the world and about 209 of them belong to PWR family, including 55 VVERs. The construction activities had started at the site on 31-3-2002 and two units are being implemented with the technical assistance of Russian Federation as per the inter-Governmental agreement (IGA) between India and Russia. As per the agreement, design and supply of major equipments are done by Russian Federation, while construction, erection, commission and operation are being carried out by NPCIL.

55. KKNPP is of a most modern design. PWR cooled and moderated by light and water and its core containing the nuclear fuel is located inside a pressure vessel. There are no pressurising tubes, no graphite moderator and no boiling of water in the core. The reactor is located inside an airtight primary containment building which is surrounded by secondary containment. There are other design features in NPP which assure adequate core cooling under deconceivable off-normal conditions including total loss of electric power. Even for the hypothetical case of a core meltdown, a core-catcher is provided where the molten core is retained and cooled and the double containment ensures that there will be no significant radiological impact in the public domain. NPP, has been divided into three stages, first stage comprises of building PHWRs and using natural uranium. The second stage includes setting up fast breeder reactors backed by reprocessing plants and plutonium-based fuel fabrication plants. The third stage is based on the thorium-uranium -233 cycle.

Nuclear spent fuel (NSF)

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56. Radioactive waste is generated during operation, maintenance and decommissioning of nuclear and radiation facilities. The waste generated needs to be managed in a safe manner to ensure protection of human health and the environment from the undue effects of ionising radiation now and in future without imposing undue burden on future generations. Radioactive waste is to be managed in a manner that ensures compliance with the fundamental principles of radiation protection and environmental safety. Monitoring and surveillance programme helps to ensure radiation protection of the occupational workers, public and the environment.

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57. The Central Government in exercise of powers conferred by sub-section (1) read with clause (*i*) of sub-section (2) of Section 30 and clause (*b*) of sub-section (1) of Section 17 of the Act framed the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987, which provide requirements for the safe disposal of radioactive wastes in the country. The disposal has to be done in accordance with the terms and conditions specified in the authorisation which include the process materials and equipments generating radioactive wastes in the installations, environment around the installation, safety devices and other equipments in the installation for conditioning, treatment and disposal of radioactive wastes, estimates of annual releases, discharges and leakages in normal conditions and its anticipated environment impact, potential accidents, design features and monitoring equipment to control the release of radioactivity and procedure to be followed in the safe collection of radioactive wastes. The Hazardous Wastes (Management and Handling) Rules, 1989 provide that these Rules will not apply to radioactive wastes [Rule 2(*c*)]. The radioactive wastes are covered under the provisions of the Atomic Energy Act, 1962 and the Rules framed thereunder. Further, Rules 2(*b*) and 3 of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 under the Environment (Protection) Act, 1986 have notified AERB as the authority to enforce directions and procedures as per the Atomic Energy Act, 1962 with respect to radioactive materials.

58. AERB issued a code "Management of Radioactive Waste" on 22-6-2007, the objective of that is to establish the requirements, which shall be fulfilled for the safe management of solid, liquid and gaseous radioactive waste from generation through disposal. The Code specifies basic requirements for the safe management of radioactive waste from

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nuclear and radiation facilities such as mining and milling and processing of uranium and thorium ores, fuel fabrication, nuclear power plants, research/experimental reactors, fuel reprocessing, medical, industrial, agriculture and research facilities using radionuclides, and other facilities handling radioactive materials. The safety Code also deals with the requirements for radiation protection aspects in design, construction and operation of waste management facilities and the responsibilities of different agencies involved. The Code is also applicable to the management of radioactive waste containing chemically and biologically hazardous substances even though other specific requirements may additionally be applicable as per the relevant standards.

59. The specific requirements pertaining to management of radioactive waste from application of sealed/unsealed sources, mining and milling of uranium/thorium ores and site remediation are covered in Appendices A, B and C respectively of the Management of Radioactive Waste Code. Appendix D provides requirements of transportation/transfer for radioactive solid and liquid waste. Annexures I and II of the Code deal with the principles, philosophy and basic steps of management of radioactive waste. The Code specifically states that deep geological disposal methodology of high-level

radioactive solid waste requiring long time isolation of thousands of years from biosphere is presently under development.

60. Para 2.2 of the Management of Radioactive Waste Code specifically refers to protection of human health and the environment. The said paragraph is of considerable importance, hence is given below in detail:

> "**2.2. *Protection of human health and the environment***
>
> 2.2.1. Radioactive waste shall be managed within the dose constraints and other safety requirements prescribed by the regulatory body.
>
> 2.2.2. Radiation exposure to workers and the public from radioactive waste shall be kept as low as reasonably achievable, social and economic factors being taken into account. A well-defined radiation protection programme shall be established for radioactive waste management. Approved procedures and control measures shall be used for radiation protection.
>
> 2.2.3. Radiation exposures to workers and the members of public shall not exceed the limits prescribed by the regulatory

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body.

2.3. *Effluent release criteria, control and monitoring*

2.3.1. Radioactive waste shall be characterised, monitored segregated, treated and conditioned, as necessary, prior to disposal.

2.3.2. Radioactive discharges to the environment (aquatic, atmospheric and terrestrial route) shall not exceed the limits prescribed by the regulatory body.

2.3.3. At a given site, facility specific disposal schemes for radioactive solid, liquid and gaseous wastes to the environment shall be established and got approved by the regulatory body prior to the commencement of operation.

2.3.4. The facility shall assess the adequacy of controls on release of activity into the environment and demonstrate compliance with the regulatory requirements. The facility shall obtain approval from the regulatory body, if the discharges exceed the authorised limits.

2.3.5. For all non-radiological releases/discharges, the relevant clearances shall be obtained from respective statutory agencies and stipulations therein shall be complied with.

2.4. *Environment monitoring and surveillance*

2.4.1. The facility shall implement approved environmental monitoring and surveillance programme for the identified exposure pathways to meet the requirements set by the regulatory body. The programme shall include pre-operational, operational, closure, and post-closure monitoring and surveillance.

2.4.2. The facility shall implement approved quality assurance programme on sampling, monitoring and analysis to ensure a reliable data.

2.5. *Safety assessment*

2.5.1. Safety assessment report shall be prepared for waste management facilities including waste disposal facilities/repositories to demonstrate compliance with the regulatory requirements.

2.5.2. Assessments shall be made to identify various possible sequences of internal or external events that may lead to incidents or accidents and to evaluate their impact on workers,

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the public and the environment.

2.5.3. Assessments shall be made to identify, describe and analyse the potential non-radiological impact of releases from radioactive waste management facilities on human beings, the environment (soil, water, air and non-human biota) and natural resources.

2.5.4. The safety assessments of the long-term performance of a waste disposal facility/repository shall take account of the radionuclide content, physic-chemical characteristics of the waste/waste form and the effectiveness of engineered/natural barriers."

61. Responsibilities associated with the radioactive waste management are also dealt with in the Code. Safe management of radioactive waste requires clear allocation of responsibilities of the agencies involved which may involve transfer of the responsibility of the management of radioactive waste from one facility to another or to a different agency other than the one responsible for the operation of the facility. The continuity of responsibility required to be ensured through regulatory control by a licence or a sequence of licences according to the procedures laid down by the regulatory body. The Code provides that the waste generator/manager or both shall be responsible for identifying on an appropriate timescale, a destination for the waste in accordance with the regulatory requirements and for seeking any necessary authorisation. The waste generator/manager shall dispose of the radioactive waste in an approved manner or transfer it in an authorised manner to another waste manager for processing, storage or disposal. Para 3.2.6 of the Code specifically refers to the publication of the waste generator/manager.

62. Para 4 of the Code specifically deals with predisposal measures to be taken by predisposal management of radioactive waste. Para 5 of the Code deals with near surface disposal of solid waste which says that solid waste disposal deals with emplacement of waste in approved facilities. Further, it also stated that disposal may be in a near surface disposal facility (NSDF) or a deep geological repository (DGR). The design, construction, operation and post-operation of NSDF has to meet necessary safety requirements. Appendix II of the Code deals with the principles and philosophy of radioactive waste management.

NSF and management of waste

63. Serious apprehension has been voiced by the appellants that huge amounts of radioactive waste are generated with the use of nuclear energy which, unless handled, treated, transported, stored and disposed of safely without any leaks, can cause serious contamination of land, water, food, air and the ecosystems. Further, it was also the case of the appellants that during the nuclear fission process, nuclear

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plants convert almost all of their fuel into radioactive waste with little reduction in mass and even reprocessing creates its own high-level waste. Further, it was also pointed out that many of the repositories designed to be temporary ones are turning into permanent ones

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and the interim storage is by its very nature storage for a small period, which can never be a substitute for permanent geologic repository. The appellants further pointed out that, as on today, no sustainable solution has been found or implemented worldwide so as to do away with nuclear waste. The appellants also submitted that, under the earlier agreement of 1988 with Russia, nuclear waste had to be shifted back to Russia and the site clearance and environment clearance are based on this factor. However, a new agreement was signed in the year 1998 under which nuclear waste had to be retained and stored in India.

64. Management of radioactive waste includes all types of radioactive waste generated from the entire fuel cycle right from mining uranium fuel fabrication through reactor operations, and whole reprocessing of spent fuel. A coherent, comprehensive and consistent set of principles by way of IAEA document titled "Storage and Disposal of Spent Fuel and High-Level Radioactive Waste" and AERB Safety Guide to AERB Management of Radioactive Waste Code, 2007 are already in place. Further, the fifteen-member team in its report, in December 2011, has to say this on spent fuel management:

> "**6.3.** ***Spent fuel management***.—First and foremost it should be remembered that spent fuel is not a waste in the Indian nuclear programme. A closed fuel cycle is followed, where the valuable fissile materials like uranium and plutonium which are present in the spent fuel are recovered to reuse.
>
> (*1*) Spent fuel is, therefore, an asset that needs to be preserved. At Kudankulam, spent fuel from the reactors will be carefully stored in storage pools, which are always filled with pure, demineralised borated water, which is constantly recirculated. These pools are high integrity concrete pools which are additionally lined with stainless steel sheets, to ensure effective containment for extended periods of time. The Department of Atomic Energy has long experience and expertise of a high order in the safe management of spent fuel.
>
> (*2*) There is no plan to do the reprocessing of the spent fuel at Kudankulam site. As such the storage of spent fuel at Kudankulam is to be considered only as an interim measure till they are transported to a reprocessing facility.

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(*3*) Adequate technology and years of experience are available with the Department of Atomic Energy for transporting spent fuel from one site to another through both Railways and by roadways, in a safe manner without any public hazard. This is done as per stipulations of AERB, regarding transport regulations that govern safety."

65. NPCIL, MoEF and the Department of Atomic Energy (DAE) have filed a detailed counter-affidavit on the various issues posed by the appellants. NPCIL, DAE submitted that even though, as per the earlier agreement of 1988 between India and USSR, spent fuel had to be transported to Russia, in a subsequent agreement in 1998 signed between the two countries, the Government of India had insisted that it should be allowed to

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retain the spent fuel in India, so that it could be recycled and used. Spent fuel, it is stated, discharged from the reactor contains materials suitable for recycling and hence could be reused to produce electricity. The spent fuel contains minerals, both uranium and plutonium, which constitutes about 96% and 1% of the spent fuel respectively. The remaining 3% contains other components that are normally not recyclable.

66. Further, it has also been pointed out that KKNPP had adequate provisions for safe storage of spent fuel. In KKNPP, spent fuel pool (SFP) is located inside the primary containment, adjacent to reactor cavity which has the capacity to store fuel equivalent to 7 years of full power operation of the plant plus one full core load. AERB Safety Guide "Design of Fuel Handling and Storage Systems for Pressurised Heavy Water Reactors — AERB/SG/D-24" deals with the safety in design of storage of spent fuel. NPCIL submitted that they are scrupulously following the safety guidelines issued by AERB. However, the Nuclear Recycle Group of BARC has got an overall view of radioactive waste management in India and has developed certain guidelines for management of nuclear fuel.

SNF waste — transportation

67. SNF from NPPs, after an adequate storage period, is transported to reprocessing facilities located within the country, following the international and AERB guidelines and standards. NPCIL, DAE and MoEF have maintained the stand that they are aware of the importance of safety and security and have taken care to ensure that the management and transportation of spent fuel is carried out safely

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following the internationally recognised norms and regulations and the same is being done under the observation of AERB and the Government of India.

68. SNF poses a dangerous, long-term health and environmental risk and it is often said that it remains dangerous "for time spans seemingly beyond human comprehension". Issue, needless to say, is of great concern. It may be noted, twenty years of work on establishing a "geologic repository" at Yucca Mountain, USA, had to be abandoned when the Department of Energy decided to withdraw its licence application for the facility. NPCIL has maintained that SNF is being kept at the site for reprocessing or transported to a permanent repository and how safe it is, if not properly kept, as we have already indicated, it can cause serious health hazard not only to the present generation but to the future generations as well, to whom we owe a responsibility.

69. India has got the capability for reprocessing SNF, experts say. Currently, India has three operating processing plants based on solvent extraction process—one each at Trombay, Tarapur and Kalpakkam. Trombay Plant reprocesses the spent fuel from research reactors with the capacity of 60 tons per year. The plants at Tarapur and Kalpakkan process off-site fuels from PHWRs with operating capacity of 100 tons per year each. Additional reprocessing facilities are being set up with the active participation of the Indian industry to accelerate the programme.

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70. We notice that with the limited resources of uranium available in India, the indigenous achievable NP is estimated to be 10,000 MWe by PHWR, without reprocessing. With the help of reprocessing, the achievable capacity could go up to 63,000 MWe imported LWR and recycling LWR fuel to 2,75,000 MWe, by 2052. NPCIL has, therefore, taken up the stand that reprocessing of spent fuel is the key to the country's three-stage nuclear power programme. 97% of SNF is capable of being reused, but what has to be done with regard to the remaining 3% SNF, is a moot question, since it is not reusable, which consists of various fission products and minor actinides. This 3% waste comprises of minor actinides which have a long half-life of lakhs of years. Experts, however, say that if the minor actinides are "partitioned" or removed, the rest of the waste is dominated by FPs having a half-life of about 30 years and so in 10 half-lives (300 years) it will have negligible activity and the partitioned minor actinides can then be "transmuted" or burnt

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by inducing fission in fast breeder reactors or in accelerator driven systems (ADS).

71. The facts mentioned above would indicate that certain percentage of SNF will have long life of lakhs of years and will have some impact on the environment, but how to contain that?

72. The Supreme Court of Pakistan in *Human Rights (Environmental Pollution in Baluchistan), In re*[8], took suo motu notice of a paper report of dumping nuclear waste along the coast of the province of Baluchistan. The Court directed the Provincial Government to investigate the claim and ruled that such dumping of nuclear waste is in violation of the fundamental right to life enshrined in Article 9 of the Constitution of Pakistan.

73. We may, in this connection, refer to the judgment of the US Court of Appeals in *State of New York* v. *Nuclear Regulatory Commission*[9]. In that case, the Court was dealing with the issue regarding temporary storage and permanent disposal of nuclear waste. The Court held that the Nuclear Regulatory Commission's evaluation of the risks of spent nuclear fuel is deficient in two ways: first, in concluding that permanent storage will be available "when necessary," the Commission did not calculate the environmental effects of failing to secure permanent storage—a possibility that cannot be ignored. Second, in determining that spent fuel can safely be stored on site at nuclear plants for sixty years after the expiration of a plant's licence, the Commission failed to properly examine future dangers and key consequences.

74. We notice that the above decision in *State of New York case*[9] would not directly apply to the facts of the present case. The United States is following "open fuel cycle" process where spent fuel is not reprocessed, but disposed of treating the same as waste but, in India, we follow "close fuel cycle" process, where reprocessing of SNF to obtain uranium and plutonium is an essential step.

75. AERB, way back in 1989, had recommended to have an away from rector storage (AFR) facility at KKNPP for prolonged storage of SNF while granting siting clearance. Design-safety aspects of AFR, it is stated, would be reviewed by AERB: one such facility is already available at Tarapur, where it is reported that there has been no adverse impact on the environment issue of such storage. AERB, in subsequent reviews, made recommendations with respect to AFR

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facilities. In ACPSR 126th Meeting held on 15-9-2011/16-9-2011, the issue related to AFR was reviewed and it was recommended that AFR should be finalised well before 5 years of operation.

Deep geological repository (DGR)

76. Permanent DGR, India may require, after a few decades, states NPCIL. Research and development work, we are informed, are in progress over three decades in the field of in situ experiments, natural barrier characterisation, numerical modelling, conceptual design and natural analogue of waste forms and repository processes. Keeping in line with the international developments, initial focus of work in 80s centred mainly on setting up of generic underground research laboratory (URL), in one of the abandoned mines in India and resulted in the development of an underground chamber in Kolar goldmine located in South India. Current efforts within the Indian geological repository programme are directed towards granite-based URL. The experts feel that setting up of a DGR is not much of a technological challenge, but as is the case internationally everywhere, the issue is more of a socio-political issue.

77. We are of the view that these issues have to be dealt with by the experts in the field, evidently, without much delay. The AERB Safety Code on "Management of Radioactive Waste" of 2007 does not deal with the requirements for DGR. The problem of this nature is being faced by all the nuclear plant operating countries, including India. Research is on to handle SNF in DGR which, in the near future, let us hope, would be a reality, but that shall not deter us in holding up of such a project which has been established at KKNPP in implementation of India's nuclear policy.

78. We may, however, caution that it is of utmost importance that the Union of India, NPCIL, etc. should find out a place for a permanent DGR. Storing of SNF at NPP site will, in the long run, pose a dangerous, long-term health and environmental risk. NPCIL and the Union of India is bound to look at the probabilities of potentially harmful events and the consequences in future. Noticeably, NPCIL does not seem to have a long-term plan, other than, stating and hoping that in the near future, it would establish a DGR. The Atomic Energy Act, especially Section 17, envisages present and future safety of our NPPs and the lives and environment around. NPCIL and the Union of India must have a hard look at the environmental consequences of its action of setting up of NPPs, hence a permanent DGR is of utmost importance, which they should plan now.

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Radioactive material

79. We are all exposed to the naturally occurring radiation in our daily lives. Cosmic radiation from outside the solar system is also common phenomenon. The earth's crust is radioactive, so also above the earth's surface where we fly by aeroplane, we also get doses of radiation. Medical diagnostic treatment such as x-ray, CT scan, angiography, angioplasty also radiates radioactive dose. However, the development of nuclear reactors which, for the first time, made possible the production of radioisotopes of many different elements, expanded the field of radioactive materials. Production and use of it, therefore, is bound to create a little bit of marginal radiation which seldom can be prevented.

80. The Atomic Energy (Radiation Protection) Rules ("the Radio Protection Rules" now) were initially framed and revised in 2004. According to the Rules no person could handle radioactive material or operate any radiation generating equipment except in accordance with the terms and conditions of a licence. The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (revised in 1996) seeks to regulate the irradiation of foods in the country. The provisions of the Act, statutory rules and regulations, various codes, safety standards, etc. issued by AERB buttressed by the technical assistance provided by IAEA, NEA, World Association of Nuclear Operations (WANO), etc. are being followed in India in respect of 20 operating power reactors which are existing in this country. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have therefore become a central part of nuclear law. Risks arising from NPP, do affect not merely the country which chooses to use that technology but can have catastrophic consequences to the neighbouring countries as well. Non-proliferation, disarmament and peaceful use are stated to be the three pillars of all the international conventions. Nuclear technologies and techniques, it is well accepted, can offer vital benefits for improving human well being, like health care, radio therapy, food security, agricultural advantages to the present and generation.

81. The Prime Minister of India, as already indicated, ordered a fresh review of all safety of NPPs, on 11-3-2011, immediately after the accident at Fukushima NPP, Japan with respect to external events. The Prime Minister of India had emphasised that the safety of nuclear power plants was a matter of highest priority for the Government and called for safety audits of all NPPs. NPCIL, the operating agency, constituted separate task forces to review safety of NPPs depending on types of reactor designs and their vintages in India. NPCIL constituted broad categories of Indian NPPs to make an assessment of:

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- Boiling water reactors (BWR) (TAPS 1 and 2);
- Pressurised heavy water reactors (PHWRs) at RAPS 1 and 2;
- PHWRs at MAPS 1 and 2;
- Standard PHWRs from NAPS onwards.

82. The task forces reviewed safety of NPPs with a postulated scenario of non-availability of off-site and on-site electric power and water supply

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sources. The reports of the task forces are summarised in a document titled "Safety Evaluation of Indian NPPs Post-Fukushima Incident" to provide an integrated assessment of strength of Indian NPPs to withstand extreme external events. Report was submitted by the end of March 2011. Over and above, two more task forces were constituted for VVERs, one of which was for VVER, pressurised water reactors (PWR), under construction at KKNPP, and another for 700 MWe PHWRs. NPCIL also constituted task forces on safety evaluation of the systems of KKNPP post-Fukushima which gave its interim report on 11-5-2011. The task force found that KKNPP had already incorporated all safety standards, including passive systems to ensure reactor shutdown.

83. AERB, in pursuance of the direction of the Prime Minister, constituted a High-Level Committee (AERBSC-EE) to review safety of NPPs against external events of natural origin (post-Fukushima accident) with national level experts in the areas of (*i*) design, safety analysis and NPP operation; and (*ii*) external events in the field of seismology, hydrology and earthquake engineering to carry out a comprehensive review of capability of NPPs to deal with external events within and beyond design basis. The Committee constituted specialist working groups and they reviewed the following major areas:

- External events in relation to the safety of NPPs;
- Safety of electrical, control and instrumentation systems against external events;
- Safety of NPPs under prolonged station black out (SBO) and loss of ultimate heat sink;
- Safety of spent fuel storage facilities at NPPs against external events;
- Severe accident management provisions and guidelines (SAMG).

84. AERBSC-EE submitted its report on 31-8-2011. AERB has also taken cognizance of self-assessment carried out by NPCIL and the site-specific focused regulatory inspections. The NPCIL and AERB Report

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indicates that the overall assessment of safety of Indian NPPs following Fukushima nuclear accident and the actions taken/planned based on the lessons learnt are enumerated in the report. The following aspects were addressed:

(*i*) External events

(*ii*) Design

(*iii*) Severe accident management and recovery (on site)

(*iv*) National organisations

(*v*) Emergency preparedness and response and post-accident manage-ment (off site)

(*vi*) International cooperation

85. The Government of India also submitted a national report in May 2012 on the actions taken for Indian NPPs, subsequent to Fukushima nuclear accident to the Convention on nuclear safety in the Second Extraordinary Meeting of contracting parties, held in August 2012 at Vienna.

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86. The Expert Committee of AERB, LWR in its final report dated 31-8-2011 gave 17 safety measures by way of abundant caution. We have directed NPCIL to file a status report with respect to the completion date of implementation of all the 17 recommendations made by AERB in Annexure A of the Post-Fukushima AERB Recommendations. A comparative chart giving the status and implementation of the Post-Fukushima AERB Recommendations has been filed as Annexure A by NPCIL in its affidavit dated 3-12-2012, which will indicate that twelve recommendations have already been complied with, except the following:

Sl. No.	*Recommendations*	*Status*	*Completion schedule*
	*	*	*
3.	Mobile self-powered pumping equipment for emergency use.	Two fire tenders with diesel operated pump is available at site. To augment the capacity,	April 2013

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		two additional fire tenders are being procured and made available. Chassis has been procured and fabrication of the fire tender is in progress.	
4.	Facility for monitoring safety parameters using portable power packs.	Present design of KKNPP envisages 24-hour battery bank for monitoring parameters and 2-hour battery bank for valve operation during an event of station blackout. In order to extend the duration of the monitoring for not less than 7 days, portable DG sets will be connected to the instruments for monitoring safety parameters. One portable DG set is readily available for use at site.	April 2013

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		Portable measuring devices are also available at site for local monitoring.	
	*	*	*
6.	Primary containment to be assessed for ultimate load-bearing capacity (ULBC).	Based on design margins available, it has been assessed that for primary containment, ultimate load-bearing capacity (ULBC) is at least 1.5 times design basis accident (DBA) value. Detailed analysis for ultimate load-bearing capacity (ULBC) will be carried out progressively.	Long term. Under progress.
	*	*	*

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8.	Ensuring that highly active water used for cooling the core-catcher vessel under beyond design basis	The required analysis covering dose estimation, equipment qualification assessment of	Long term. Under progress.

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	accident (BDBA) is contained inside the primary containment.	containing pressure is being carried out.	
	*	*	*
12.	Adequacy of instrumentation for monitoring plant status during design basis accident (BDBA).	All the important parameters of the reactor such as neutron flux, pressure above the core, containment pressure, hydrogen concentration, reactor coolant level, radiation levels in containment, coolant temperatures in hot and cold legs, level of fuel pool, and accumulators, etc. will be monitored during design basis accident (BDBA). Please refer Item 4 also.	April 2013 (Adequacy of instrumentation ensured. Provision to extend power supply to these instruments will be implemented under Item 4 above.)
	*	*	*
17.	Provision of additional backup power supply sources for performing essential safety functions, like	One portable DG set is readily available for use at site. Another mobile diesel generator (DG) set is	April 2013.

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	air cooled diesel generator (DG) located at a high elevation, should be considered.	being made available for redundancy.	

87. We are convinced that KKNPP design incorporates advanced safety features complying with the current standards of redundancy, reliability, independence and prevention of common cause failures in its safety systems. Design also takes care of anticipated operational occurrences (AOO), design basis accidents (DBA) and beyond design basis accidents (BDBA) like station blackout (SBO), anticipated transients without scram (ATWS), metal water reaction in the water core and provision of core-catcher to take care of core degradation. The design also includes the provisions for withstanding external events like earthquake, tsunami/storm, tidal waves, cyclones, shock waves, aircraft impact on main buildings and fire. The 17 recommendations were made after the Fukushima accident, the cause of which is a natural phenomenon. The facts would indicate that tsunamigenic zone along the east coast of India is more than 1300 km away from the nearest NPP site (Madras/Kalpakkam) and about 1000 km away from Kudankulam. The possibility of hitting tsunami at Kudankulam, as the one that hit Fukushima, seems to be very remote.

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Response to people's resistance

88. The Government of India, in order to allay various apprehensions raised by the people's movement against the production of nuclear energy as well as against commissioning of KKNPP, constituted a fifteen-member expert group to provide clarifications on the issue raised by the agitators by interacting with the forum provided by the State Government comprising of 2 State Government nominees and 4 representatives of the people. Public hearing was held and views and suggestions made for and against the project were heard. The Committee specifically examined the safety features of KKNPP in the wake of the accidents occurred at TMI, Chernobyl, Fukushima, etc.

89. The radiation around NPP and impact on the public health were also effectively addressed. The reactor design and safety of the plant

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was also examined. Principles and practices taken for radioactive waste and spent fuel management were also examined. Ecological effects of the project in question on marine ecology and fish protection, impact on land, agriculture, livestock, and food, impact on flora and fauna were also examined. The effect of a possible, though remote, impact of earthquake and tsunami was also examined. The Committee concluded as follows:

"*Conclusions*

EG observes that KKNPP is designed and engineered to the state-of-art of nuclear reactors in line with the current international safety requirements and principles. KK site related aspects such as seismic, tsunami, tropical storms are taken into consideration at design stage. More than 20 VVER-1000 are operating in Russian Federation and in other countries. While finalising the contract for KKNPP, additional safety features were specified which have been incorporated and their functionality is being established during commissioning. The radiological releases during the plant operation are expected to be well below prescribed limits. This fact is borne out by the experience from operating NPPs in India and abroad. Based on the national and international studies and experience, such radiological releases have no adverse effects on public health, environment and plant personnel. Safety of KKNPP was examined in relation to the TMI, Chernobyl and Fukushima accidents. It is seen that based on the advanced design safety features, safe grade level and high elevation of safety related equipment and the fact that all key operating personnel are graduate engineers who also receive intensive training, it is not conceivable that any accident of these types can take place at KKNPP.

EG also notes that clearances for various stages of the project are given by the Atomic Energy Regulatory Board after an elaborate and exhaustive safety review at each stage. Similarly, other statutory bodies have also conducted detailed and in depth reviews before according clearances pertaining to areas relevant to their purview. This clearly indicates that all applicable safety aspects of the project have been

subjected to careful scrutiny by the statutory bodies concerned in the country.

In particular, safety of KKNPP has been thoroughly evaluated against external events of natural origin viz. earthquakes and

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possible flooding of the site from cyclonic storms and tsunamis. It is seen that the seismic design of its SSCs and location of safety related components provide high level of safety against such events. Possibility of volcanic eruptions in the vicinity of the site has also been examined and no active volcanism has been identified. The magnitude of any possible tsunami that can be generated from submarine landslides in the Gulf of Mannar has been found to be much smaller than tsunamis that may get generated from the submarine active seismic faults, which has already been taken into consideration.

In view of the above, the EG would like to conclude that the fears of the local population are unfounded and design of KKNPP meets the current safety standards."

90. The Committee prepared a detailed report in December 2011. The report was later presented to the Tamil Nadu Government nominees and people representatives. The expert group submitted another supplementary report dated 31-2-2012.

91. The Government of Tamil Nadu also appointed an Expert Committee headed by former President of AEC along with three other experts. The Committee submitted its report after assessing that the project has a unique passive safety feature which provides cooling to the nuclear fuel without the need for operator action or power supply, namely, a passive heat removal system, which is a novel safety feature. In addition to the various reports mentioned hereinbefore, the Russian Nuclear Safety Authority also known as GosAtomNadzor (GAN) reviewed and cleared the safety analysis report of KKNPP Units 1 and 2, which forms the basis of the licensing safety review.

Civil liability for nuclear damage

92. Developing modern sources for energy through NPPs carry the problem of potential damage, which might flow from a nuclear catastrophe. Several nuclear energy generating countries have adopted their own legislation on the issue of civil and criminal liability. The US Price-Anderson Act, 1957, the German Atomic Energy Act (1959), the Swiss Federal Law on the Exploitation of Nuclear Energy for Peaceful Purposes and Protection from Radiation (1959) and the Japanese Law on the Compensation of Nuclear Damage (1961) are some of them. Few of such legislations followed the basic principle of imposing legal liability on a strict liability basis on the operator of a nuclear installation coupled with the limitation on liability.

93. Currently, there are two main conventions on third-party liability in the field of nuclear energy. The first is the Paris Convention of 1960, which was supplemented by the Brussels Supplementary Convention Act, 1963. IAEA's Vienna Convention on Civil Liability for Nuclear Damage, 1963 is yet another convention. India's Civil Liability for

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or the Nuclear Liability Act mainly rests on the above Conventions, though India is not a signatory to those conventions. The India's Nuclear Liability Act aims to provide a civil liability for nuclear damage and prompt compensation to victims of a nuclear incident through a no-fault liability to the operator, appointment of the Claims Commissioner, establishment of the Nuclear Damage Claims Commission, Nuclear Liability Fund and other matters connected therewith. The constitutional validity of the said Act is under challenge before this Court in Writ Petition (Civil) No. 464 of 2011. Various prayers have been made in the abovementioned writ petition, but this Court issued the notice only with regard to Prayer clause (*e*) i.e. to declare the act as unconstitutional and void ab initio.

94. NPCIL had undertaken the task of constructing the two IGW reactors of VVER-1000 Model in collaboration with Atomstroyexport, a wholly-owned Russian Government company. Safety features of NPP as well as the quality requirements for the plant equipment are part of the detailed specifications agreed between the vendor and the purchaser, and as per the quality assurance plan. NPCIL, AERB also should ensure that there can be no compromise on the quality of plant equipment, components and other systems.

95. The India's Nuclear Liability Act states that the liability of the operator is to the tune of Rs 1500 crores and the maximum liability to rupee equivalent of 300 million SDRs, though the Act, speaks of no-fault liability. It is unnecessary to examine the scope of various provisions contained in the Act, for our purpose, especially when the constitutional validity of the Act is under challenge.

96. We may, in this connection, point out that the constitutional validity of the Price-Anderson Act, 1957 of US was challenged in the year 1978 before the US Supreme Court in *Duke Power Co.* v. *Carolina Environmental Study Group*[10]. It was urged before the US Supreme Court that the Act did not ensure adequate compensation for victims of accidents and it violated the equal protection clause of the 14th Amendment by treating the nuclear accidents differently from other accidents, etc. The US Supreme Court upheld the validity of the Act holding that it was lawful, in that there was adequate justification for treating nuclear accidents different to other claims; that the Act provides a reasonably just substitute for the common law or State tort law remedies it replaces and that it cannot be said that the Act

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encouraged irresponsibility in the matter of safety and environmental protection.

97. The strict liability principle has been examined by this Court in the environmental point of view in several judgments:

97.1. In *M.C. Mehta* v. *Union of India*[11] (*Oleum Gas Leakage case*), this Court held that the industries which are engaged in hazardous or inherently dangerous activity, possess serious threat to health and safety of persons and

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have an absolute and non-delegable duty to ensure that no harm is caused to the life and safety of the people.

97.2. In *Indian Council for Enviro-Legal Action* v. *Union of India*[12], this Court held that once the activity carried on in hazardous or inherently dangerous, the person carrying on such activity is liable to make good losses caused to any other person by his activity, irrespective of the fact that he took reasonable care while carrying on his activity.

97.3. In *Vellore Citizens' Welfare Forum* v. *Union of India*[13], this Court held that once the activity carried on is hazardous or potentially hazardous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity, irrespective of the fact that he took reasonable care. The absolute liability extends not only to compensate the victims of pollution, but also the cost of restoring environmental degradation.

97.4. In *Vellore Citizens' Welfare Forum*[13], this Court reiterated the "polluter pays principle". It is unnecessary to multiply the authorities on the principle of strict liability, precautionary principle, polluter pays, etc., which find their expression in Articles 21, 47, 48-A, 51-A(*g*) of the Constitution of India.

98. We have examined the above principles only to highlight the importance of the Act and the steps taken for its effective implementation. People in this country have not forgotten the incidents which had happened in the Union Carbide Pesticides Plant in Bhopal in the night of 2-12-1984. This Court in *Union Carbide Corpn. (2)* v. *Union of India*[14] based on an earlier settlement, directed Union Carbide to pay US $470 million to the Union of India in full and final settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas Tragedy. Following that, it was ordered that all civil proceedings arising out of the Bhopal Gas Disaster, shall stand concluded in terms of the settlement and all criminal proceedings related to and arising out of the

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disaster shall stand quashed, wherever they were pending. Later, this Court modified that order upholding the settlement except the condition of quashing criminal charges in *Union Carbide Corpn.* v. *Union of India*[15].

99. Considering India's population density and our national policy for setting up various NPPs in the country, safety and security of the plants are of extreme importance, lest a nuclear accident can cause immense damage both in terms of human life as well as environmental destruction. Provisions have also to be made for remedying or compensating environmental damage caused by the accidents, without merely limiting it to personal injury and damage to property.

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Disaster Management Plan

100. Disaster management plan (DMP) is of paramount importance, since we are dealing with a substance which has huge potential of causing immense damage to human beings and to the environment, which may cross over generations after generations.

101. After the accidents in Three Mile Island, Chernobyl and Fukushima, there has been an uproar all over the world including India for adopting sufficient safety measures for handling nuclear/radiological emergencies which may be likely to occur in various NPPs situated in the country. Any radiation incident resulting in or having a potential to result in exposure and/or contamination in excess of the respective permissible limits can lead to a nuclear/radiological emergency. Situations are, of course, not bound to occur quite often, but one must be prepared to face nuclear/radiological emergencies because of high population density in a country like India. Nuclear/radiological emergencies can occur due to factors beyond the control of the operating agencies, for example, human error, system failure, sabotage, earthquake, cyclone, flood, etc. Noticing the above factors, the Central Government decided to enact a law on disaster management to provide for requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans, ensuring measures by various wings of the Government for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation.

102. Parliament enacted the Disaster Management Act, 2005 (the DM Act), following that, the National Disaster Management Authority

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(NDMA) was constituted with the Prime Minister as the Chairperson. Similar authorities have been created in various States with their Chief Ministers as the Chairpersons. NDMA has assumed the responsibility of strengthening the existing nuclear/radiological emergency management framework by involving all stakeholders in a holistic approach through a series of mutually interactive, reciprocal and supplementary actions to be taken on the basis of a common thread—the National Guidelines.

103. Following that, NDMA, after conducting a detailed discussion with all the stakeholders, issued the National Disaster Management Guidelines, 2009, which has the concurrence of DAE and AREB. The Guidelines recommended a series of actions on the part of various stakeholders at different levels of administration that would:

(*i*) mitigate the accident at source;

(*ii*) prevent deterministic health effects in individuals and limit the probability of stochastic effects in the population;

(*iii*) provide first aid and treatment of injuries;

(*iv*) reduce the psychological impact on the population; and

(*v*) protect the environment and property.

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The Guidelines have been prepared to provide direction to the Central Ministries/departments, State Governments and local authorities for preparing detailed action plans to ensure inbuilt capabilities to handle nuclear and radiological emergencies as part of an all-hazard disaster management plan in the public domain.

104. The National Guidelines consist of 10 chapters:

104.1. Chapter 1 deals with the introduction which provides a brief of all possible scenarios of nuclear and radiological emergencies. These emergencies have been broadly classified into the following five categories:

"(*i*) An accident taking place in any nuclear facility of the nuclear fuel cycle including the nuclear reactor, or in a facility using radioactive sources, leading to a large-scale release of radioactivity in the environment.

(*ii*) A 'criticality' accident in a nuclear fuel cycle facility where an uncontrolled nuclear chain reaction takes place inadvertently, leading to bursts of neutrons and gamma radiations.

(*iii*) An accident during the transportation of radioactive material.

(*iv*) The malevolent use of radioactive material as a radiological

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dispersal device by terrorists for dispersing radioactive material in the environment.

(*v*) A large-scale nuclear disaster, resulting from a nuclear weapon attack (as had happened at Hiroshima and Nagasaki) which would lead to mass casualties and destruction of large areas and property."

104.2. Chapter 2 deals with the "Approach to Nuclear and radiological emergency management", which spells out a four-pronged strategy to be adopted for a holistic management of nuclear/radiological emergencies.

104.3. Chapter 3 deals with the "Present Status and Situation Analysis", which highlights some of the technical and administrative issues yet to be addressed in a holistic approach, besides analysing the present status.

104.4. Chapter 4 deals with the "Prevention of Nuclear/Radiological Emergencies", which enumerates how nuclear and radiological emergencies are prevented in nuclear facilities by adopting the defence -in-depth approach, where the safety systems are inbuilt with adequate redundancy and diverse working principles.

104.5. Chapter 5 of the Guidelines deals with the "Mitigation of Nuclear/Radiological Emergencies", which explains the various engineered safety features and accident management procedures that are in place in a nuclear plant as accident mitigation measures for minimising the impact of a nuclear emergency by keeping the radioactivity release in the environment to levels as low as possible.

104.6. Chapter 6 deals with the "Preparedness for Nuclear/Radiological Emergencies" and covers various aspects of preparedness.

104.7. Chapter 7 deals with the "Capacity Development for Nuclear/Radiological Emergencies" and deals with the capacity development for coping with nuclear/radiological emergency situations.

104.8. Chapter 8 deals with the "Response to Nuclear/Radiological Emergencies" and describes the action to be taken in nuclear/radiological emergencies.

104.9. Chapter 9 deals with the "Implementation of the Guidelines" which spells out the preparation of action plans by various levels of stakeholders. Such plans should indicate the detailed work plan and

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milestones with recommended time-frame and suitable indicators to enable monitoring and review of the actual progress made.

104.10. Chapter 10 deals with the "Summary of Action Points" and sums up the major recommendations that have been made in the text of the national guidelines.

105. NDMA, established under Section 3 of the DM Act, is responsible for each of the three phases of disaster management continuum with six major responsibilities, namely, pre-disaster (prevention, mitigation and preparedness), during disaster (rescue and relief) and post-disaster (rehabilitation and reconstruction) scenarios. NDMA will be assisted by the National Executive Committee, which is the executive arm of NDMA. The National Crisis Management Committee/National Executive Committee has to take on relief operations on a war footing. The District Management Authorities of the States/Union Territories will be responsible for implementing the nuclear/radiological disaster risk management programmes in their respective areas and each State has to develop a detailed micro-level action plan in a mutually interactive and supplementary mode with its district-level plans.

106. DAE, as a nodal agency, has to provide the necessary technical inputs to the national or local authorities for responding to any nuclear or radiological emergency in the public domain. In the event of a nuclear/radiological emergency in the public domain, the basic regulatory framework for safety of all activities related to the atomic energy programme and the use of ionising radiation in India is derived from the Atomic Energy Act, 1962 (the AE Act).

107. Para 3.6 of the Guidelines dealing with public awareness is of some importance and the same is extracted hereunder for our easy reference:

> "**3.6.** ***Public awareness***.—Public awareness plays a key role in the emergency preparedness and response plans for any type of emergency/disaster where the participation/role of the public is of prime importance. The fact that one cannot see, feel or smell the presence of radiation, coupled with a general lack of credible and authentic information to the public at large about radiation and radiation emergencies and the wide publicity given to any nuclear/radiation-related incident, has resulted in several erroneous perceptions about nuclear technology. Not surprisingly, most people perceive that any small nuclear/radiation-related incident will lead to a situation like Hiroshima or Nagasaki, or the Chernobyl accident.
>
> To educate the people about the beneficial aspects of nuclear radiation and to remove their misgivings about it, the authorities of nuclear fuel cycle facilities in general, and that of nuclear power stations in particular, are actively involved in carrying out regular

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public awareness programmes for people living in the vicinity of these facilities. People are invited and taken on guided tours of the nuclear power stations, made conversant with the basics of radiation protection, safety limits, safety practices, and the dos and

don'ts during a nuclear emergency. The station authorities also make visits to the surrounding villages and population centres to create awareness of the same. Good coordination is also maintained with the district officials. Prior to any off-site emergency exercise, awareness programmes are specially conducted for the public officials, making them conversant with their responsibilities during any off-site emergency."

108. NPCIL and the State of Tamil Nadu should take adequate steps to educate the public of the need for generation of power through NPP, since it is part of India's national policy and also how to deal with nuclear/radiological emergencies. Para 3.9.1 of the Guidelines specifically refers to education and knowledge management, which reads as follows:

"**3.9.** ***Institutions for education, knowledge management, public awareness and training***

3.9.1. ***Education and knowledge management***.—At present, practically no education is imparted at any level on nuclear/radiological emergencies in the national educational system. It goes against one of the basic concepts of good emergency response, which envisages that the culture of preparedness has to be imbibed right from childhood in all sections of the society. The basics of radiation, radioactivity and the use of nuclear radiation in day-to-day life (with its beneficial aspects) should be taught in schools and colleges. Once people are sensitised about this subject, it will help in removing prejudices/misconceptions of the general public about nuclear radiation/programmes and they will treat a nuclear/radiological emergency like any other type of natural or man-made emergency."

109. The necessity for enhancing public awareness about nuclear/radiation hazards has also been dealt with in Para 3.9.2, which reads as follows:

"**3.9.2.** ***Enhancing public awareness about nuclear/radiation hazards***.—In general, there is very limited public awareness about radiation emergencies. Even the intelligentsia have misconceptions about nuclear energy in general. Ever since the reactor accidents at

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Three Mile Island and Chernobyl, any news of a nuclear/radiological emergency has always been of great interest that generates misconceptions in the minds of the public. The sensationalisation of such news by the media has also erroneously caused a perception that any radiation or nuclear emergency will result in cancer or death.

Such lack of public awareness is a major constraint in handling and objectively responding to these emergencies. To overcome this, sincere and concerted efforts are needed to create awareness amongst the general public with the target audience of school and college students, teachers, technocrats and government officials.

The fear in the minds of the public that even a small accident in nuclear facilities will lead to a situation like Hiroshima/Nagasaki, can be removed only through proper awareness, generation and training programmes (Appendix 1)."

110. The necessity to accord proper training to the personnel involved in the management of radiation emergencies, which includes education of senior public functionaries like the district or State-level officials who would manage a radiation emergency as well as the first responders, needs special

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emphasis. This would also include RSOs, civil defence personnel and home guards, police and fire and emergency services personnel and medical professionals. The Guidelines also highlight the necessity of a proper network of roads and transport system. In an off-site emergency situation, the emergency response plans envisage evacuation of the public from the affected zone which requires well-defined routes and evacuation strategies. The availability of both adequate transport and good roads, which would provide the evacuation routes, is of paramount importance. Further, certain radiation emergency scenarios envisage a sheltering requirement for a large number of people. Normally, community centres, schools, colleges, religious places, marriage halls, etc. are chosen for this purpose. SDMAs/DDMAs should identify those places during a non-emergency period, with assistance from DAE/DRDO.

111. It is also highly necessary to identify alternate sources of food, water and hygiene facilities. Because of the assembly of a large number of persons at the emergency shelters, poor hygiene facilities may lead to the spread of diseases, including epidemics. In addition to providing good hygiene facilities, good medical care with adequate stock of

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medicines, should be made available in all areas of possible nuclear emergencies/disasters.

112. Major highlights indicated in Para 3.20 of the Guidelines are of prime importance. Para 3.20 is extracted hereunder for easy reference:

"**3.20.** ***Highlights***.—Some of the highlights of this Chapter are given below:

(*i*) In the event of any nuclear/radiological emergency in the public domain, CMG is immediately activated and it coordinates with the local authority in the affected area and all the authorities concerned at the centre (NCMC/NEC/NDMA) to ensure that the necessary technical/administrative inputs are available to respond to the nuclear/radiological emergency.

(*ii*) The AERB, which oversees nuclear and radiological safety in the country, has been playing a very crucial role in the prevention of nuclear/radiological accidents by ensuring that proper safety design features and operating procedures in all nuclear and radiation facilities are in place. The AERB has the power to not only licence the operation of a facility but also to order the partial or full shutdown of any facility that violates its guidelines.

(*iii*) As per statutory requirements, the local district administration is responsible for drawing up and rehearsing the off-site emergency plan in coordination with the facility operator.

(*iv*) It is also mandatory for the power plant operators to periodically rehearse various emergency preparedness plans by way of exercises, and based on the feedback and experience, take corrective measures. As the first stage of the trigger mechanism, CMG, DAE and the resource agencies are alerted even when a plant or site emergency exercise is conducted.

(*v*) The basic training for NDRF teams, 'first responders' and TOT is being imparted by BARC in addition to training of QRTs of the paramilitary forces and defence CBRN officers.

(*vi*) Emergency preparedness exists at all nuclear and radiation facilities to respond to any on-site or off-site emergency in their areas. A network of 18 units of ERCs has been established by BARC to handle radiological emergencies arising from a transport accident or the movement/handling of 'orphan sources' or any malevolent act like the explosion of an RDD, RED or IND at any time or anywhere in the country.

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(*vii*) The fact that one cannot see, feel or smell the presence of radiation, coupled with a general lack of credible and authentic information to the public at large about radiation and radiation emergencies and the wide publicity given to any nuclear/radiation -related incident, has resulted in several erroneous perceptions about nuclear radiation/technology. Not surprisingly, most people perceive that any small nuclear/radiation-related incident will lead to a situation like Hiroshima/Nagasaki or the Chernobyl accident.

To remove such misgivings, the authorities of nuclear fuel cycle facilities in general, and that of nuclear power stations in particular, are actively involved in carrying out regular public awareness programmes for people living in the vicinity of these facilities.

(*viii*) The AERB, the national regulatory authority, has been regulating the nuclear and radiation facilities in the country very effectively and has, over the years, issued a large number of codes, standards and guides.

(*ix*) In the event of the private sector getting involved in the nuclear power programme, it might be required for the regulatory authority to ensure that the necessary knowledge base does exist in the private industry concerned for building and operating the nuclear facility as per the stipulated safety standards of the AERB.

(*x*) In case of a nuclear/radiological emergency, the rescue and relief measures will be highly demanding in terms of availability of adequate trained manpower as well as advanced instruments/equipment. In this case, the nature of relief measures would be different in many ways from those carried out in natural disasters like fire, floods, earthquakes, etc. (where there is very little detrimental effect to the health of the personnel involved in the relief work). In a nuclear emergency/disaster, however, the persons carrying out the relief work are also likely to be exposed to both high doses of radiation and/or high-levels of contamination which, if not controlled, may affect their health including their potential to carry out the relief work effectively.

(*xi*) Several major metros and other vulnerable locations will need to have ERCs established in their areas. Local civil defence, police, fire brigade, hospitals and other agencies also need to develop liaison with these ERCs.

(*xii*) Facilities using radioactive sources need to strengthen their physical protection systems along with proper inventory and control procedures of the radiation sources.

(*xiii*) In the current security threat scenario, there is a need for enhancing the security of the sources at radiation facilities and

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during their transportation, to ensure that they do not go 'out of control' by any

deliberate acts of theft and/or sabotage and become a potential radiation hazard to the public.

(*xiv*) In the context of large-scale radiation disasters, the involvement of civil defence personnel and home guards is usually considered highly desirable.

(*xv*) Because of their preoccupation in defending the country from the enemy, the armed forces are normally not always available to respond to a nuclear disaster scenario. However, for any major nuclear accident where the situation is beyond the coping capability of the civil administration, the services of the armed forces may be called for to take over several critical operations related to response (i.e. rescue and relief), rehabilitation (i.e. evacuation and sheltering) and reconstruction activities, including the immediate restoration of essential infrastructures like communication, electrical power, transportation, etc. Civil-military coordination will be developed for such purposes so that specially trained and rehearsed teams of the Army can be inducted to assist the civil administration, as and when called for and are available.

(*xvi*) To start with, the SDMAs, SECs and DDMAs concerned will aim to cover all cities with a population of 20 lakh or more, that may be affected by a major nuclear/radiological emergency in respect of the preparedness for response to a nuclear/radiological emergency. This cover will be progressively extended to other cities.

(*xvii*) Presently, there is no network of hospitals in the country which can handle radiation-induced injuries on a large scale. The establishment of such a network is essential for handling nuclear emergencies/disasters. This will also include the establishment of a nationwide capability for utilisation of the services of a large number of RSOs for managing both RDD-related scenarios and large-scale nuclear disasters on priority. There will also be a dedicated and reliable communication facility among hospitals so that, whenever required, they can pool their resources.

(*xviii*) There can always be a possibility of some radioactive sources going 'out of control' in some country and from there, entering into our country inadvertently or deliberately. Such

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unnoticed entry has the potential of the end products of steel mills being contaminated or, in the worst scenario, the source being used in an RDD. Hence, the strengthening of border controls will need to be addressed on priority by MHA.

(*xix*) In an off-site emergency situation in a nuclear facility, emergency response plans envisage the evacuation of the public from the affected zone. This requires well-defined routes and evacuation strategies, taking into account the topology of the site. Problems related to the availability of well-defined routes, transport facilities, food, drinking water, shelters, etc. also need to be addressed by the DDMAs/SDMAs concerned as part of the preparedness/response programme in an all-hazards approach.

(*xx*) In the emerging security threat scenario, there is a possibility of 'orphan' sources (stolen or misplaced sources that may go out of regulatory control of the AERB) falling into the wrong hands and being

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used for malevolent purposes through an RDD (also called a 'dirty bomb').

At present, there is no mobile monitoring system available with law and order authorities which can warn them of any significant/abnormal rise in background radiation levels in the public domain. The establishment/strengthening of monitoring and detection systems of such sources on priority is considered highly desirable, to detect any unauthorised presence or movement of radioactive material in the public domain.

(*xxi*) With the increasing incidences of terrorists activities and impending threat of RDD, it is imperative that the police, which in all probability will be the first to reach the site of an explosion, should have some simple portable monitoring instruments (at each police station within the areas with radiological threat perception) which will warn them as they approach the radiation source (from, say, a blast of RDD).

(*xxii*) The values of the radiation dose levels at which intervention is required for various actions (like sheltering, iodine prophylaxis, evacuation, etc.) and the action levels that will be needed to control the consumption of contaminated food items in the affected areas are presently not available either for any RDD or nuclear emergency/disaster and are needed to be generated because these are essential in respect of both (*i*) the members of

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the relief and rescue teams and (*ii*) the public.

(*xxiii*) The lack of public awareness is a major constraint in handling and objectively responding to nuclear and radiological emergencies. Further, presently there is no mechanism for maintaining a knowledge base or case studies in the public domain on the events of previous emergencies and their consequences. As a result, the lessons that should have been learnt from the handling of those emergencies have been lost sight of. To overcome this, sincere and concerted efforts are needed to create awareness amongst the general public with the target audience of school and college students, teachers, technocrats and government officials."

113. The 2009 Guidelines issued by AERB are very exhaustive which have to be implemented and attended to forthwith. AERB, in the Code of Practice on Safety in NPP Siting, also has dealt with the term "exclusion zone". Paras 5.5.3 and 5.5.4 are relevant and extracted below:

"5.5.3. An exclusion area of appropriate size (at least 1.5 km radius from the reactor centre) shall be established around the reactor and entry to this is to be restricted to authorised personnel only.

5.5.4. A sterilised area up to 5 km around the plant shall be established by administrative measures where the growth of population will be restricted for effective implementation of emergency measures. National growth, however, is allowed in this zone."

114. Facts presented indicate that there is no population in the "exclusion zone" of KKNPP. "Exclusion zone" is under the exclusive control of the plant operator NPCIL, guarded by CISF, where no public habitation is permitted. The property wall is at a distance of 2 km from the reactor buildings existing at KKNPP, which encloses the exclusion zone, and no people reside

permanently inside the property wall. A sterilised area around the exclusion area covering an area of up to 5 km radius from the plant has also been established. As per the AERB Citing Code, the desirable population within the sterilised zone is about 20,000. As per the documents available, three villages are within SZ of KKNPP, namely, Kudankulam, Vijayapathi (Idinthikarai) and Irrukkandurai. As per the 2001 Census, the population residing with SZ consisting of these three villages is approximately 23,960, which has been taken care of while

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preparation of the emergency preparedness plan (EPP) of KKNPP.

115. NPCIL, after due concurrence with AERB, as already indicated, has prepared the Emergency Preparedness Plan, Vol. 5 for off-site emergency at KKNPP. EPP has listed the composition of Off-Site Emergency Response Coordination Committee (OERCC) comprising of 14 district administration officials for implementing countermeasures in public domain in case of an emergency. The District Collector, Tirunelveli is the Off-Site Emergency Director and the members are District Revenue Officer, Site Director, KKNPP, Superintendent of Police, District Forest Officer, Joint Director (Fisheries), Deputy Controller (Civil Defence), Divisional Fire Officer, Executive Engineer (Irrigation), Joint Director (Agriculture), Deputy Director (Animal Husbandry), District Supply Officer, Regional Transport Officer, Deputy Director (Health Services). The overall responsibility of OERCC and individual responsibilities of the members of the Committee have been chartered in the Emergency Preparedness Plan for effective implementation of countermeasures. Eleven emergency response teams such as warning and advise team, emergency response teams, traffic control team, prophylactics distribution team, evacuation advice team, convoy team, decontamination team, rallying post team, patrolling team, information team and services support team have also been formed and are in place as well.

Emergency exercise — on and off site

116. KKNPP site comprises of two units along with their auxiliary facilities. In the plant or the site, an unplanned event at a particular unit may result in an emergency situation which may affect either the offending unit alone (plant emergency) or the other facilities as well within the site exclusion zone of the KKNPP (site emergency). Site emergency may result in off-site emergency which may affect the public personnel living beyond 1.6 km radius of the plant boundary. NPCIL, therefore, prepared an emergency preparedness plan for KKNPP. Vol. 1 contains the on-site emergency plan and Vol. 2 contains the off-site emergency plan. The off-site emergency preparedness procedures was issued in July 2010 after incorporating the comments and instructions made by NPSD and AERB. Final revised plan was incorporated on recommendations made by OPSD and SARCOP. We have gone through the Emergency Preparedness Plan, Vol. 2 (off-site emergency plan) which is very comprehensive and deals with almost all eventualities.

117. The off-site emergency exercise was carried out as per the requirements of AERB Safety Guide on Consenting Process for NPPs. The off-site emergency exercise is required to be carried out once in two years

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and that NPCIL and State authorities would conduct such exercises in other nearby villages frequently. Such mock drills are conducted to educate the public not to scare them away, but make them understand that the project is part of the national policy, participatory in nature, and hence we cannot remain as a nuclear isolated nation. We have to find out a substitute for other sources of energy. Such exercise was carried out annually to assess whether plant management and the local authorities, including the communication and infrastructure facilities, are geared up for tackling with a real emergency situation, in case it arises.

118. We heard Shri Rakesh Dwivedi, learned Senior Counsel appearing for the State of Tamil Nadu, who gave an overall view of the steps taken by the State Government and the District Collector, Tirunelveli for implementing the Neighbourhood Development Scheme relating to housing, steps taken for off-site emergencies, awareness programme, other infrastructural facilities. We have also gone through the detailed affidavit filed by the District Collector, Tirunelveli District in December 2012 and noticed the steps taken by the District Administration and the State to meet the off-site emergencies, awareness programmes and the other steps taken to provide infrastructural facilities like upgradation of primary health centres, opening of new primary health centres, setting up of desalinate place at Uvari, solar energy lighting system, etc.

Corporate social responsibility (CSR)

119. Sustainable development and CSR are inseparable twins, integrated into the principles of inter- and intra-generational equity, not merely human-centric, but ecocentric. CSR is much more when the project proponent sets up NPPs, thermal power plants, since every step taken for generation of energy from such hazardous substances, is bound to have some impact on human beings and environment, even though it is marginal. The Department of Public Enterprises (DPE), recently, issued the Comprehensive Guidelines on CSR for Central Public Sector Enterprises, which includes NPCIL, to create, through the Board resolution, a CSR budget as a specific percentage of net profit of the previous year. CSR is envisaged as a commitment to meet its social obligations by playing an active role to improve the quality of life to the communities and stakeholders on a sustainable basis, preferably, in the project area where it is operating. CSR strategy has to be put in practice in line with the millennium development goals as lodged by

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the United Nations and adopted by the Government of India in the 11th Five-Year Plan i.e. 2007-2012, which could cover the areas of education, health, drinking water/sanitation, environment, solar lighting system, infrastructure for backward areas, community development and social empowerment, promotion of sports and traditional forms of arts and culture, generation of employment opportunities and livelihood to be a part of the national/local initiatives to provide reliefs/rehabilitation in terms of natural disaster, calamities, etc.

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120. NPCIL has allocated funds for providing health, education, infrastructural development under CSR at Kudankulam. The allocation and utilisation of funds by NPCIL during the last three years and the current year are enumerated below:

Financial Year	*Funds allocated (rupees in lakhs)*	*Funds utilised (rupees in lakhs)*
2009-2010	14.50	14.47
2010-2011	120.00	45.20
2011-2012	160.00	18.67
2012-2013	800.00	13.91 (up to July 2012)

We notice that, apart from the above, Rs 500 crores has been allocated for the Neighbourhood Development Programme (NDP) around the nuclear plant at Kudankulam, which would be utilised for taking up various development works like setting up of cold storage and fishing marketing area, public board motor works, housing facilities, levelling of roads, upgradation of health services, ground and drinking water, etc. The Chief Secretary of Tamil Nadu convened a meeting on 15-5-2012 following CSR, in which it was decided to set up a fund of Rs 300 crores for the housing scheme for a projected period from 2012 to 2015. The proposal is to construct 10,000 houses in the housing project with a unit cost of Rs 3,00,000 per house with a plinth area of 300 sq ft under NDS. Various other development activities are also being undertaken as part of CSR, like upgradation of public health centres, establishment of new public health centres, etc.

121. This Court in *Banwasi Seva Ashram* v. *State of U.P.*[16] allowed the construction of NPP in a displaced forest area, but ordered inter alia

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that every family of forest dwellers be provided with a housing plot of specified dimensions elsewhere, that health, education, sanitation services and the like, be provided there, as part of CSR.

122. NPCIL in association with the District Collector, Tirunelveli should take effective steps to discharge their CSR in accordance with the DPE Guidelines. Needless to say, there must be an effective and proper monitoring and supervision of the various projects undertaken under CSR, to the fullest benefit of the people who are residing in and around NPP.

Part II

123. Environmental impact on setting up of a nuclear plant anywhere in the world is bound to generate some apprehension, at least in the minds of the ordinary people, of its possible impact on environment, life and property, flora and fauna, marine life, radiation, nuclear waste and its disposal and other related issues:

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> "Royal Commission on Environmental Pollution, Sixth Report, 'Nuclear Power and the Environment'.
>
> There are few subjects in the field of environmental pollution to which people react so emotionally as they do to radioactivity."
>
> (Command Paper, 1976 Cmnd 6618, para 5)

124. Public opinion, national policy, economic growth, sustainable development, energy security are all intrinsically interlinked. One cannot be divorced from other, all the same, a balance has to be struck. National policy of this country, as already stated, is that atomic energy has a unique position in the emerging economics in India. Nuclear energy is, therefore, considered to be a viable source of energy and it is necessary to increase the country's economic growth. Nuclear energy is now considered in India as a sustainable source of energy and India cannot afford to be a nuclear isolated nation, when most of the developed countries consider it as a major source of energy for their economic growth. Renewed momentum against the setting up of NPPs picked up fast after accidents at the Three Mile Island Power Plant in USA, Chernobyl in Ukraine and Fukushima in Japan. Primary reason for such opposition seems to be on the issues of the impact of nuclear installations on life and property, environment, flora and fauna, marine life, nuclear waste disposal, health, displacement of people, etc. which has a direct link with Article 21 of the Constitution of India and the environmental laws of the country.

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125. The learned counsel appearing for the appellants mainly contended so far as this project is concerned that the regulatory authorities have consistently legalised the fait accompli violations presented by the project proponent. Further, it was alleged that the plant standards had been relaxed; statutory violations such as construction without permission, unauthorised setting up and commissioning of discharge outlets had not only merely been condoned but justified by TNPCB, MoEF, etc.

126. The learned counsel also submitted that the environment clearance granted by MoEF on 9-5-1989 was not only vague but with imprecise conditions and that no environmental impact study or public hearing was conducted. Further, it was stated that no construction was started after getting the above clearance, but only in the year 2002, by the time the 1994 EIA Notification came into force, consequently, fresh environmental clearance had to be obtained. Reference was made to a Circular dated 27-3-1998 issued by MoEF, which stated that the environmental clearance issued prior to 1994 would not be valid in the case of projects which did not commence work before 1-8-1998. Referring to Explanation 8 to the EIA Notification of 1994, it was submitted that the project did not obtain all clearances including NOC from the State Pollution Control Board, which was required under the Water Act, 1974 and the Air Act, 1981. The project, therefore, did not have NOC, from the Pollution Control Board, when the 1994 Notification came into effect. No fresh environmental clearance was obtained from MoEF as per the 1994 Notification and even if obtained, the same would be valid only for five years of the construction or operation of the project. Further, it is also pointed

out that the environmental clearance granted on 9-5-1989 was revalidated by a letter dated 6-9-2001, when the EIA Notification of 1994 was in force.

127. The appellants pointed out that the refusal of Russia in accepting the spent fuel also brought about complete change in the project, since it expanded the activities of transportation of spent fuel for reprocessing, reprocessing of spent fuel, generation, storage and disposal of nuclear waste. These changes, according to the appellants, would amount to expansion and modernisation of the project, which required fresh environmental clearance, and revalidation of 1989 clearance, according to the appellants, was impermissible in law. The learned counsel, therefore, pointed out that all those factors would

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indicate that KKNPP Units 1 and 2 required fresh environmental clearance which the project proponent did not obtain. KKNPP, it was submitted, is located within 500 m of HTL and therefore was a prohibited activity under the CRZ Notification, 1991. It was pointed out that the project of NPCIL is not a project of DAE and that only those construction activities are allowed for which foreshore facilities are essential. Construction of KKNPP is, therefore, not allowed under the CRZ notification. Further, it was pointed out that no environmental clearance was obtained from MoEF before setting up the desalination plant and the same is also situated in the CRZ zone. NPCIL, it was submitted, had not followed the CRZ Notifications dated 21-5-2002, 19 -10-2002, etc. which have got serious impact on marine life and also on the coastal area. The discharge of water from the plant into the sea also causes serious environmental impact, especially on the marine life. The appellants submitted that all those factors were not taken into consideration when the environmental clearance was granted by TNPCB as well as MoEF. The appellants submitted that the discharge of radioactive liquid from the two units, if not adequately treated, will affect the quality of marine life and biodiversity of flora and fauna and marine resources found in the Marine National Park and the Wedge Bank of Gulf of Mannar. Further, it was contended that as per the stipulation of MoEF of the year 1980 temperature of the coolant water should not exceed 5°C. However, NEERI has unilaterally increased it to 7°C which will have serious effect on marine life apart from changes in salinity levels.

128. NPCIL, AERB, MoEF as well as TNPCB have filed detailed counter-affidavits and explained the steps they have taken for getting environmental clearance for the project at various levels. The counter-affidavits state that comprehensive studies have been conducted on all issues by environmental experts and scientists and permissions have been granted taking into consideration all safety measures under the Environmental Protection Act, notifications issued thereunder and also following/taking into consideration guidelines laid down by well-known international organisations.

129. NPCIL submits that it had submitted its application for grant of environmental clearance for the project on 12-12-1988. Clearance for installation of NPP was granted by the Department of Environment and Forests, Government of Tamil Nadu on 26-12-1988. The Department of Environment and Forests, Government of Tamil Nadu also accorded amended

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clearance to the project vide Letter dated 13-2-1989 with certain stipulations. MoEF also accorded its approval to Units 1 and 2 subject to certain conditions stated therein on 9-5-1989. After the receipt of government clearance, process of land acquisition was initiated and land acquisition was completed during the period 1991 to 1993. Pre-project activities like construction of boundary wall, roads and some buildings were also initiated and completed during the said period. AERB on 10-11-1989 granted clearance for locating the plant at Kudankulam after the evaluation of the site by the Site Selection Committee. Environment Impact Assessment (EIA) Notification came into force on 27-1-1994 which provided an exception for the project which had commenced the pre-project stage activities vide Exception Clause 8. The notification of 1994, therefore, it was pointed, would not apply to Units 1 and 2 for which environmental clearance was already granted on 9-5-1989.

130. Further, it was pointed out by NPCIL that the environmental clearance dated 9-5-1989 stipulated that the temperature of the coolant water should not exceed 5°C, however, in the light of Para 5 of the clearance dated 9-5-1989 and the amendment of Rule 84 of the Environment (Protection) Rules, 1986 and the Notification dated 22-12-1988 stipulation of 5°C contained in the clearance can be varied. Further, it was stated that since the discharge from Units 3 to 6 is essentially in the same area, the temperature of discharge from Units 1 and 2 can also be limited to 7°C, which according to NPCIL, will have no impact on marine life.

131. NPCIL, further pointed out that the report of the studies conducted by the Institute of Ocean Management (IOM), Anna University, would indicate that there would be no impact on marine ecosystem due to such discharge and opined that the temperature differential of the discharged water with respect to the receiving water should not exceed 7°C. The environmental clearance was accorded to Units 3 to 6 on the same design as Units 1 and 2 which stipulated the condenser cooling water discharge limit as 7°C. Further, it was also pointed out that during the appraisal of CRZ clearance for Units 3 to 6 before the grant of CRZ clearance on 25-7-2012 the Expert Appraisal Committee (EAC) considered the marine impact assessment and opined that there would be no impact on water qualities due to the proposed discharge. Further, TNPCB has also accorded consent to operate on 28-8-2012 for Units 1 and 2 stipulating the condenser cooling water discharge limit as 7°C. NPCIL, also submitted that the EIA of Units 3 to 6 includes the impact of Units 1 and 2 as a baseline for computing the additional impact of Units 3 to 6. The concern of the public, it was submitted, regarding safety, livelihood, radiation, etc. have been adequately addressed during the public hearings on Units 3-4 and 5-6

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which was granted on 23-9-2008 and 31-12-2009 respectively. Procedure required to be followed under the EIA Notification, 2006 had also been strictly followed. Further, it was also pointed out that no environmental clearance is required for establishing the desalination plant since the same has not been included in the schedule to either the 1994 Notification or the 2006 Notification and there is no prohibition in establishing the plant in the CRZ area.

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132. MoEF has filed detailed counter-affidavits and also submitted their written submissions on various aspects. MoEF submitted that at the relevant point of time, when KKNPP Units 1 and 2 were sought to be established, there was no regulatory requirement of the Coastal Zone Regulations (except the 500 m norm). Everything was based on the Letter written by the then Prime Minister in November 1981 to the Chief Ministers of coastal States regarding necessity to keep clear of all activities at least up to 500 m from the water at the maximum high tide (MHT). Further, it was also urged that pollution from industrial and town wastes should also be avoided totally. Following the Letter of the then Prime Minister, a working group was constituted which formulated some environmental guidelines for the development of beaches in the year 1983. The permission for location of NPP at Kudankulam was granted on 25-2-1988 by the Committee on Conservation of Seashore, State of Tamil Nadu. Later, the Tamil Nadu State Environmental Committee (TNSEC) also met on 15-12-1988 and cleared the KKNPP project subject to further monitoring by a Special Committee. The decision was communicated vide letter dated 26-12-1988 which was later modified by the Committee on 13-2-1989 subject to certain conditions mentioned therein. MoEF had also stated that DAE, Government of India had sought for relaxation in respect of the project from 500 m. On 19-4-1989, the Prime Minister approved an exemption of 500 m norm especially for the Kudankulam project subject to the MoEF prescribing and ensuring sufficient safeguards for preserving the ecology, for which MoEF accorded approval to KKNPP Units 1 and 2 subject to the conditions stipulated therein.

133. MoEF issued the CRZ Notification on 19-2-1991 imposing restrictions on the setting up and expansion of industries, operation or processes, etc. in the coastal zone. This notification, it was pointed out, did not prohibit the project already in operation, granted clearance prior to the date of the issue of notification. Later, by an amendment dated

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12-4-2001, S.O. 329(C) amended Para 2 on "prohibited activities" of the Notification dated 19-2-1991 by substituting a new clause which exempted the projects of DAE. EIA came into force on 27-10-1994 but MoEF issued a Circular dated 23-7-1998 conveying its decision that the environmental clearances granted prior to 1994 would be valid in the case of projects where work had commenced before 1-8-1998. On 31-8-2001, the Director of MoEF visited the Kudankulam plant site and found that the land acquisition was completed and construction of Township, Environment and Health Research Centre and RO plant was in progress.

134. MoEF took up the stand that the 1994 Notification would not apply qua Units 1 and 2 in view of the fact that the environmental clearance was already granted in the year 1989. Further, it was also submitted that subsequently while granting the environmental clearance for Units 3 to 6, public hearing was conducted as per the EIA Notification, 2006. Consequently, it was submitted that EIA for the expansion of KKNPP i.e. for setting up of Units 3 to 6 included the environmental impact on account of Units 1 and 2. Environmental clearance, it was pointed out, for Units 3-4 and

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5-6 was granted on 23-9-2008 and 31-12-2012 respectively after following due procedures required under the EIA Notification, 2006.

135. MoEF also maintained the stand that prior environmental clearance is required only for those activities which are listed in the schedule to the EIA Notification dated 27-1-1994 or the subsequent Notification dated 14-9-2006, which superseded the Notification dated 27-1-1994. Desalination plant, it was submitted, did not find a place in the abovementioned notifications, hence prior environmental clearance for establishment of a desalination plant was not required. Further, it was pointed out that the same would not preclude MoEF from considering the issue of desalination plant from the CRZ point of view. Referring to CRZ amended Notification dated 19-2-1991, it was submitted that the desalination plant could be established within CRZ area except CRZ-I(*i*) i.e. eco-sensitive areas viz. mangroves, sand dunes, reserve forests, etc. Reference was also made to the CRZ Notification dated 6-1-2011, which superseded the CRZ Notification dated 19-2-1991. MoEF, therefore, maintained the stand that in view of the legal position desalination plant could be established within the CRZ area. However, it was pointed out that even though the desalination plant is a permissible activity within the CRZ area, MoEF

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would again take into account the establishment of the desalination plant from the CRZ point of view and ensure that it would continue to function to the full satisfaction of MoEF.

136. MoEF has also in the affidavit dealt with the issue of change in the temperature limit of condenser cooling water discharge and its impact on marine environment. It was pointed out that at the time of grant of environmental clearance on 9-5-1989, the standard temperature difference between the inlet and outlet of condensed cooling water for discharge for temperature was fixed at 5°C. However, vide Notification dated 22-12-1998, the Environment (Protection) Rules, 1986 were amended. Rule 84 dealing with the thermal power plant, the limit prescribed therein would equally apply to NPPs as the technology for condenser cooling in both thermal as well as NPPs are the same. The environmental impact on the marine ecosystem due to +7°C condenser cooling water (CCW) has been considered by MoEF through EAC before giving the environmental clearances for Units 3-4 and 5-6 by stipulating that the temperature differential of the discharged water with respect to the receiving water would not exceed 7°C. MoEF, therefore, concluded that during the appraisal of the CRZ clearance for Units 3-6 of KKNPP before grant of CRZ clearance on 25-7-2012, EAC considered the marine impact assessment, thermal dispersion modelling studies conducted for condenser cooling water discharge considering the CCW discharge from all the 6 units i.e. KKNPP Units 1-6. Further, it was also pointed out that TNPCB has also accorded consent to operate on 28-8-2012 for KKNPP Units 1 and 2 by stipulating the CCW discharge limit as 7°C as per the amended Environment (Protection) Rules. MoEF also maintained the stand that it will continue to monitor the environmental standards of KKNPP and periodically inspect as to examine whether KKNPP units conform to the safety of environment set by MoEF.

137. Shri Guru Krishna Kumar, learned Senior Counsel appearing for TNPCB submitted that it had vide its Letter dated 21-6-2001 requested DAE to apply and obtain a fresh environmental clearance from MoEF. MoEF, at that time, maintained the stand that NPCIL had already taken steps to implement the project and hence there was no necessity of a fresh environmental clearance. TNPCB's officials then inspected the site of KKNPP on 19-9-2001 and found that it had started construction of NPP without valid consent for establishment as required under the

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Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, consequently, show-cause notices vide Proceedings Nos. DEE/TNPCB/TNV/F.NPP-RDF/W/2001 dated 11-10-2001 and DEE/TNPCB/TNV/F.NPP-RDF/A/2001 dated 11-10-2001 were issued calling for explanation. NPCIL later filed applications dated 20-12-2001 for consent of TNPCB for NPP of capacity 2 × 1000 MW. TNPCB issued consent for establishment vide proceeding dated 25-2-2004. NPCIL had a proposal to use sea water for cooling, Pechiparai Reservoir for fresh water and groundwater for construction. Later, they applied for revised consent which included additional facilities for desalination plant using sea water as an input, in place of water supply from Pechiparai Dam. TNPCB later issued "consent to operate" vide proceedings dated 23-7-2012 with tolerance limits prescribed for trade effluent discharge, as per Board proceeding dated 21-2-1984, which included the tolerance limit for temperature as 45°C at the point of discharge. Later, TNPCB vide proceedings dated 22-8-2012 altered the condition to be read as "not to exceed 7°C over and above the ambient temperature of sea for trade effluents".

138. The appellants filed detailed common rejoinder-affidavit traversing the various statements made by AERB, NPCIL, MoEF.

139. The appellants urged that all facilities related to nuclear fuel and nuclear waste required an environment clearance under the EIA Notifications of 1994 and 2006. Further, it is pointed out that when the supplemental agreement with Russia was entered into in the year 1998 that envisaged this critical change and hence NPCIL ought to have applied for a fresh clearance from MoEF. But MoEF had consistently condoned such violations of law. Desalination plant, it was pointed out, is bound to cause serious environmental implications and significant impact on marine life. It was pointed out that the plant has been constructed without mandatory previous "consent to establish" from TNPCB under the Water Act. TNPCB's consent to establish was given in the year 2004 while the desalination plant was envisaged only in the year 2006 and the construction of the plant has also violated the provisions of the Water Act since any activity that discharges anything in water required PCB clearance. Fresh environmental clearance was, therefore, not just required for the desalination plant, but for the nuclear plant as a whole because the desalination plant introduced a significantly different dimension to pollution, especially given the fact that highly

concentrated salty water is being released into the eco-sensitive Gulf of

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Mannar Biosphere Reserve. Further, without any legal sanction, NPCIL has unilaterally increased the temperature from 5°C to 7°C. The appellant, therefore, maintained the stand that unless and until the plant conforms to the environmental protection laws, the same shall not be allowed to be commissioned which gives threat to the life and property of the people who are staying in and around the plant and it will have adverse effect on the environment as well as marine life.

Judicial evaluation

140. We will first examine the question whether NPCIL, the project proponent while establishing KKNPP, had obtained all necessary environmental clearance and other requisite permission from the authorities. No plant, specifically the one dealing with radioactive materials, can be allowed to function or commission even if it has been cleared by AEC, AERB, NPCIL, etc. unless it strictly conforms to the standards set by the statutory authorities like MoEF, TNPCB, etc. and follow the environmental laws. Most of the issues referred to hereinbefore, as already indicated, are interrelated and interconnected, therefore, there is bound to be some overlapping while examining the same. Before examining various legal issues raised before us, let us first examine the factual foundation on which they rest.

141. The Government of India after due deliberation with AEC, AERB, NPCIL and other organisations decided, in principle, to set up an NPP, for which Site Selection Committee of DAE was constituted and the Committee examined various sites in the Coramandel Coast of Tamil Nadu and selected the site at Kudankulam as the most ideal for setting up of NPP on scientific, technical, safety, security and environmental point of view. No regulatory requirement of CZR (except the 500 m norm) at the sea coast was in force at that time. The Prime Minister of India had written a Letter in November 1981 to all the Chief Ministers of the coastal States in which it was stated as under:

> "The degradation and misutilisation of beaches in the coastal States is worrying as the beaches have aesthetic and environmental value as well as other values. They have to be kept clear of all activities at least up to 500 m from the water at the maximum high tide. If the area is vulnerable to erosion, suitable trees and plants have to be planted on the beaches without marring their beauty. Beaches must be kept free from all kinds of artificial development. Pollution from industrial and town wastes must also be avoided totally."

142. Following the Letter of the Prime Minister, a nine-member working group comprising experts in the fields of marine biology, nature conservation, tourism, pollution control and human settlements was constituted to formulate guidelines for the development of

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beaches. The Committee formulated the environmental guidelines for development of beaches in July 1983. Before selecting the site at Kudankulam, a detailed

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study was conducted as to the suitability of the site, safety, radiological impact and its assessment, external natural events, foundation conditions, water availability and various other factors. Following that, an application was submitted in the year 1988 by NPCIL before the State of Tamil Nadu for location of NPP at Kudankulam. The application was considered by the Committee on conservation of seashore of the Government of Tamil Nadu since the plant had to be set up at the seashore. The Committee after considering the proposal accorded clearance for the location of the plant at Kudankulam which is reflected in the Letter dated 25-2-1988 sent by the Secretary to the Government, State of Tamil Nadu.

143. NPCIL later submitted its application to the Government of Tamil Nadu for grant of environmental clearance vide its application dated 12-12-1988. As per the then existing practice, applications for environmental clearance of a project like NPP had to be placed before TNSEC which consisted of high-ranking officials including the Chairman and Secretary of TNPCB, etc. The application was placed before the Committee which met on 15-12-1988 and discussed various issues. The Executive Director of the project NPCIL explained the project in detail to the Committee with particular reference to safety measures. It was also pointed out that a disaster management plan had already been prepared and submitted by them to the Government of India and that no rehabilitation of the people around the site would be necessary. Some of the members expressed the apprehension that cyclone condition might affect nuclear plant, which was allayed by the Executive Director, NPCIL stating that the proximity of Sri Lanka would deactivate the cyclone. The Additional Director (Public Health and Preventive Medicines) expressed the apprehension that the project might pollute the sea water thereby affecting the fish and the consumers. The Executive Director, NPCIL had assured that an Environmental Survey Laboratory (ESL) would be set up 30 km away from Kudankulam and samples of water and fish would be analysed to find out the amount of radioactivity on the flora and fauna. Safety issues were also discussed in that meeting. After detailed discussions on various aspects, the Committee decided to clear the project subject to the monitoring by a Special Committee, which Committee, it was

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stated, would go into the details of safety and rehabilitation measures proposed in the areas communicated in the project report.

144. The decision of TNSEC dated 15-12-1988 was communicated to NPCIL vide Letter dated 26-12-1988 followed by another Letter dated 30 -12-1988. On 13-2-1989, TNSEC modified the environmental clearance contained in its Letter dated 26-12-1988 and decided that environmental clearance accorded for the installation of KKNPP would be subject to the thirty-one conditions specified in the annexure to the Letter dated 13-2-1989.

145. DAE, Government of India sought relaxation in respect of proposed KKNPP of the guidelines that the coastal beaches should be kept clear from all

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building activities up to 500 m from HTL. At that point of time only the Environment Protection Act, 1986 was in force and the Letter of the Prime Minister of 1981 and the 1983 Environmental Guidelines for Development of Beaches. On 19-4-1989, the then Prime Minister approved an exemption of 500 m norm specifically for KKNPP project subject to MoEF prescribing and ensuring sufficient safeguards for preserving the ecology of the beach.

146. MoEF vide its Office Memorandum dated 9-5-1989 accorded approval to KKNPP Units 1 and 2 (2 × 1000 MW) subject to the following conditions which are given below:

"2. Approval of this Ministry from environmental angle is accorded, subject to the following conditions:

(*i*) Special exemption from the present ban on undertaking any construction within 500 m from high tide line (HTL) is accorded to this project subject to the conditions that:

(*a*) In such area only the plant and essential associated structures may be put up and nothing else should come up in this area;

(*b*) Attempts should be made to keep such construction within 500 m of high tide line as far away from high tide line as possible;

(*c*) Adequate measures and environmental safeguards will be taken for ensuring preservation of the ecology of the beach;

(*d*) Since this area has been declared as a biosphere reserve, the project authorities should take special precautions to avoid any damage to the coral reefs or changes in the water quality near the shore; and

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(*e*) An environmental management plan (EMP) for the area up to 500 m from HTL should be submitted to the Ministry for review.

(*ii*) The temperature of the condenser water should not exceed 5°C over and above the ambient temperature of the water at the point of discharge in the sea.

(*iii*) The liquid effluents emanating from the different plants of the power station should be treated to conform to the standards stipulated by the Central/State Pollution Control Board and the International Commission for Radiological Protection (ICRP)/AERB. Steps should be taken to prevent groundwater pollution. Adequate number of coastal water quality monitoring stations should be set up.

(*iv*) Radioactive wastes (solids and semi-solids) generated during various operations, both low level and high level, should be properly treated and disposed of after proper containment to fix the radioactivity as per the standards/guidelines prescribed by ICRP/AERB.

(*v*) No radioactive emissions, fugitive or otherwise, will be permitted beyond the safety standards prescribed by AERB.

(*vi*) The location/alignment of the offshore berth/jetty should be selected in such a way that no damage is caused to the coral reefs. Such construction should be kept at the minimum.

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(*vii*) The route of the pipeline from Pechiparai Reservoir to the power station should preferably be so selected that it does not affect forest areas.

(*viii*) Efforts should be made to avoid forest areas to be affected due to the proposed transmission corridors and power evacuation system.

(*ix*) Adequate precautionary measures should be taken in transportation of radioactive fuel/spent fuel/radioactive wastes, in/out of the country.

(*x*) Periodical environmental surveillance and monitoring for radioactive emissions should be undertaken for measuring radioactivity and record maintained.

(*xi*) Necessary steps may be taken for educating local people about the project to allay their apprehension due to the proposed

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power station.

(*xii*) All the vacant lands within the project zone should be afforested with a tree density of 1000 per acre. The type of tree species should be so selected that they will be able to give maximum density of canopy.

(*xiii*) From the initial stages of the project the environmental surveillance and monitoring of this particular area including the health status of the population around the power station location should be carried out and records maintained. This activity should continue in future also.

(*xiv*) On-site and off-site disaster management plan (DMP) should be prepared as per the guidelines stipulated by ICRP/AERB and approved by the National Emergency Response Committee (NERC) of the Department of Atomic Energy, Government of India.

(*xv*) Necessary approval under the Forest (Conservation) Act, 1980 and the Wildlife (Protection) Act, 1972 will be obtained, when applicable.

(*xvi*) A committee will be set up by the Department of Atomic Energy consisting of Additional Secretary, Department of Atomic Energy, Additional Secretary, Ministry of Environment and Forests, Project Director, Kudankulam Atomic Power Project, representative of AERB, Director, NEERI, representative of the Government of Tamil Nadu and two prominent public persons for review of the rehabilitation programmes, environmental protection measures and public awareness concerning the project.

(*xvii*) A detailed rehabilitation plan should be prepared covering the affected persons within a radius of 2 km exclusion zone. It will also be necessary to provide for some package of benefits for the people residing in the sterilised zone as there will be some restriction on the activities of this area. These should be submitted to this Ministry for review after examination by the Committee.

3. There should be an environmental cell with suitable personnel and a laboratory in the project.

4. Adequate financial provisions should be made for implementation of the above conditions.

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5. Conditions may be varied or new conditions imposed in the interest of environmental protection.

6. The stipulations will be implemented among others, under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986."

147. MoEF has a duty to see that the abovementioned conditions are fully complied with; which has also dealt with the exemption from the ban which was at that point of time only a norm prohibiting any construction within 500 m of the HTL. Permission granted also dealt with the temperature of the condenser and also with radioactive rays, solids and semi-solids generated during various operations including proper containment to fix the radioactivity as per the standards/guidelines prescribed by ICRB/AERB. Condition for periodical environmental surveillance was also stipulated so also the necessity of educating the people, monitoring the health and also the provisions for on-site and off-site disaster management plan and the need for framing a detailed rehabilitation plan. After the receipt of the nuclear clearance, the process of land acquisition was initiated and the land acquisition was completed during the period 1991-1993. Project activities like construction of boundary was initiated and completed during the said period.

148. AERB on 10-11-1989 granted clearance for locating nuclear power plant at Kudankulam after evaluation of the site by the Site Selection Committee of DAE with stipulations given in the annexure along with that letter. Following are the stipulations laid down by AERB:

1. Stipulations made by various State and Central authorities in giving clearance, should be met. In addition, plantation in the area under control of the project should be taken up along with site development. Studies to assess thermal pollution by making appropriate models should be carried out.

2. An exclusion zone of 1.6 km radius from the NPP stack should be established with access control. The dose limits specified by AERB will be complied with at this boundary.

3. The Board noted that Vairavikinaru quarry, Idinthikarai and Kudankulam settlements are beyond 2 km distance but within sterilised zone. Suitable legislative and administrative control measures should be taken through State authorities to prevent increase in population within the sterilised zone beyond natural growth. Also arrangements must be made to terminate the lease of the limestone quarry in 1994.

4. Facility to store at site adequate quantities of water should be provided to meet the make-up requirements of uninterrupted cooling

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of core and other safety related systems on a long-term basis. Facilities

engineered at site should meet the requirements even in the event of possible disruption of piped water supply from Pechiparai Dam. Groundwater sources in the site area should be surveyed and developed to serve as an additional back-up source to meet the safety needs of the plant, if water supply from Pechiparai Dam is interrupted due to any contingency.

5. The Board requires that the safety of the long pipeline from Pechiparai Dam should be ensured by appropriate security arrangement.

6. NPCIL should take up the water management schemes with the State Government so that water supply to NPP is ensured all the time. The intake well at the dam should be provided at lower elevation than the minimum draw-down level of the reservoir. The Board desires that the structure stability of Pechiparai Dam should be assessed taking into account the recent work of strengthening the dam.

7. In the unlikely event of the breach of the dam alternative sources of water supply should be available for the site within a reasonable time. NPCIL should conceptualise schemes at the detailed project report (DPR) stage for utilisation of the water from upper Kodiyar storage reservoir for such eventuality.

8. Site related design considerations such as seismic aspects, etc. are to be established before submission of PSAR. Design should be engineered to meet site related design basis events.

9. The Board noted that as per the estimate of Health Physics Division, maximum flood level (MFL) should be +7.5 m after considering a return period of 1000 years for the maximum storm. This was reviewed against the estimated figure of 5.9 m given by CWPRS. The Board suggested that MFL must be re-evaluated by CWPRS conforming with the requirements of IAEA Safety Guide 50-SG-S10B on "Flooding on Coastal Sites". The revised report of CWPRS should be submitted to the Design Safety Committee.

10. Bore-hole investigations are to be carried out at the proposed location of various buildings and structures. The report should be forwarded to design group for taking into account at the time of actual design.

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11. Radiological impact should be assessed with proper source terms, consideration of topography and relevant dispersion characteristics of the site. Dose limits prescribed should be met at a distance of 1.6 km by incorporating design features in the plant. The radioactivity releases should be maintained in line with ALARA principle.

12. The typical radioactivity emission rates used in evaluation of the site should be compared with the releases from similar reactors and should be suitably adjusted taking into consideration acceptable failed fuel rates during evaluation by the Design Safety Committee.

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13. The Board desires that the adequacy of stack height of 100 m should be confirmed by NPC at the design stage, specifically in view of the change in the ground level of about 40 m on the north side of the plant.

14. Environmental survey laboratory should be set up at site and instruments are to be installed at site to collect meteorological data and background radiation.

15. Two independent reliable sources of start-up power connected to two points in the electrical network located in different regions of the grid should be made available. Availability of a dedicated source of reliable start-up power should be examined.

16. Power evacuation studies particularly that influence the plant-grid interaction should be pursued. Feasibility of operation on islanding mode may be studied in collaboration with CEA.

17. Studies on biofouling and jelly fish, etc. that may affect the water supply should be taken up.

18. Studies on accretion/erosion rate around the plant site should be carried out. If required, proper protection should be provided.

19. At least two evacuation routes from plant site during an emergency should be provided.

20. The Board recommends that NPCIL shall consider the possibility of providing an additional facility for spent fuel storage in future (away from reactor storage, AFR). The site for this should be reserved after considering the transportation and handling requirement of spent fuel.

21. The over dimension consignment (ODC) Committee of NPCIL should evaluate suitability of transportation of ODC at design stage.

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22. Analysis for the quality of construction water is to be carried out.

23. This approval is given only for the location of two units of VVER of 1000 MWe capacity each at the proposed site. Other detailed investigations are necessary and NPCIL will have to apply and obtain permission of AERB before construction at the site begins.

Coastal Regulation Zone (CRZ)

149. India is a gifted country which has coastal seas, bays, estuaries, creeks, rivers, backwaters. Critical importance of sea coast in a country like India need not be overemphasised, the protection of the same calls for scientific care and diligence and following tsunami, cyclone, earthquake, etc., the protection of the sea coast has assumed added importance.

150. MoEF in exercise of powers conferred under Sections 3(1) and 3 (2)(*v*) of the Environment (Protection) Act, 1986 and Rule 5(3)(*d*) of the Environment (Protection) Rules, 1986 issued a Notification dated 19 -2-1991 declaring coastal stretches as coastal stretches of seas, backwaters, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 m from HTL and the land between the low tide line (LTL) and HTL are called coastal regulation zone and regulating activities in CRZ,

both prohibited and permitted activities. However, it did not prohibit the project already in operation and granted clearance prior to the date of the issue of notification. Later, by an amendment dated 12-4-2001 S.O. 329(C) amended Para 2 on "prohibited activities" and the Notification dated 19-2-1991 by substituting clause (1) to the following effect:

"**2. (1)** setting up of new industries and expansion of existing industries, except (*a*) those directly related to water front or directly needing foreshore facilities and (*b*) projects of Department of Atomic Energy;"

151. We find with regard to the location of KKNPP within the prescribed 500 m within CRZ an exemption had already been granted as per the then existing norms even prior to 1991 by the then Prime Minister of India by the communication dated 19-4-1989. Over and above, Para 2(1) of the 1991 CRZ Notification as amended by the Notification dated 12-4-2011, exempted projects of the Department of Atomic Energy. A cumulative reading of the permission dated 19-4-

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1989 accorded by the then existing norms read with Para 2(1) of the 1991 Notification, as amended by the Notification dated 12-4-2011, we are of the view that KKNPP Units 1 and 2 have not violated the 1991 CRZ Notification.

EIA Notification 1994 and environmental clearance

152. MoEF in exercise of powers conferred under sub-section (1) and clause (*v*) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with clause (*d*) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, issued a Notification dated 27-1-1994 directing that on and from the date of publication of that notification in the Official Gazette expansion or modernisation of any activity (without pollution load is to exceed the existing one) or a new project listed in Schedule 1 of that Notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the notification. The Notification contains an explanatory note regarding the impact of the assessment Notification dated 27-1-1994.

153. Relevant portions of the 1994 Notification are given below for easy reference:

> "**1. *Expansion and modernisation of existing projects***.—A project proponent is required to seek environmental clearance for a proposed expansion/modernisation activity if the resultant pollution load is to exceed the existing levels. The words 'pollution load' will in this context cover emission, liquid effluents and solid or semi-solid wastes generated. A project proponent may approach the State Pollution Control Board (SPCB) concerned for certifying whether the proposed modernisation/expansion activity as listed in Schedule I to the notification is likely to exceed the existing pollution load or not. If it is certified that no increase is likely to occur in the existing pollution load due to the proposed expansion or modernisation, the project proponent will not be required to seek environmental clearance, but a copy of such certificate issued by the SPCB will have to be submitted to the Impact Assessment Agency (IAA) for

information. The IAA will, however, reserve the right to review such cases in the public interest if material facts justifying the need for such review come to light."

154. The note also deals with exemption for project already initiated under Explanatory Note 8 which reads as follows:

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"**8.** ***Exemption for projects already initiated***.—For projects listed in Schedule I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Boards have been obtained before 27-1-1994, a project proponent will not be required to seek environmental clearance from the IAA. However, those units who have not as yet commenced production will inform the IAA."

155. Schedule 1 of the notification refers to nuclear power project and related projects such as heavy water plants, nuclear fuel complex, rare earths, etc. and the same also deals with thermal power plant as well.

156. The Central Government, later in exercise of the powers conferred under Section 23 of the Environment (Protection) Act, 1986 issued a Notification S.O. 318(E) dated 10-4-1997, whereby it inter alia introduced Schedule IV into the 1994 Notification prescribing the procedure for public hearing. MoEF later issued Circular dated 23-7-1998 after reviewing the progress of cases which were accorded environmental clearance prior to 27-1-1994 Notification and it had been observed that a large number of projects had not commenced constructions or other operations due to various reasons like non-availability of financial resources, non-availability of forestry clearance, inter-State water disputes and non-availability of essential infrastructure like land, electricity, road, etc. Further, it was also noticed that certain projects which were environmentally appraised even as early as 1980 had not commenced construction activities. MoEF felt there might have been significant changes during those years which would have implications to the environment and ecology of the area. MoEF issued the above circular pointing out that the environment clearance issued prior to 1994 would not be valid in the cases, where work did not commence before 1-8-1998. Further, it was also clarified that in all such cases fresh environmental clearance would be required, if those come in the 29 categories listed in the EIA Notification. Further it was also clarified that projects which were not listed in Schedule 1 in the EIA Notification would not require environmental clearance.

157. MoEF later inspected the site of the plant on 31-8-2001 and found that land acquisition had been completed and the construction work on various components such as township, Environmental and Health Research Centre and RO plant was in progress. Further, it was noticed that afforestation programme was undertaken by M.S. Swaminathan Research Foundation and that till August 2001, Rs 377.30 crores were spent for KKNPP on various activities.

158. MoEF, noticing the above facts, vide its Letter dated 6-9-2001 clarified that environmental clearance granted on 9-5-1989 stands valid

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and that there is no need to conduct public hearing and seek fresh environmental

clearance. A chart giving the details of land acquisition and compensation amount paid reads as follows:

Land acquisition details of Kknpp

Sl. No.	*Name of village*	*Private land (in hectares)*	*Puramboke land (in hectares)*	*Total (in hectares)*
For plant site				
1.	Kudankulam	862.775	112.945	975.720
2.	Irukkundarai	—	2.675	2.675
3.	Vijayapathi	66.750	1.815	68.565
	Sub-total	*929.525*	*117.435*	*1046.960*
For township				
1.	Chettikulam	153.905	24.300	178.205
	Total land acquired			1225.165 h
	Land and acquisition completed and awards pronounced			1991-1993
	Number of displaced persons			Nil
	Type of acquired land			Dry

Compensation details

Sl. No.	*Village*	*Amount paid (Rs)*
1.	Kudankulam	62,02,332.00
2.	Irukkundarai	31,09,727.00
3.	Vijayapathi	6,09,834.00
	Total	*99,21,893.00*

159. We are of the view that the EIA Notification of 1994 would not apply to KKNPP Units 1 and 2 for which environmental clearance was granted on 19-5-1989. The 1994 Notification, in our view, would be operative only prospectively except in the case of expansion and

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modernisation of any activity (if the pollution load is to exceed the existing one) as on the date of publication of that notification or a new project listed in Schedule 1 for which environmental clearance is necessary as per the Notification dated 27-1-1994. So far as KKNPP Units 1 and 2 are concerned, they had the relevant clearance from the State Government including the NOC from the State Pollution Control Board. The facts stated above would indicate that the land acquisition process for the plant site and township had commenced during the year 1990-1991 and awards were pronounced during the period 1991-1993

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by the Land Acquisition Officer and Special Tahsildars (Land Acquisition), Government of Tamil Nadu. Annexure R-15 produced along with the affidavit filed by MoEF dated 18-10-2012 indicates the details of total land acquired, the awards pronounced and the details of the compensation paid. Further site surveys, infrastructure design, construction of boundary wall, roads and some buildings, etc. had been completed between 1989 to 1994. The Committee on Conservation of Seashore of the Government of Tamil Nadu had also granted clearance on 25-2-1988 and TNSEC had also granted clearance on 15-12-1988, modified on 13-2-1989. The above facts clearly indicate that the EIA Notification dated 27-1-1994 would not apply to KKNPP Units 1 and 2 since these units stood exempted from the notification and Explanatory Note 8 to the notification and also the Circular issued by MoEF on 23-7-1998 make it more explicit.

160. We may now examine whether there has been any expansion or modernisation of Units 1 and 2 resulting in increase in pollution loads. Plant capacity, we have noticed, always remained 1000 MWs × 2, and the plant model V-412 remained to be as envisaged in the 1988 agreement and the 1998 supplementary agreement of 1988. Further, for the purpose of cooling the steam generated in the steam generator, sea water is required which goes through the steam turbine which runs the electrical generator to produce electricity. Sea water consumption is 2,40,000 m3/Hr and the water is to be drawn from the sea and pass through the condenser for both Units 1 and 2 and once the cooling process is over, it is to be released to the sea, a process, which has undergone no change from what was envisaged before obtaining clearance from MoEF in 9-5-1989 till date and hence we find no necessity for a fresh clearance.

Desalination plant

161. We may now examine whether prior environmental clearance is

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a prerequisite for the establishment of a desalination plant in terms of the EIA Notification dated 27-1-1994 or in terms of the subsequent Notification dated 14-9-2006 which superseded the Notification dated 27-1-1994. Further, we may also examine whether establishment of desalination plant is permissible in CRZ.

162. We have already indicated that prior environmental clearance is required only for those activities which are listed in Schedule 1 to the EIA Notification dated 27-1-1994 or the subsequent Notification dated 14-9-2006 which superseded the earlier Notification dated 27-1-1994. Desalination plant is not seen listed under the abovementioned notifications. The decision to establish desalination plant for the purpose of domestic water requirement was taken by NPCIL in the year 2004. Earlier when environmental clearance was granted on 9-5-1989 the proposal was to take fresh water from Pachiparai Dam, situated at about 65 km away from the plant site. The same had to be given up in view of the involvement of forest land as well as the apprehensions expressed by the local villagers that the withdrawal of water from the dam would deplete the scarce natural resource, especially at the time of drought.

163. Desalination plant functions on distillation (mechanical vapour compression) principle. Sea water would be drawn and would be fed to the plant which consists of four streams each having a capacity of 106.66 cubic mph. Cumulative feed flow of all three operating streams is 670 cubic mph and cumulative reject flow is 350 cubic mph, balance 320 cubic mph is purified water. Facts would indicate that there is no generation of air emission, solid waste and effluent are flowing from the desalination process except rejects (which is also called brine), which is nothing but concentrated sea water which remains after desalination process and does not contain external elements. The rejects will have concentration of 69,000 parts per million which would be mixed with the sea water 1,20,000 cubic mph and discharged through the outlet channel into the sea which would give dilution 343 times and reduce the reject to the ambient sea water concentration of 35,000 parts per million. Experts say the process would not cause any increase in pollution load due to desalination.

164. The CRZ Notification of 1991, though prohibited, the setting up of new industries as well as expansion within CRZ, it had permitted the laying of pipeline and conveying system. The 1991 Notification was

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amended on 21-5-2002 and it was provided that the desalination plants could be established in the notified special economic zone, for non-polluting industries within CRZ. On 19-10-2002, it was again amended and it was provided that the desalination plants could be established within CRZ except CRZ — 1(*i*) i.e. eco-sensitive areas viz. mangroves, sand dunes, reserve forests, etc. MoEF later issued another Notification dated 6-1-2011 superseding the 1991 Notification, as per that Para 3(*i*)(*c*) and as per Para 4(*ii*)(*h*) (of the 6-1-2011 Notification) makes provisions for the establishment of desalination plants within CRZ area except CRZ–1(*i*).

165. NPCIL informed TNPCB for the inclusion of desalination facility which was not earlier included in the original application for "consent to operate". TNPCB considered the request and accorded "consent to operate" on 20-8-2012 which included desalination plant. The establishment of desalination plant, therefore, would not require any fresh environmental clearance, especially when the same has not been included in Schedule 1 to the EIA Notification dated 27-1-1994 or in the subsequent Notifications dated 14-9-2006, 6-1-2011, etc. except within CRZ – 1(*i*).

Change in temperature limit

166. We may now examine whether, in the light of Para 5 of the clearance dated 9-5-1989 and the amendment to Rule 84 of the Environment (Protection) Rules, 1986 by the Notification dated 22-12-1988, the stipulation of 5°C contained in the clearance can be varied. The Environment (Protection) Rules, 1986 was amended vide Notification dated 22-12-1998 as the Environment (Protection) (Second Amendment) Rules, 1998.

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167. Rule 84 deals with the temperature limit for discharge of condenser cooling water which reads as follows:

> "**84. *Temperature limit for discharge of condenser cooling water from thermal power plant*.—**
>
> A. ***New thermal power plants commissioned after 1-6-1999*.**—New thermal power plants, which will be using water from rivers/lakes/reservoirs, shall install cooling towers irrespective of location and capacity. For thermal power plants which will use sea water for cooling purposes, the condition below will apply.
>
> B. ***New projects in coastal areas using sea water*.**—The thermal power plants using sea water should adopt suitable

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system to reduce water temperature at the final discharge point so that the resultant rise in the temperature of receiving water does not exceed 7°C over and above the ambient temperature of the receiving water bodies.

C. ***Existing thermal power plants***.—Rise in temperature of condenser cooling water from inlet to the outlet of condenser shall not be more than 10°C.

D. ***Guidelines for discharge point***.—(1) The discharge point shall preferably be located at the bottom of the water body at midstream for proper dispersion of thermal discharge.

(2) In case of discharge of cooling water into sea, proper marine outfall shall be designed to achieve the prescribed standards. The point of discharge may be selected in consultation with State authorities/NIO concerned.

(3) No cooling water discharge shall be permitted in estuaries or near ecologically sensitive areas such as mangroves, coral reefs/spawning and breeding grounds of aquatic flora and fauna."

168. Rule 84, of course, deals with the thermal power plant, which states that the resultant rise in temperature of receiving water shall not exceed 7°C over and above the ambient temperature of the receiving water body. Facts indicate that the limit prescribed under Rule 84 will equally be applicable to nuclear power plant as well since the technology for condenser cooling in both, thermal as well as nuclear power plant is the same. In both systems condenser is cooled by using water, therefore, the limit on temperature of discharged water will have to be the same.

169. Let us also examine whether there will be any impact on the marine ecosystem due to +7°C condenser cooling water (CCW), for which detailed study was conducted by the Institute of Ocean Management, Anna University, which has submitted its report in July 2008 and Engineers India Ltd. along with CHFRI submitted its report in August 2011. Environmental impact was analysed in desalination and the experts are unanimous in their views, that there would be no impact on the marine ecosystem. Reports were also considered by MoEF through EAC before giving environmental clearance for Units 3 to 6 on 23-9-2008 and 31-12-2009 and the CRZ clearance on 25-7-2012. TNPCB has also accorded consent to operate on 28-8-2012 for KKNPP Units 1 and 2 by stipulating the condenser cooling water discharge limit as 7°C as per the amended Environment (Protection) Rules. Therefore, the contention raised by the appellants that the rise in

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temperature of receiving water due to rise in temperature of condenser cooling water would affect marine ecosystem, cannot be sustained.

170. The appellants have also raised a contention under the EIA Notification of 1994 that those projects where "all clearances" including "NOC" from State "PCBs" had not been obtained required fresh environmental clearance from MoEF in accordance with the said notification. Reference was made to Explanation 8 of the EIA Notification of 1994. Further, it was pointed out that all projects having environmental implications "required previous consent to establish" and "to operate" under the Water Act, 1974 and the Air Act, 1981 from the State Pollution Control Board and unless those consents are existing, the plant cannot be said to have "all clearances from the State PCBs as required by Explanation 8 of the EIA Notification of 1994".

171. We are of the view that the "environmental clearance" or "no-objection certificate" cannot be equated to "consent to establish" under Section 25 of the Air Act and "consent to operate" under Section 21 of the Water Act, which were granted on 25-2-2004 and 28-8-2012, respectively. NPCIL had undertaken various activities with respect to KKNPP subsequent to the environment clearance granted by TNSEC on 26 -12-1988, subsequently modified on 13-2-1989.

172. TNSEC on 15-12-1988 had already cleared the project, which tantamounts to no-objection certificate (NOC). Only after clearance or NOC, the question of "establishing" or "operating" a plant arises. Environmental clearance or NOC was granted to KKNPP Units 1 and 2 as early as on 26-12-1988 though TNPCB had granted "consent to establish" under Section 25 of the Air Act on 25-2-2004 and "consent to operate" under the Water Act on 28-8-2012. The Explanatory Note 8 to the Environment Notification dated 27-1-1994 speaks of exemption for projects already initiated, that is, land has been acquired and clearance of the State Government including NOC from the Pollution Control Board had been obtained before 27-1-1994, for which no fresh environmental clearance would be required from the Impact Assessment Agency (IAA). KKNPP Units 1 and 2 are, therefore, entitled to get the benefit of the Explanatory Note 8 to the EIA Notification dated 27-1-1994.

173. We also notice that there has been no expansion or modernisation of Units 1 and 2, which has resulted in increase of pollution load. Plant capacity remained the same i.e. 1000 MWs X2, till date and there is no substantial difference in plant model and the specifications envisaged in the 1988 agreement and the 1998 supplement agreement. Plant model remains as V-412, consequently the 1994 EIA Notification will not apply qua KKNPP Units 1 and 2.

174. NPCIL, as part of the continuous process to ensure safety of

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environment made a rapid environmental impact assessment (REIA) of KKNPP Units 1 and 2 in the year 2001. The National Environmental Engineering Research Institute (NEERI) was retained by NPCIL for conducting their assessment. The REIA Report of NEERI examined the baseline data collected during summer season 2001 within the impact zone

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for air, noise, water, land, biological and socio-economic environment including data on radiological parameters which has formed the basis for predicting, evaluating the potential impact due to proposed two units of KKNPP at Kudankulam. NEERI submitted its report in May 2002. In the year 2003 there was yet another comprehensive EIA by NEERI of KKNPP Units 1 and 2 which took into account the entire season i.e. 12 months. Assessments were made as part of the continuous process to monitor the safety of the environment as well as to establish an existing baseline status with respect to various environmental points like air, noise, water, land, biological and socio-economic for identifying, predicting and evaluating the environmental potential impact as also to formulate an effective environmental management plan (EMP). Report was submitted in January 2003 which was later implemented under the expert guidance of M.S. Swaminathan Research Foundation.

Environmental clearance for KKNPP Units 3 to 6

175. NPCIL consent letter dated 18-2-2007, for grant of environmental clearance for expansion of the then existing nuclear project (2 × 1000 MW, by adding 2 × 1000 MW Units 3 and 4), pointed out that the land acquired for locating the proposed units was already available within the NPP complex and no additional land would be required for expansion of the project. Further, it was stated that water for condenser cooling system would be drawn from the sea and sweet water requirement would be met from the desalination plant. Further, it was pointed out that no forest land was involved in the project. The Gulf of Mannar Marine National Park is about 87 km from the site, though the Gulf of Mannar Biosphere Reserve boundary is at a distance of about 20-50 m. Further, it was pointed out that no displacement of population was envisaged. Project, it was stated, was to be located in CRZ-III and that exemption from 500 m norm in respect of CRZ for Units 1 and 2 was obtained from the Government of India as far back as in 1989. Further, it was also stated that public consultation was held on 2-6-2007 and that the total cost of the project would be Rs 14,000

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crores which included Rs 307.50 crores for environmental protection measures.

176. MoEF considered the abovementioned proposal in accordance with Para 12 of the EIA Notification, 2006 read with Para 2.2 sub-clause 2.2.1(*i*)(*a*) of the Circular dated 13-10-2006 and MoEF accorded clearance vide communication dated 23-9-2008 under the provisions of the EIA Notification of 2006 subject to the implementation of several conditions, which read as follows:

(*i*) Online continuous monitoring of the temperature of the discharged cooling water shall be carried out at the discharged point. It shall be ensured that the temperature differential of the discharged water with respect to the receiving water does not exceed 7°C at any given point of time.

(*ii*) Necessary prior clearance under the provisions of the CRZ Notification, 1991 for the activities to be located in CRZ shall be obtained from the competent authority.

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(*iii*) No additional land shall be acquired for any activity/facility of project.

(*iv*) AERB clearance for the site shall be obtained before starting any construction work and a copy of the same shall be provided to the Ministry of Environment and Forests.

(*v*) A scheme for rainwater harvesting shall be prepared in consultation with an expert agency/State Ground Water Board and details furnished within 3 months of the issue of the environment clearance letter.

(*vi*) Greenbelt shall be developed all around the project boundary covering an area of 180 ha preferably with local species.

(*vii*) Noise levels shall be limited to 75dBA. For people working in the high noise area, requisite personal protective equipment like earplugs/ear muffs, etc. shall be provided.

(*viii*) Regular monitoring of conventional gaseous pollutants, radioactive pollutants in the air as well in the discharged water shall be monitored regularly as per the AERB standards.

(*ix*) Regular monitoring of ambient air quality shall be carried out in and around the power plant and records maintained. The location of the monitoring stations and frequency of monitoring shall be decided in consultation with SPCB. Periodic reports shall be

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submitted to the regional office of this Ministry. Besides air quality, water, food samples and soil shall also be monitored regularly for radioactive levels in the surrounding areas and records maintained.

(*x*) A disaster management plan and emergency preparedness plan shall be prepared and put in place as per the norms of AERB. Regular mock drills shall be undertaken and based on the same, any modification required, if any, shall also be incorporated.

(*xi*) The radioactive waste shall be managed as per the norms prescribed by AERB.

(*xii*) The non-radioactive waste water generated from the plant premises will be suitably treated in STP and the treated effluents shall be recycled and reused within the plant premises for greenbelt, etc.

(*xiii*) The radioactive liquid waste emanating from the plant will be treated and managed as per the guidelines of AERB/ICRD in this regard.

(*xiv*) Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche, etc. The housing may be in the form of temporary structures to be removed after the completion of the project.

(*xv*) The project proponent shall advertise in at least two local newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned within seven days from the date of this clearance letter, informing that

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the project has been accorded environmental clearance and copies of clearance letter are available with the State Pollution Control Board/Committee and may also be seen at the website of the Ministry of Environment and Forests at http://envfor.nic.in

(*xvi*) A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environment safeguards.

(*xvii*) Half-yearly report on the status of implementation of the stipulated conditions and environmental safeguards shall be submitted to this Ministry/regional office/CPCB/SPCB.

(*xviii*) Regional office of the Ministry of Environment and Forests located at Bangalore will monitor the implementation of the

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stipulated conditions. A complete set of documents including the environmental impact assessment report and the environment management plan along with the additional information submitted from time to time shall be forwarded to the regional office for their use during monitoring.

(*xix*) Separate funds shall be allocated for implementation of environmental protection measures along with itemwise break-up. These costs shall be included as part of the project cost.

(*xx*) Full cooperation shall be extended to the scientists/officers from the Ministry/regional office of the Ministry at Chandigarh/CPCB/SPCB who would be monitoring the compliance with environmental status."

177. The notification also stated that the environmental clearance would be valid for a period of five years to start the operation of the power plant and that in case of any deviation or alteration in the project proposed and already submitted to MoEF for clearance, a fresh reference should be made to MoEF to assess the adequacy of the conditions imposed and to add additional protection measures required, if any. Further, it was also pointed out that the above stipulations would be in force amongst others under the Water Act, 1974, the Air Act, 1981 and the Environment (Protection) Act, 1986 and the Rules thereunder, the Hazardous Wastes (Management and Handling) Rules, 1989 and its Rules, the Public Liability Insurance Act, 1991 and its amendment.

178. NPCIL submitted yet another application dated 19-11-2009 for environmental clearance for KKNPP expansion Units 5 and 6 (2 × 1000 MW). Environmental clearance was granted by MoEF vide its communication dated 31-12-2009 incorporating all the conditions which were stipulated in respect of Units 3 and 4 in the Notification dated 23-9-2008 and also with additional conditions which read as under:

"(*i*) Environmental clearance is subject to obtaining prior clearance from wildlife angle as applicable due to proximity of Gulf of Mannar Biosphere Reserve.

(*ii*) The grant of environmental clearance does not necessarily implies that wildlife clearance shall be granted to the project and that their proposal for wildlife clearance will be considered by the respective

authorities on their merits and decision taken. The investment made in

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the project, if any, based on environmental clearance so granted, in anticipation of the clearance from wildlife angle shall be entirely at the cost and risk of the project proponent and the Ministry of Environment and Forests shall not be responsible in this regard in any manner.

(*iii*) Environmental clearance is subject to final order of the Hon'ble Supreme Court of India in *Goa Foundation* v. *Union of India* in Writ Petition (Civil) No. 460 of 2004, as may be applicable to this project.

(*iv*) First aid and sanitation arrangements shall be made for the drivers and the contract workers during construction phase.

(*v*) A sewage treatment plant shall be provided and the treated sewage conforming to the prescribed standards shall be used for raising green belt/plantation.

(*vi*) The proponent shall upload the status of compliance with the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the regional office of MoEF, the respective zonal office of CPCB and SPCB. The criteria pollutant levels (stack and ambient levels) indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.

(*vii*) The project proponent shall also submit six-monthly reports on the status of compliance with the stipulated EC conditions including results of monitored data (both in hard copies as well by email) to the respective regional office of MoEF, the respective zonal office of CPCB and SPCB.

(*viii*) A copy of the clearance letter shall be sent by the proponent to the Panchayat concerned, Zila Parishad/Municipal Corporation, urban local body and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the company by the proponent.

(*ix*) The environment statement for each financial year ending 31st March in Form V as is mandated to be submitted by the project proponent to the State Pollution Control Board concerned as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance with the EC conditions and shall also be sent to the respective regional offices of MoEF by email.

This issues with the approval of the competent authority."

179. As provided under the EIA 2006 Notification, before applying for environmental clearance for Units 3 to 6 a comprehensive EIA study

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was conducted for Units 3 to 6 which included the impact of Units 1 and 2 aspect as a baseline for computing additional impacts of Units 3 to 6. Concern of the public regarding safety, livelihood, radiation, etc. had been addressed during

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the public hearing on Units 3 to 6 held on 2-6-2007. Issues raised in the public hearing were:

1. Use of water from Pachiparai Dam;
2. Effect of temperature of discharged water on marine life;
3. Radiation emission;
4. Solid waste and fuel management;
5. Welfare activities of the nearby villagers;
6. Compliance with MoEF, IEA and AERB Guidelines;
7. Environmental impact and monitoring; and
8. Site location criteria.

180. It was discussed in the meeting that sea water intake structure would be located at a depth of 10 m from the main sea level (MSL) and at a distance of 1.2 km offshore from the shoreline. The temperature differential of cooling water at the discharge point would be limited to 7°C with respect to the ambient temperature. Discharge of all units, including the existing two units will be let off into a common discharge channel parallel to the shore bound and release at the two extreme ends of the channel. Gates will be provided on east and west side of the channel, which will be operated depending upon the ocean current direction in different season. The modelling was done for all the units of 1000 MW each taking into consideration the futuristic plan of expansion at the proposed site. The impact zone was shown to be 5 km.

181. The Environmental Appraisal Committee (EAC) after holding the public meeting on 2-6-2007 again met on 22-8-2008 and made its recommendations for environmental clearance for Units 3 and 4 subject to their obtaining CRZ clearance. We have already indicated that the proposal of EAC was approved by MoEF on 23-9-2008 with respect to Units 3 and 4. Later, after getting the administrative approval from the competent authority for Units 5 and 6, the same was also reported by NPCIL to MoEF and MoEF vide its letter accorded clearance on 31-12-2009 for Units 5 and 6 as well.

182. The appellants, therefore, cannot contend that the procedure laid down under the 1994 and 2006 Notifications had not been followed. In our view, the EIA for the expansion of KKNPP i.e. for setting

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up of Units 3 to 6 included the environmental impact of Units 1 and 2 and the cumulative effect of all the six units definitely formed the baseline for the clearance granted by the MoEF on 23-9-2008 and 31-12-2009. The concern of the public regarding safety, livelihood, radiation, impact on marine life, rehabilitation, impact on the seashore, etc. were also considered and following that necessary clearance was granted.

183. KKNPP Units 3 to 6, after having got environmental clearance from MoEF in September 2008 and December 2009 entrusted the task of updation of EIA study to M/s Engineers India Ltd. (EIL), Gurgaon (a Government of India undertaking). EIL, accordingly carried out the study along with Central Marine Fisheries Research Institute (CMFRI) for the expansion of projects on

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air, water, land, noise, biological and socio-economic aspects within a radius of 10 km from the proposed location. Detailed study was conducted on the reactor system of KKNPP Units 3 to 6, impact on environment, existing environmental status, its prediction, and an environmental management plan report was submitted in August 2011. The report has also analysed the environmental impact on the marine ecosystem due to +7°C condenser cooling water (CCW) and concluded that it will have no impact on the marine ecosystem. EIA was considered by EAC, while granting CRZ clearance for the additional reactors 3 to 6 at KKNPP along with sea water intake and outfall facilities for cooling purpose. CRZ clearance was granted by MoEF on 25-7-2012 after following the procedure laid down in the CRZ Notification of 2011. TNPCB, as already indicated, has also accorded consent to operate vide proceeding dated 28-8-2012 incorporating stringent standard of 7°C over and above the ambient temperature of sea for the discharge of effluents, through the cooling water and trade effluent and included permission for discharge of effluents from desalination plant.

Sustainable development and impact on ecosystem

184. The Government of India, as already stated, constituted a fifteen-member expert group covering all fields, technical, scientific, environment, etc. to provide clarifications on the various issues raised by group of general public. Efforts were made by the group to have interaction with the agitators but met with little success. Group elaborately discussed apart from safety features of the plant, its ecological effects on environment and marine life and a report was submitted to the Government of India in December 2011. The

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Government of Tamil Nadu also appointed an Expert Committee headed by the former President of AEC Prof R. Srinivasan along with three other experts to review the safety features. There has been consensus among all the Expert Committees on safety and security of the plant as well as on the effect on marine ecology, high protection, impact on land, agriculture, livestock, food, impact on flora and fauna, biosphere, environmental clearance, CRZ clearance, fresh water supply, desalination plants, emergency preparedness, etc. Detailed studies have been conducted on various occasions of the effect of NPP on air, water, noise, land, environment and also on biological, marine and socio-economic environment; to allay the apprehension voiced by a section of the people and its worth.

185. The Royal Commission on Environmental Pollution (UK) in its very first report, 4 (1971) stated as follows:

> "The problem we face is how to strike a balance between the benefits of rising standard of living and its costs in terms of deteriorations of the physical environment and the quality of life. In the past, the danger of polluting the air, water and land was not fully recognised, but now there is no doubt that it is a matter of great concern."

The Royal Commission had said so in the year 1971.

186. The next year in 1972, the international community convened the United Nations Conference on Human Environment at Stockholm (Stockholm Conference) of which India is a signatory. The Stockholm Conference not only brought into focus the human rights approach to the problem of environmental protection but also recognised the linkage between the development and environment from which the concept of "sustainable development" has emerged. The Conference noticed that while man is both creature and moulder of this environment, rapid advances in science and technology had invested man with the potent power to transform his environment in countless ways and on an unprecedented scale. The benefits of development and opportunity to enhance quality of life, if wrongly or carelessly used, man could do incalculable harm to human beings and to the environment. The responsibility of the people to protect and improve the environment for the present and the future generations was also recognised.

187. Later, the Nairobi Conference and the 1982 Declaration

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restated the principles of the Stockholm Conference and highlighted the importance of intensifying the efforts at the global, regional and national levels to protect and improve environment. The United Nations General Assembly (UNGA) in October 1982 adopted "the World Charter for Nature" and laid down general principles of environmental protection, action plan and implementation of scheme which highlighted the conservation principles. New Delhi hosted the Delhi International Conference on Environmental Education, 1982 where the international community called for massive programme of environmental research and monitoring. The Conference suggested that environmental education should start from childhood and it should be both formal and informal.

188. The United Nations General Assembly vide Resolution No. 38/161, in the year 1983 suggested the creation of "the World Commission on Environment and Development" for suggesting and recommending legal principles based on the Stockholm Conference and the Nairobi Conference and many other then existing international conventions and General Assembly resolutions. The World Commission submitted its report in the year 1987 which indicated that politicians, industrial leaders and environmental groups around the world had endorsed "sustainable development" i.e. meeting the needs of the present without compromising the ability of future generations to meet their own needs. The United Nations convened a conference in the year 1983 at Vienna for protection of ozone layer which provided foundation for global multilateral undertakings to protect the environment and public health from the potential adverse effects of depletion of stratospheric ozone.

189. The United Nations Environment Programme (UNEP) convened a conference of plenipotentiaries in Montreal in the year 1987, called the Montreal Protocol, 1987, which highlighted the necessity of limiting and reducing the use of chlorofluorocarbons and other chemicals that deplete ozone. India has acceded to both the Vienna Convention, 1985 and the related Montreal Protocol, 1987, in the year 1992.

190. Following the Stockholm Conference the second landmark on environmental protection and development was "the United Nations Conference on Environment and Development (UNCED), 1992" (the Rio Summit). The Conference was held at Rio (Brazil) in the year 1992 which addressed the twin problems of environment and development.

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The Rio Declaration sets out general non-binding commands for "sustainable development" i.e. "human beings who are at the centre of sustainable development concerns have to exercise their right to healthy and productive life in harmony with nature". The Rio Conference also highlighted the principle of inter-generational equity. Principles like "precautionary principle" so as to prevent the environmental degradation and the principle of "polluter pays" i.e. "to bear the cost of pollution with due regard to public interest" were highlighted. The Conference resulted in conclusion of a treaty on climate change with a general recognition of the importance of curbing emission of greenhouse gases, another treaty on biodiversity aiming at the preservation of flora and fauna was also concluded. The Rio Conference also adopted Agenda 21. Section II of that Agenda deals with topics like protection of the atmosphere, land resources, deforestation, sustainable agriculture and rural development, conservation of biodiversity, protection of oceans, fresh water, toxic chemicals management, hazardous waste management, solid waste management and radioactive waste management.

191. An international instrument expressing international concern for the protection of global environment was the Convention on the Climate Change (UNFCCC), 1992. The Convention highlighted the necessity to reduce emissions of greenhouse gases believed to be contributing to global warming. Yet another convention was the Biodiversity Convention, 1992 which sought to ensure that animals, plants and microorganisms as well as genetic variety and ecosystem, water, land and air, in which they live are properly protected. It obligates the countries to promote the protection of ecosystems, natural habitat and the maintenance of viable populations of species in natural surroundings. Following the Rio Summit a special session of UNFA was held in June 1997 in New York to review the progress of the Rio Earth Summit called "the Earth Summit + 5" which adopted a comprehensive document titled "the Programme for Further Implementation of Agenda 21". The Conference noticed that since the Rio Conference, global environment had continued to deteriorate with rising level of polluting emissions, notably of greenhouse gases, toxic substances and waste volumes and at operational levels, including the lowest administrative levels.

192. The UN Millennium Declaration, 2000 articulated that prudence must be shown in the management of all living species and natural resources, based on the principle of "sustainable development" and that only then, can the immeasurable riches provided to us by the nature be preserved for posterity. Further, it was declared that current unsustainable pattern of production and consumption must be changed in the interest of our future welfare and that of our descendants.

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193. The United Nations General Assembly (UNGA) following the Rio Declaration and Agenda 21 created a Commission on Sustainable Development under the United Nations Economic and Social Council to ensure the effective implementation at the local, national, regional and international levels of what had been agreed at the Rio Conference, to ensure follow-up of the Rio Summit, to enhance adequate international, scientific and technological cooperation to catalyse inter-Governmental decision-making capacity to ensure regular and effective reporting on Agenda 21 and at the national, regional and global levels.

194. The Delhi Sustainable Development Summit (DSDS) held in February 2002 at New Delhi, examined and elaborated the dynamics of the concept of sustainable development, with a view to make recommendations for consideration at the World Summit on Sustainable Development to be held in Johannesburg. The Delhi Summit sought to focus on poverty alleviation as the overriding concern to achieve sustainable development.

195. The World Summit on Sustainable Development (Johannesburg Summit), 2002 convened under the auspices of the Commission of Sustainable Development recommended various steps for further implementation of the Rio Principles and Agenda 21. The Summit recognised that the reduction of poverty is the greatest global challenge facing the world, for which the World Solidarity Fund was required to be established to eradicate poverty and to promote social and human development in various developing countries. Further, the Conference also noticed that since oceans, seas, islands and coastal areas form an integrated and essential component of earth's ecosystem and are crucial for global food security and for sustaining economic prosperity and the well-being of many national economies, particularly, developing countries, it is necessary to ensure sustainable development of the oceans.

196. The United Nations Conference on Sustainable Development, Rio +20 took place in Rio de Janeiro in June 2012, which also took forward-looking decisions on a number of thematic areas including energy, food security, oceans, cities, etc. Conference also focused its attention on green economy in the context of sustainable development, poverty eradication and an institutional framework for sustainable development.

197. We have already found on facts that KKNPP has been set up and

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is made functional on the touchstone of sustainable development and its impact on ecology has been taken care of following all national and international environmental principles.

Public interest and human rights

198. We have to resolve the issue whether the establishment of NPP would have the effect of violating the right to life guaranteed under Article 21 to the persons who are residing in and around Kudankulam or by establishing the NPP, it will uphold the right to life in a larger sense. While balancing the benefit of establishing KKNPP Units 1 to 6, with right to life and property and the protection of environment including marine life, we have to strike a

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balance, since the production of nuclear energy is of extreme importance for the economic growth of our country, alleviate poverty, generate employment, etc. While setting up a project of this nature, we have to have an overall view of larger public interest rather than smaller violation of right to life guaranteed under Article 21 of the Constitution.

199. Problems highlighted, while setting up a nuclear plant, are not unique to this nation, because other countries are also grappling with those situations:

199.1. In *R.* v. *Inspectorate of Pollution, ex p Greenpeace Ltd.*[17], the Court of Appeal in England had occasion to examine the correctness of the decision taken by Her Majesty's Inspectorate of Pollution (HMIP) and the Ministry of Agriculture, Fisheries and Food (MAFF) for allowing testing of new thermal oxide reprocessing plant (THORP) at Sellafield, HMIP and MAFF had concluded that the radiological impact of emissions from THORP would be very small, a plea which was accepted by the Court.

199.2. In *R.* v. *Secy. of State for the Environment, ex p Greenpeace Ltd.*[18], the Greenpeace and Lancashire Country Council sought to quash the decision to grant authorisation for the disposal of radioactive waste from THORP. Overall, Potts, J. concluded that the Minister had acted correctly in considering first the human issues related to acceptability of risk and then examining the wider issue of justification as if they were relevant even though the Minister (incorrectly) believed that they were not relevant, they had, in fact, weighed the benefits and detriments and were entitled to reach the conclusion that balance came down on the side of justification.

199.3. In *R.* v. *Secy. of State for Environment, Food and Rural*

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Affairs, ex p Friends on the Earth Ltd.[19], the Court of Appeal in England had to consider the application of the principle of justification to the substantive decision in October 2001 with the proposed practice by British Nuclear Fuels Ltd. (BNFL) of manufacturing mixed oxide fuel (MOX) at Sellafield. The Government's stand was that the "economic benefits" were sufficient to justify "the very minor radiological detriments" which would result from the manufacture of MOX. The Court of Appeal accepted the stand of the Government.

199.4. In *R. (Marchiori)* v. *Environment Agency*[20], the Court of Appeal examined the validity of the authorisation granted by the environment agency for the discharge of liquid wastes from the Atomic Weapons Establishment (AWE) on the basis of that they could not be justified having regard to the humanitarian and international law objections to the use of nuclear weapons. The environment agency took the stand that the practice of designing, constructing, maintaining and dismantling nuclear weapons at AWE was justified in the light of the Government's defence policy. The Court of Appeal

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rejected the suggestion that the government decisions on matters such as the national nuclear deterrent should be subjected to review by the courts on merits.

199.5. However, in *R. (Greenpeace Ltd.)* v. *Secy. of State for Trade and Industry*[21], Sullivan, J. highlighted the importance of "public participation in decision-making and access to justice" in environmental matters and held that the Government was obliged to honour the promise that it had made of the fullest public consultation, even if it had made no such promise which was difficult to see how anything less could have been consistent with the obligations to provide opportunities for public participation accepted by the Government under the United Nations Economic Commission of Europe (UNECE).

199.6. In *S.* v. *France*[22], the Commission of Human Rights found that noise, night-time illumination of the power plant, nuclear risk and changes in the microclimate while interfering with the applicant's private life had to be weighed with the general interests of the community.

199.7. The United States Supreme Court in *Metropolitan Edison Co.* v. *People Against Nuclear Energy*[23] was called upon to determine whether psychological health damage flowing directly from the perceived risk of a nuclear accident, in the context of restarting the second reactor at Three Mile Island, following the accident affecting the

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other reactor fell within the scope of environmental impact assessment under the National Environmental Policy Act. The Court regarded the perceived risk of a nuclear accident as "a pervasive element of modern life" and held that such risk was not an effect on the physical environment.

199.8. In *Alberta Wilderness Assn.* v. *Express Pipelines Ltd.*[24], the Canadian Court held that no information about probable future effects of a project can ever be complete or exclude all possible future outcomes. This principle has been endorsed by the Federal Court of Appeal, Canada in *Inverhuron and District Ratepayers' Assn.* v. *Canada (Minister of the Environment)*[25] in a case involving a dry storage facility for used nuclear fuel.

200. Much hue and cry has been raised by some sections of the people about the possible impact of radiation from KKNPP Units 1 and 2, a point which has been addressed by AERB, NPCIL, MoEF and all the Expert Committees constituted to go into the impact and effect of radiation from the units not only on humans but also on ecology. The Experts Committees are of the unanimous opinion that there will not be any deleterious effects due to radiation from the operation of KKNPP, and that adequate safety measures have already been taken. We cannot forget that there are many potential areas

of radiation reflected in many uses of radioactive materials. Radioactive materials are used in hospitals, surgeries and so on. Mobile phone use, though minor, also causes radiation. In a report of the Department of Telecommunication "Mobile Communication — Radio Wave and Safety" released in October 2012, it has been stated that a human body is exposed to more electromagnetic field radiation in case of a call from mobile phone in comparison to the radiation from a mobile tower.

201. We have, therefore, to balance "economic scientific benefits" with that of "minor radiological detriments" on the touchstone of our national nuclear policy. Economic benefit, we have already indicated has to be viewed on a larger canvas which not only augment our economic growth but alleviate poverty and generate more employment. NPCIL, while setting up the NPP at Kudankulam, have satisfied the environmental principles like sustainable development, corporate social responsibility, precautionary principle, inter-/intra-generational equity and so on to implement our National Policy to develop, control and use of atomic energy for the welfare of the people and for economic growth of the country. Larger public interest of the community should give way

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to individual apprehension of violation of human rights and right to life guaranteed under Article 21.

202. Public money running into crores and crores of rupees have already been spent for the development, control and use of atomic energy for the welfare of the people and hence, we have to put up with such "minor inconveniences", "minor radiological detriments" and "minor environmental detriments" in our lives because the benefits we reap from KKNPP are enormous since nuclear energy remains as an important element in India's energy mix which can replace a significant part of fossil fuels like coal, gas oil, etc.

203. The necessity of establishing KKNPP at Kudankulam has elaborately been discussed in the earlier part of the judgment, hence is not repeated. Justification for establishing KKNPP at Kudankulam, therefore, has been vindicated and all safety and security measures have already been taken, and necessary permissions and clearances have been obtained from all statutory authorities. Apprehension expressed by some sections of the public that if the units are commissioned or put into operation, it will have far-reaching consequences, not only on the present generation, but also on the future generation, of the possible radioactive effects of the units, in our view has no basis. A few of them raised the apprehension that it might repeat accidents like the one that had happened at Three Mile Island, Chernobyl, Union Carbide and Fukushima, etc. Apprehension, however legitimate it may be, cannot override the justification of the project. Nobody on this earth can predict what would happen in future and to a larger extent we have to leave it to the destiny. But once the justification test is satisfied, the apprehension test is bound to fail. Apprehension is something we anticipate with anxiety or fear, a fearful anticipation, which may vary from person to person.

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204. Power generation through a nuclear plant set up after following all safety standards, rules and regulations, is for the welfare of the people and for the economic growth of the country, which is the object and purpose of the Atomic Energy Act. Nuclear energy assumes as an important element in India's energy mix for sustaining economic growth of natural and domestic use which in future has to replace a significant part of fossil fuel like coal, oil, gas, etc. Electricity is the heart and soul of modern life, a life meant not for the rich and famous alone but also for the poor and downtrodden. They should also have an

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adequate means of livelihood, job opportunities for which we have to set up industries and commercial undertakings in the public as well as private sector and also have to invite foreign investment. Generation of electricity is of extreme importance for their establishment and functioning and also for domestic consumption. Power generation with the traditional means, through hydro, thermal electric project, coal, etc. are not effective substitution to the power generation through nuclear plant. India has a mammoth population unlike developed countries, and the consumption of electricity in domestic, industries, agricultural sector, etc. is going up day by day. Most of the States are in the grip of power cut; day and night, for a number of hours, which has adverse effect on their economic and industrial growth. To sustain rapid economic growth, it is necessary to double the supply of energy. Energy tariff is also increasing, nuclear power in the long run will be much cheaper than other forms of energy.

205. This Court in *Chameli Singh* v. *State of U.P.*[26] held that in an organised society, the right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities like road, etc. so as to have easy access to his daily avocation.

206. Nuclear power plant is being established not to negate right to life but to protect the right to life guaranteed under Article 21 of the Constitution. The petitioner's contention that the establishment of nuclear power plant at Kudankulam will make an inroad into the right to live guaranteed under Article 21 of the Constitution, therefore has no basis. On the other hand, it will only protect the right to life guaranteed under Article 21 of the Constitution for achieving a larger public interest and will also achieve the object and purpose of the Atomic Energy Act.

Experts' views — Technical and Scientific

207. AEC, DAE, BARC, AERB, NPCIL, TNPCB, the expert bodies, are all unanimous in their opinions that adequate safety and security measures have already been taken at KKNPP which are to be given due weight that they deserve. Further, as already indicated, NPCIL Task Force Report on Security of all NPPs including KKNPP dated March 2011, 11-5-2011, AERB-EE

Expert Opinion on Design Committee Safety dated 31-8-2011, fifteen-

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Member Expert Team Committee Report (post-Fukushima) dated December 2011, Supplementary Report dated 31-2-2012 on the Grievances raised by some of the agitators, report submitted by Shri R. Srinivasan, Former President, Atomic Energy Commission appointed by the State of Tamil Nadu are all unanimous in their view on the safety and security of KKNPP.

208. MoEF, EAC, TNPCB, Report of IOM, Anna University dated July 2008 on Impact of NPP on Marine Ecosystem, Committee on Conservation of Seashore of the State of Tamil Nadu, Report of Engineers India Ltd. with CHFRI dated August 2011, NEERI dated May 2002 and January 2003 on the Impact on Air, Water, Land, Ecosystem, etc. are all unanimous that the radiation as well as the discharge of water from NPP to the seashore will not have serious impact on the marine ecology or on marine life.

209. A Constitution Bench of this Court in *University of Mysore* v. *C.D. Govinda Rao*[27], held that, normally, the court should be slow to interfere with the opinion expressed by the experts and it would normally be wise and safe for the courts to leave the decisions to experts who are more familiar with the problems which they face than the courts generally can be, which has been the consistent view taken by this Court. Reference may be made to the judgments of this Court in *State of Bihar* v. *Asis Kumar Mukherjee*[28], *Dalpat Abasaheb Solunke* v. *B.S. Mahajan*[29], *Central Areca Nut & Cocoa Mktg. & Processing Coop. Ltd.* v. *State of Karnataka*[30], *Dental Council of India* v. *Subharti K.K.B. Charitable Trust*[31], *Basavaiah* v. *H.L. Ramesh*[32] and *Avishek Goenka* v. *Union of India*[33]. In *Woon Tan Kan* v. *Asian Rare Earth Sdn. Bhd.*[34], the Supreme Court of Malaysia vide its judgment dated 23-12-1992 examined the effect of low-level radioactive waste on the health of the population. The Supreme Court upheld the plea of the company, placing reliance on the expert opinion expressed by the Atomic Energy Licensing Board (AELB) and took the view that since the company has been operating under the licence granted by AELB, an expert body, it will be taken that the expert body had the expertise to speak on the radiation level of the radioactive waste, on the health of the population.

210. We have noticed that, so far as this case is concerned, from the safety and security point of view of life and property, on environment and all that related aspects, all the expert bodies are unanimous in their opinion that KKNPP has fully satisfied all safety norms to safeguard the human life,

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property and environment which, we are sure, will allay the fears and apprehensions expressed by the people living in and around Kudankulam. The Court, in our view, cannot sit in judgment on the views expressed by the technical and scientific bodies in setting up of KKNPP Plant at Kudankulam and on its safety and security.

Conclusion

211. KKNPP has, therefore, been set up as part of India's national policy so as to develop, control and use of atomic energy for the welfare of the people of India. Policy-makers consider nuclear energy as an important element in India's energy mix for sustaining economic growth of natural and domestic use. For setting up the project, the project proponent has taken all safety requirements in site and off site and has followed the code of practices laid down by AERB, based on nationally and internationally recognised safety methods. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have become a central part of nuclear law. Adequate measures have, therefore, to be taken for storage of NSF at site, and also for the physical safety of stored NSF. Of the seventeen suggested safety measures, by AERB, LWR, twelve have already been implemented and the rest, in a phased manner have to be implemented which the experts say, are meant for extra security. DMP is already in place, so also the emergency preparedness plan, off site and on site and all programmes under CSR are progressing in the right direction with the cooperation and assistance of the District Administration.

212. NPCIL, has also received necessary environmental clearance from MoEF, TNPCB, etc. for Units 1 to 6. No violation of CRZ is also noticed. Desalination plant is also established after following rules and regulations and there is no violation of CRZ. Experts say that there will be no impact on the marine ecosystem due to discharge of +7°C CCW over and above the ambient temperature of the sea. Radiation impact on the ecosystem is also within the standard set by AERB, MoEF, EAC, Pollution Control Board, etc., so opined by the experts. In other words, all the expert teams are unanimous in their opinion of the safety and security of KKNPP both to life and property of the people and the environment which includes marine life. The Court has to respect national nuclear policy of the country reflected in the Atomic Energy Act and the same has to be given effect to for the welfare of the people and the country's economic growth and it is with these objectives in mind that KKNPP has been set up.

DIPAK MISRA, J. (*concurring*)— I have my respectful concurrence with the views and conclusions expressed by my respected learned Brother Radhakrishnan, J. on all aspects. However, I propose to add a few words in addition to what has been eruditely stated by my learned

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Brother.

Prologue

214. At the very inception, I may state that in the cases at hand, we are faced with a situation whether to interfere in the establishment, operation and functionalism of a nuclear plant coming up at Kudankulam and interdict its

operation because of numerous grounds assiduously urged in voluminous pleadings encompassing the broad canvas, namely, statutory violations of the entire gamut of environmental law, exhibition of nonchalant attitude towards public opinion, show of total disrespect towards nature's inconsistencies, keeping at bay the constant apprehension and threat of the known and the unknown, absolute contempt for predictable danger that has surfaced on certain parts of the globe and the unpredictable disaster that may be faced by the populace of the locality and, most importantly, the public safety in praesenti and in futuro, or take cognizance of the needs and necessities of the public at large, the concept of public policy and the scope of judicial review, the precautions already undertaken and further assured to be taken within a specific time span, the opinion of the experts, the impossible avoidance of certain facets of existence in today's world, the global phenomena of requirement of electricity as a source of energy and various innovative methods to meet the same, the safety measures carried out and the steps undertaken to manage the disaster in case it occurs and finally to march ahead with life allaying all apprehensions with a scientific mindset accepting the nature's unpredictability to survive on the planet earth on the bedrock of the doctrine — survival of the fittest.

The concern for safety under the Atomic Energy Act, 1948

215. Bearing in mind the broad scenario, few aspects are required to be harped upon. Independent India perceived the need and use of nuclear energy in this country. The Atomic Energy Act, 1948 conceived the constitution of the Atomic Energy Commission which came into being in 1954. After the repeal of the 1948 Act and coming into force of the Atomic Energy Act, 1962 (for brevity "the 1962 Act"), a larger field was covered. The 1962 Act was enacted to provide for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes and for matters connected therewith. The dictionary clause as contained in Section 2 takes into consideration many an aspect pertaining to equipment,

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substance, radiation and radioactive substance, etc.

216. Certain provisions of the 1962 Act may be usefully referred to:

216.1. Section 3 of the 1962 Act deals with general powers of the Central Government. Clause (*e*) of Section 3 reads as follows:

"**3. *General powers of the Central Government***.—Subject to the provisions of this Act, the Central Government shall have power—

* * *

(*e*) to provide for control over radioactive substances or radiation generating plant in order to—

(*i*) *prevent radiation hazards*;

(*ii*) *secure public safety* and safety of persons handling radioactive substances or radiation generating plant; and

(*iii*) ensure *safe disposal of radioactive wastes*;"

(emphasis supplied)

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216.2. Section 17 deals with special provisions for safety which reads as follows:

"**17. *Special provisions as to safety***.—(1) The Central Government may, as regards any class or description of premises or places, being premises, or places, in which radioactive substances are manufactured, produced, mined, treated, stored or used or any, radiation generating plant, equipment or appliance is used, make such provision by rules as appear to the Central Government to be necessary—

(*a*) *to prevent injury being caused to the health of persons employed at such premises or places or other persons either by radiations, or by the ingestion of any radioactive substance*;

(*b*) to secure *that any radioactive waste* products resulting from such manufacture, production, mining, treatment, storage, or use as aforesaid *are disposed of safely*;

(*c*) to prescribe qualifications of the persons for employment at such premises or places and the regulation of their hours of employment, minimum leave and periodical medical examination:

and the rules may, in particular and without prejudice to the generality of this sub-section, *provide for imposing requirements as to the erection or structural alterations of buildings or the carrying out of works*.

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(2) The Central Government may, as respects the *transport of any radioactive substance or any prescribed substance specified by an order issued under this Act as being dangerous to health, make such rules as appear to be necessary to prevent injury being caused by such transport to the health* of persons engaged therein and other persons.

(3) Rules made under this section may provide for imposing requirements, prohibitions and restrictions on employers, employed persons and other persons.

(4) Any person authorised by the Central Government under this section, may, on producing, if so required, a duly authenticated document showing his authority, enter at all reasonable hours any premises, or any vehicle, vessel or aircraft for the purpose of ascertaining whether there has been committed, or is being committed, in or in connection with the premises, vehicle, vessel, or aircraft, any contravention of the rules made under this section.

(5) In the event of any contravention of the rules made under this section, the Central *Government shall have the right to take such measures as it may deem necessary to prevent further injury to persons or damage to property arising from radiation or contamination by radioactive substances*, including, without prejudice to the generality of the foregoing provisions, and to the right to take further action for the enforcement of penalties under Section 24, the sealing of premises, vehicle, vessel, or aircraft, and the seizure of radioactive substances and contaminated equipment."

(emphasis added)

216.3. I have referred to the aforesaid provisions to highlight the emphasis laid on the public safety and safety of persons handling radioactive substances and to control the repercussions by the legislature.

217. Before I dwell upon in detail with regard to the necessity of safety, the measures taken and the constant vigil for future, it is apt to scan the anatomy of the Preamble, which has already been referred to. The Preamble can be segregated into three parts namely, (*i*) development, control and use of atomic energy, (*ii*) for the welfare of the people of India, and (*iii*) for other peaceful purposes. Thus, on one hand, the need was felt to get into the global arena for producing nuclear energy and, on the other, which is as important as the first one,

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for the welfare of the people.

218. The necessity to generate energy from various sources in India was and still is a felt necessity. It has been submitted by the learned counsel for the appellant with immense emphasis that apart from violation of the Environment (Protection) Act, 1986 and the notifications framed thereunder, the study would reflect that there would be multiple ecological problems and further the safety of the local people would be absolutely in peril. My learned Brother has already dealt in detail with regard to the submissions pertaining to the violations of the statutory provisions, the rules and the notifications relating to various environmental issues. I do not intend to add anything in that regard. My deliberation shall be on the concept of welfare and safety relating to the use of nuclear energy for the purpose of development. Needless to say, it has to be totally guided by the conception of public safety and welfare of the citizens.

219. The term "welfare" is always related to the living generation and generations to come. It has been contended before us by the learned counsel for the appellant that the basic care has not been taken to make the nuclear plant at Kudankulam a safe one and further when the entire globe has been shaken by the Fukushima tragedy, the Government of India, without taking recourse to the participative process of public hearing and showing scant respect for public safety, has plunged into such an activity. That apart, it is highlighted that the radioactive substances have the real potentiality to gravely affect the present generation and that, in turn, will usher in immense disaster and suffering for the future generations. Per contra, the learned counsel for the respondents would urge that the plant is based and founded on sophisticated technology and there are more than three layers of protection for safety which is not available in other nuclear plants in other parts of the world. In essence, it is submitted that all possible measures have been taken to avoid any kind of calamity.

220. It is borne out from the material on record that two aspects have weighed with many a nation while thinking of a nuclear energy plant, namely, the caution and circumspection at the time of operation and how to deal with radioactive waste. We have been apprised how the re-use of radioactive waste is done by a sophisticated method and the danger is kept at bay. On one hand, there is requirement of energy and the need of progress and development and, in a way, to compete with the progressive phenomenon of the other countries in many a sphere and, on the other, the likelihood of danger to be caused to the people of the locality and the effect-potentiality to affect the larger section of public because of disposal of radioactive waste and transportation.

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Certain Conventions pertaining to safety

221. At this juncture, I may profitably refer to the Convention on Nuclear Safety adopted on 17-6-1994 in the conference convened by the International Atomic Energy Agency at its headquarters. India is a signatory to the said Convention.

221.1. The Preamble of the Treaty reads as follows:

"(*i*) Aware of the importance to the international community of ensuring that the use of nuclear energy is safe, well regulated and environmentally sound;

(*ii*) Reaffirming the necessity of continuing to promote a high level of nuclear safety worldwide;

(*iii*) Reaffirming that responsibility for nuclear safety rests with the State having jurisdiction over a nuclear installation;

(*iv*) Desiring to promote an effective nuclear safety culture;

(*v*) Aware that accidents at nuclear installations have the potential for transboundary impacts;

(*vi*) Keeping in mind the Convention on the Physical Protection of Nuclear Material (1979), the Convention on Early Notification of a Nuclear Accident (1986), and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986);

(*vii*) Affirming the importance of international cooperation for the enhancement of nuclear safety through existing bilateral and multilateral mechanisms and the establishment of this incentive Convention;

(*viii*) Recognising that this Convention entails a commitment to the application of fundamental safety principles for nuclear installations rather than of detailed safety standards and that *there are internationally formulated safety guidelines which are updated from time to time and so can provide guidance on contemporary means of achieving a high level of safety*;

(*ix*) Affirming the need to begin promptly the development of an international convention on the safety of radioactive waste management as soon as the ongoing process to develop waste management safety fundamentals has resulted in broad international agreement;

(*x*) *Recognising the usefulness of further technical work in connection with the safety of other parts of the nuclear fuel cycle*, and that this work may, in time, facilitate the development of

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current or future international instruments;"

(emphasis supplied)

221.2. Article 10 deals with priority to nuclear safety. It reads as follows:

"**10.** ***Priority to safety***.—Each contracting party shall take the appropriate steps to ensure that all organisations engaged in activities directly related to nuclear installations *shall establish policies that give due priority to nuclear safety*."

(emphasis added)

221.3. Article 14 provides for assessment and verification of safety. It is as under:

"**14.** ***(i)*** *comprehensive and systematic safety assessments are carried out before the construction and commissioning of a nuclear installation and throughout its life. Such assessments shall be well documented, subsequently*

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updated in the light of operating experience and significant new safety information, and reviewed under the authority of the regulatory body;

(ii) verification by analysis, surveillance, testing and inspection is carried out to ensure that the physical state and the operation of a nuclear installation continue to be in accordance with its design, applicable national safety requirements, and operational limits and conditions."

(emphasis supplied)

221.4. Article 16 stipulates emergency preparedness. It reads as follows:

"**16.** ***Emergency preparedness***.—(1) Each contracting party shall take the appropriate steps to ensure that there are on-site and off-site emergency plans that are routinely tested for nuclear installations and cover the activities to be carried out in the event of an emergency.

For any new nuclear installation, such plans shall be prepared and tested before it commences operation above a low power level agreed by the regulatory body.

(2) Each contracting party shall take the appropriate steps to ensure that, insofar as they are likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are provided with appropriate information for emergency planning and response.

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(*3*) Contracting parties which do not have a nuclear installation on their territory, insofar as they are likely to be affected in the event of a radiological emergency at a nuclear installation in the vicinity, shall take the appropriate steps for the preparation and testing of emergency plans for their territory that cover the activities to be carried out in the event of such an emergency."

221.5. Article 19 deals with operations. It is as follows:

"**19.** ***Operation***.—Each contracting party shall take the appropriate steps to ensure that:

(*i*) the initial authorisation to operate a nuclear installation is based upon an appropriate safety analysis and a commissioning programme demonstrating that the installation, as constructed, is consistent with design and safety requirements;

(*ii*) operational limits and conditions derived from the safety analysis, tests and operational experience are defined and revised as necessary for identifying safe boundaries for operation;

(*iii*) operation, maintenance, inspection and testing of a nuclear installation are conducted in accordance with approved procedures;

(*iv*) procedures are established for responding to anticipated operational occurrences and to accidents;

(*v*) necessary engineering and technical support in all safety related fields is available throughout the lifetime of a nuclear installation;

(*vi*) *incidents significant to safety are reported in a timely manner by the holder of the relevant licence to the regulatory body*;

(*vii*) programmes to collect and analyse operating experience are established, the results obtained and the conclusions drawn are acted upon and that existing mechanisms are used to share important

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experience with international bodies and with other operating organisations and regulatory bodies;

(*viii*) *the generation of radioactive waste resulting from the operation of a nuclear installation is kept to the minimum practicable for the process concerned, both in activity and in volume, and any necessary treatment and storage of spent fuel and waste directly related to the operation* and on the same site

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as that of the nuclear installation take into consideration conditioning and disposal."

(emphasis supplied)

222. The aforesaid Convention, as is demonstrable from the various articles, lays down the priority to nuclear safety, comprehensive and systematic safety assessments at all stages including the lifespan of the plants, verification by analysis, surveillance, testing and inspection, regard being had to the safety requirements, emergency planning and preparedness to take care of the people in the vicinity of the nuclear installation, necessary engineering and technical support in all safety related fields available throughout the lifetime of the nuclear installation, constant reporting by the operator to the regulatory body pertaining to safety and the handling of radioactive waste resulting from the operation and the measures of safety carried thereon.

223. In this regard, I may refer with profit to another convention, namely, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management dated 5-9-1997. I may hasten to add that India is not a signatory to the same but the said Convention is worth referring to in order to understand and appreciate the worldwide concern for public safety. Chapter 2 deals with safety of spent fuel management, Chapter 3 deals with safety of radioactive waste management and Chapter 4 deals with general safety provisions:

223.1. Article 4 occurring in Chapter 2 deals with general safety requirements. Clauses (*v*) and (*vii*) read as follows:

"**4.** ***General safety requirements***.—Each contracting party shall take the appropriate steps to ensure that at all stages of spent fuel management, individuals, society and the environment are adequately protected against radiological hazards.

In so doing, each contracting party shall take the appropriate steps to—

* * *

(*v*) take into account the biological, chemical and other hazards that may be associated with spent fuel management;

* * *

(*vii*) aim to avoid imposing undue burdens on future generations."

223.2. Article 11 in Chapter 3 pertains to general safety requirements. It is reproduced below:

"**11.** ***General safety requirements***.—Each contracting party shall take the appropriate steps to ensure that at all stages of radioactive waste management individuals, society and the environment are adequately protected against radiological and other

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hazards.

In so doing, each contracting party shall take the appropriate steps to:

(*i*) ensure that criticality and removal of residual heat generated during radioactive waste management are adequately addressed;

(*ii*) ensure that the generation of radioactive waste is kept to the minimum practicable;

(*iii*) take into account interdependencies among the different steps in radioactive waste management;

(*iv*) *provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards*;

(*v*) take into account the biological, chemical and other hazards that may be associated with radioactive waste management;

(*vi*) *strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation*;

(*vii*) *aim to avoid imposing undue burdens on future generations*."

(emphasis added)

223.3. Article 15 deals with assessment of safety of facilities. The relevant clauses are as under:

"**15.** ***Assessment of safety of facilities***.—Each contracting party shall take the appropriate steps to ensure that:

(*i*) before construction of a radioactive waste management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(*ii*) in addition, before construction of a disposal facility, a systematic safety assessment and an environmental assessment for the period following closure shall be carried out and the results evaluated against the criteria established by the regulatory body;

(*iii*) before the operation of a radioactive waste management facility, updated and detailed versions of the safety assessment

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and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in paragraph (*i*)."

223.4. Article 22 that occurs in Chapter 4 deals with human and financial resources. It is apt to reproduce the same:

"**22. *Human and financial resources***.—Each contracting party shall take the appropriate steps to ensure that:

(*i*) qualified staff are available as needed for safety related activities during the operating lifetime of a spent fuel and a radioactive waste management facility;

(*ii*) adequate financial resources are available to support the safety of facilities for spent fuel and radioactive waste management during their lifetime and for decommissioning;

(*iii*) financial provision is made which will enable the appropriate institutional control and monitoring arrangements to be continued for

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the period deemed necessary following the closure of a disposal facility."

223.5. Article 23 deals with quality assurance. It reads as follows:

"**23. *Quality assurance***.—Each contracting party shall take the necessary steps to ensure that all appropriate quality assurance programmes concerning the safety of spent fuel and radioactive waste management are established and implemented."

224. The aforesaid Convention, as is seen, lays emphasis on ecological hazards, avoidance of undue burden on future generations, management of radioactive waste, adequate protection against radiological and other hazards, application of suitable protective methods approved by the regulatory body keeping in view the interest of the individual and the society, to avoid actions that impose reasonable predictable impact on future generations, the systematic safety assessment and environmental assessment appropriate to the hazards presented by the facility and covering its operating lifetime, the institutional control and mandatory arrangements and ensuring of appropriate quality assurance programmes concerning the safety from spent fuel and radioactive waste. I am absolutely conscious that India has not ratified the said Convention but the safety concern at any level is a fundamental human concern. I have referred to the same, to repeat at the cost of repetition, to show the concern of many countries, especially, relating to safety measures taken at all times. The 1962 Act

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and the Convention which has been ratified by India speak eloquently about that. The conception of public safety, at no stage, can be brushed aside or ignored. It has to be treated with paramount primacy and highest priority for the simon-pure reason that life delights every person and creates an innate desire to live.

Necessity of electrical energy by the State and concept of public safety

225. In *Anderson* v. *Dunn*[35], the US Supreme Court, in a different context, long back had stated about the role of the State and the safety of the citizens: (L Ed p. 247)

> "*No one is so visionary as to dispute the assertion, that the sole end and aim of all our institutions is the safety and happiness of the citizen*. But the relation between the action and the end, is not always so direct and palpable as to strike the eye of every observer. The science of Government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the State as they arise. It is the science of experiment."
>
> (emphasis supplied)

After so stating, the US Supreme Court proceeded to observe as follows: (*Anderson case*[35], L Ed p. 248)

> "That 'the safety of the people is the supreme law', not only comforts with, but is indispensable to, the exercise of those powers in their public functionaries, without which that safety cannot be guarded."

226. In *Charan Lal Sahu* v. *Union of India*[36], this Court, while dealing with the constitutional validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, observed that the said enactment was passed as a sequel to a grim tragedy that occurred on the night of 2-12-1984. This Court treated it to be the most tragic industrial disaster in recorded human history. While discussing the concept of parens patriae, the learned Chief Justice observed that the conception of the parens patriae theory is the obligation of the State to protect and it takes into custody the rights and the privileges of its citizens for discharging its obligation. While dealing with the said concept, it has been opined that the maxim *salus populi (est) suprema lex* — regard

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for public welfare is the highest law.

227. I have referred to the said pronouncement solely to emphasise on the role of the State to act in the greater welfare of the collective and how the public welfare has been treated to be at the zenith of law.

228. In *Union Carbide Corpn.* v. *Union of India*[37], a Constitution Bench regarded the Bhopal Gas Leak Tragedy as a horrendous industrial mass disaster, unparalleled in its magnitude, and the devastation and remains a ghastly monument to the dehumanising influence of inherently dangerous technologies. While dealing with the justness and reasonableness of the quantum of settlement, the Constitution Bench adverted to the problems emerging from the pursuit of such dangerous technologies for economic gains by multinationals, availability of cheap labour, captive markets and the facets of economic exploitation in developing countries where the matters of concern were propounded before the Court and in that context, it has been observed as follows: (SCC p. 49, para 32)

> "*32.* These issues and certain cognate areas of even wider significance and the limits of the adjudicative disposition of some of their aspects are indeed questions of seminal importance. The culture of modern industrial technologies, which is sustained on processes of such pernicious potentialities, in the ultimate analysis, has thrown open vital and fundamental issues of technology options. Associated problems of the adequacy of legal protection against such exploitative and hazardous industrial adventurism, and whether the citizens of the country are assured the protection of a legal system which could be said to be adequate in a comprehensive sense in such contexts arise. These, indeed, are issues of vital importance and this tragedy, and the conditions that enabled it happen, are of particular concern."

229. Thereafter, the Court referred to the technology in agriculture that has given a big impetus to enterprises of chemical fertilisers and its serious problems. Thereafter, it has been stated thus: (*Union Carbide Corpn. case*[37], SCC p. 50, para 34)

> "*34.* Indeed, there is also need to evolve a national policy to protect national interests from such ultra-hazardous pursuits of economic gains.

Jurists, technologists and other experts in economics, environmentology, futurology, sociology and public health, etc. should identify areas of common concern and help in evolving proper criteria which may receive judicial recognition and legal sanction."

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230. In *Pritam Pal* v. *High Court of M.P.*[38], the maxim *salus populi (est) suprema lex* i.e. welfare of the people is the supreme law, was again emphasised upon, though in a different context.

231. At this juncture, I must also refer to the other maxim *salus reipublicae suprema lex* i.e. safety of the State is the supreme law and in case of any conflict, an individual must yield to the collective interest. But, it should not be done at the cost of safety. At all times and at all quarters, sincere efforts are to be made to maintain and sustain the safety of the people. That has been spoken by the ancients when the Kings ruled and the same reigns supreme in a democratic set-up. True it is, there are exceptions, but the exceptions are to remain in the realm of exceptions only and should not be brought into play either at the whim or fancy of the executive. The purpose of saying is that the law has many a mansion and the mosaic of law covers many spectrums so that both the maxims, namely, *salus populi (est) supreme lex* and *salus reipublicae suprema lex*, can harmoniously coexist. The present case is one where there is need for nuclear energy for the welfare of the public and for other welfare of the people of India and for peaceful purpose. Definitely, the interest of the economy and the interest of safety are to be the real concerns of a welfare State.

232. In this regard, I may usefully refer to the following observations made by this Court, though in a different context, in *State of Karnataka* v. *Praveen Bhai Thogadia*[39]: (SCC p. 694, para 9)

> "*9.* … Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote the well-being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the *Vedas*, *Upanishads* and *Puranas* were said to reveal to mankind seem to be: 'Love others, serve others, help ever, hurt never' and '*sarvae jana sukhino bhavantoo*'."

233. The concept of welfare State is a facet of Article 38 of the Constitution of India. It is the obligation of the State to see that the welfare of the people is appositely promoted. It is the obligation passed by the Constitution of the State to establish a welfare State. The words used in the Preamble of the 1962 Act are "welfare for the people" and "peace". There is a necessity for generation of electrical energy and regard being had to the hazards, there has to be guidance which the Acts, rules and notifications provide. The collective interests should not totally be thrown overboard for

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the development of the power sector. If the safety measures are adequately not taken and the apprehensions are not removed and the fear is not totally ostracised from the minds of the people of the locality, posterity may not recognise the same as a development or a progressive step. The conscientious and conscious policy decisions by the Government are to be taken with due care and consideration, keeping in mind the welfare of the people at large. True it is, when such policies are framed, especially for establishment of nuclear plants or such big projects, the safety measures become the primary concern and the same have to be adequately addressed to and taken care of. However, the courts, in exercise of power of judicial review, cannot assume the role of approving authority for laying safety measures, but, a significant one, what the regulatory authorities have stated are to be regarded as the primary and principal concern.

AERB Report

234. In this context, I may refer to the report of AERB to review the safety of Indian nuclear power plants against external events of natural origin. For the sake of necessity and completeness, it is reproduced below:

> "*Safety assessment of Kudankulam Nuclear Power Plant Units 1 and 2 (KKNPP 1 and 2) in the wake of Fukushima accident*
>
> Two units of VVER Pressurised Water Reactors (Model V-412) each of 1000 MW rating are being built at Kudankulam site in Tamil Nadu. Initial commissioning activities for Unit 1 have started with AERB issuing clearance for 'Hot-Run' on 30-6-2011. Construction of Unit 2 is in an advanced stage of completion.
>
> The design of KKNPP incorporates a number of engineered safety features (ESFs) for catering to design basis accident (DBAs) and beyond design basis accidents (BDBAs), and several other design safety features.
>
> ESFs for catering to DBA:
>
> (*a*) Emergency Core Cooling System (ECCS)
>
> (*b*) Secondary Circuit Protection against Over-Pressurisation
>
> (*c*) Emergency Gas Removal System
>
> (*d*) Fission Products Removal and Control Systems
>
> (*e*) Emergency Safety Boron Injection System
>
> (*f*) Quick Boron Injection System (QBIS)
>
> ESFs for catering to BDBA:
>
> • Passive Heat Removal System (PHRS)

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- Additional System for Core Passive Flooding
- Annuls Passive Filtering System (APFS)
- System for Retaining and Cooling of Molten Core

Other salient design safety features:

- 4 × 100% active safety system trains and 4 × 33% passive safety system trains

- Large water inventory in Stages I and II ECCS hydro-accumulators
- Automatic reactor scram on seismic signal
- Battery banks with 24 hr capacity
- Sea water pumps located at more than 2.2 m above design basis flood level (DBFL)
- Safety related buildings and structures located at least 3.0 m above DBFL
- A shore protection rubble wall

Post-Fukushima safety assessment

A task force (TF) constituted by NPCIL carried out safety assessment of KKNPP Units 1 and 2 in the light of Fukushima accident and its findings were reviewed by the AERB's Advisory Committee on Project Safety Review of Light Water Reactors (ACPSR-LWR) and the AERB Committee on safety review of Indian NPPs in the light of Fukushima accident. Salient points emerging from the assessment and its reviews are given below:

- Back-up provisions from alternate sources should be made for
  - ⇒ Charging water to secondary side of SGs
  - ⇒ Make-up of borated water to spent fuel pools
  - ⇒ Injection of borated water in the reactor coolant system.
- Seismic qualification of emergency water storage facility and augmentation of its storage capacity for core decay heat removal for a period of at least one week.
- Mobile self-powered pumping equipment for emergency use.
- Facility for monitoring safety parameters using portable power packs.

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- Finalisation of emergency operating procedures for BDBA conditions.
- Primary containment to be assessed for ultimate load-bearing capacity.
- Doors and barrels of airlocks to be qualified for proof test pressure.
- Ensuring that highly active water used for cooling the core-catcher vessel under BDBA is contained inside the primary containment.
- Reconfirmation of design adequacy of hydrogen management system.
- Environmental qualification of core-catcher temperature monitoring system.

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- Adequacy of design provision for remote water addition to core-catcher.
- Adequacy of instrumentation for monitoring plant status during BDBA.
- Details of margin available on location of various safety related SSCs above DBFL should be reviewed again.
- Need for design provision for containment venting, that has been deleted, should be re-examined.
- The back-up sources for water injection to SG secondary side should be seismically qualified.
- Provisions for addition of water to core-catcher require a detailed study, to ensure that there is no possibility of any steam explosion.
- Provision of additional back-up power supply sources for performing essential safety functions, like air cooled DGs located at a high elevation, should be considered.

The recommendations are being examined and NPCIL's response would be reviewed in ACPSR-LWR before initial fuel loading in Unit 1.

235. A status report has been filed by NPCIL. An affidavit has been filed on 3-12-2012 and it is asserted therein that most of the recommendations have already been complied with. It has been dealt with by my respected learned Brother that there is substantial compliance with the same and dates or fixed time-frame has been given for compliance with certain recommendations which have not yet

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been complied. This Court has been apprised of the fact that AERB and, in turn, MoEF are in total control of things and scrutiny is made and the same shall be looked into from time to time and all possible measures shall be taken to avoid any kind of accident. As advised, at present, I have noted the categorical assurance of the statutory authority.

Nuclear energy development and doctrine of balance and proportionality vis-à-vis safety

236. It must be stated that the safety of the people residing in Kudankulam and the areas in its vicinity and also the people who are likely to be affected because of radioactive generation has to be respected, for their human dignity is their divinity. This Court has not directed for closure of the plant on the basis of the asseverations made before this Court. But, it is the highest concern of this Court that a devastating disaster should be avoided at all costs by the people who are in charge of looking after the safety measures. The statutory regulatory authority should responsibly keep the vigil and no one, who has the responsibility, should be complacent. The tragedy that has occurred at Fukushima shall remain as one of the darkest elements of history. The catastrophe of the Bhopal Gas Leak Disaster has not been erased or effaced from the minds of the public. The moan and mourns of the affected

people of Bhopal who have been injured or lost their kith and kin are still heard and humane sensitivity would not permit one to ignore it. The nuclear scientists, the administrators and other authorities cannot remain oblivious or totally insensitive to the possible hazards when the nuclear plant operates.

237. When one thinks of safety in the context of establishment of a nuclear plant, the inevitable thought that gets into the depth of mind is security. Safety and security, in this context, are insegregably intertwined commencing the planning, quality of construction, committed efforts to avoid operational jeopardy and monitoring and all are bound to remain in a singular chain. All endeavours are to be made to prevent, monitor and control. The concept of disaster management cannot be allowed to remain on paper. Its procrastination itself rings the bell of peril. The administration has to be alive to the said situation and the awakening to manage the disaster in case of an unfortunate incident has to be founded on scientific and sophisticated methods. Taking care of the situation of the present alone is not the solution. All concerned with the same are required to look to the future because that

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elevates the real concern. The danger of the future should be seriously taken note of and should not be veiled in the guise of thought for the present. Not for nothing, it has been said that he who prepares for the future and remains prepared for the future has a good control over the present, and if one remains in a state of blindness thinking the future to be uncertain, he suffers the agony of the present and the anguish of the future. This is not only the truth in respect of an individual life but also the paramount truth for the collective of the present generation and the future generations. The present generation has no right to enjoy by eating away the time of the future generation. The protection of the environment and the safety for the present generation in its connotative sense covers the posterity.

238. I have already discussed about the signification of the safety needed in respect of nuclear plants. Generation of nuclear energy is a necessity in a progressive modern State. As has been stated earlier, there is an enactment and notifications governing the field in various aspects. A policy decision has been taken to establish the nuclear plant at Kudankulam. Promotion of development and protection of environment are to be harmonised at the same time:

238.1. In *Intellectuals Forum* v. *State of A.P.*[40], it has been held that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What is required to be prescribed is the principle of sustainable development and find a balance between the developmental needs and the environmental degradation.

238.2. In *Bombay Dyeing & Mfg. Co. Ltd. (3)* v. *Bombay Environmental Action Group*[41], while dealing with the concept of sustainable development

and planned development vis-à-vis Article 21 of the Constitution, a two -Judge Bench has opined thus: (SCC p. 521)

> "*251.* It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication* of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of

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environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs."

238.3. In *M.C. Mehta* v. *Union of India*[42], while stating about sustainable development and the needs of the present without compromising the ability of the future generation to meet their own needs, this Court has expressed thus: (SCC pp. 166-67, para 46)

"*46.* … The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In *Narmada Bachao Andolan* v. *Union of India*[43] this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's' test. [See Chairman Barton: *The Status of the Precautionary Principle in Australia* (Vol. 22, 1998, Harv. Envtt. Law Review, p. 509 at p. 549-A) as referred to in para 28 in *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*[44].]"

238.4. In *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*[45], while dealing with the concept of sustainable development, the Court has observed as under: (SCC p. 747, para 26)

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"*26.* The concept of 'sustainable development' has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's' test. The

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development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in *T.N. Godavarman Thirumulpad (104)* v. *Union of India*[46] and *M.C. Mehta* v. *Union of India*[47]."

238.5. In *T.N. Godavarman Thirumulpad* v. *Union of India*[48], this Court observed that: (SCC p. 628, para 35)

"*35.* It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship."

238.6. In *Narmada Bachao Andolan* v. *Union of India*[43], a three-Judge Bench, while dealing with the public projects and policies, has opined that the court does not become the approving authority of such policies. Thereafter, the Bench observed thus: (SCC p. 763, para 234)

"*234.* … Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government."

239. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasised on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development.

240. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a

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proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property.

241. I have already emphasised upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasise, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different.

242. I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be "zero" regard being had to the nature's unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good.

Directions of the Court

243. Before proceeding to issue certain directions, it is required to be stated that the appellant, by this public interest litigation, has, in a way, invoked and aroused the conscience/concern of the Court to such an issue. True it is, the prayer is for the total closure of the plant and the Court has not acceded to the said prayer but his noble effort is

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appreciated to put forth the

grievance of the local people and the necessity of adequate safety measures as is perceived. When such cause comes up before this Court, it is the bounden duty to remind the authorities "Be alert, remain always alert and duty calls you to nurture constant and sustained vigilance and nation warns you not to be complacent and get into a mild slumber". AERB as the regulatory authority and MoEF are obliged to perform their duty that safety measures are adequately taken before the plant commences its operation. That is the trust of the people in the authorities which they can ill afford to betray, and it shall not be an exaggeration to state that safety in a case of this nature in any one's hand has to be placed on the pedestal of "constitutional trust".

244. We, therefore, fully endorse the view[49] taken by the Division Bench of the High Court, however, in the facts and circumstances of the case, we are inclined to give the following directions:

244.1. The plant should not be made operational unless AERB, NPCIL, DAE accord final clearance for commissioning of the plant ensuring the quality of various components and systems because their reliability is of vital importance.

244.2. MoEF should oversee and monitor whether NPCIL is complying with the conditions laid down, while granting clearance vide its communication dated 23-9-2008 under the provisions of the EIA Notification of 2006, so also the conditions laid down in the environmental clearance granted by MoEF vide its communication dated 31-12-2009. AERB and MoEF will see that all the conditions stipulated by them are duly complied with before the plant is made operational.

244.3. Maintaining safety is an ongoing process not only at the design level, but also during the operation for the nuclear plant. Safeguarding NPP, radioactive materials, ensuring physical security of NSF are of paramount importance. NPCIL, AERB, the regulatory authority, should maintain constant vigil and make periodical inspection of the plant at least once in three months and if any defect is noticed, the same has to be rectified forthwith.

244.4. NPCIL shall send periodical reports to AERB and AERB shall take prompt action on those reports, if any fallacy is noticed in the reports.

244.5. SNF generated needs to be managed in a safe manner to ensure protection of human health and environment from the undue effect of ionising radiation now and future, for which sufficient

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surveillance and monitoring programme have to be evolved and implemented.

244.6. AERB should periodically review the design-safety aspects of AFR feasibly at KKNPP so that there will be no adverse impact on the environment due to such storage which may also allay the fears and apprehensions expressed by the people.

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244.7. DGR has to be set up at the earliest so that SNF could be transported from the nuclear plant to DGR. NPCIL says the same would be done within a period of five years. Effective steps should be taken by the Union of India, NPCIL, AERB, AEC, DAE, etc. to have a permanent DGR at the earliest so that apprehension voiced by the people of keeping NSF at the site of Kudankulam NPP could be dispelled.

244.8. NPCIL should ensure that the radioactive discharges to the environmental aquatic atmosphere and terrestrial route shall not cross the limits prescribed by the regulatory body.

244.9. The Union of India, AERB and NPCIL should take steps at the earliest to comply with rest of the seventeen recommendations, within the time stipulated in the affidavit filed by NPCIL on 3-12-2012.

244.10. SNF is not being reprocessed at the site, which has to be transported to a reprocessing facility. Therefore, the management and transportation of SNF be carried out strictly by the Code of Practices laid down by AERB, following the norms and regulations laid down by IAEA.

244.11. NPCIL, AERB and the State of Tamil Nadu should take adequate steps to implement the National Disaster Management Guidelines, 2009 and also carry out the periodical emergency exercises on and off site, with the support of the Ministries of the Government of India, Officials of the State Government and local authorities concerned.

244.12. NPCIL, in association with the District Collector, Tiruneveli should take steps to discharge NPCIL corporate social responsibilities in accordance with the DPE Guidelines and there must be effective and proper monitoring and supervision of the various projects undertaken under CSR to the fullest benefit of the people who are residing in and around KKNPP.

244.13. NPCIL and the State of Tamil Nadu, based on the comprehensive emergency preparedness plan should conduct training

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courses on site and off site, administer personnel, including the State Government officials and other stakeholders, including police, fire service, medicos, emergency services, etc.

244.14. Endeavour should be made to withdraw all the criminal cases filed against the agitators so that peace and normalcy be restored at Kudankulam and nearby places and steps should be taken to educate the people of the necessity of the plant which is in the largest interest of the nation particularly the State of Tamil Nadu.

244.15. AERB, NPCIL, MoEF and TNPCB would oversee each and every aspect of the matter, including the safety of the plant, impact on environment, quality of various components and systems in the plant before commissioning of the plant. A report to that effect be filed before this Court before commissioning of the plant.

245. The appeals are accordingly disposed of without any order as to costs.

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† Arising out of SLP (C) No. 27335 of 2012. From the Judgment and Order dated 31-8-2012 of the High Court of Madras in WP No. 22253 of 2012

‡ Arising out of SLP (C) No. 27813 of 2012

†† Arising out of SLP (C) No. 29121 of 2012

†‡ Arising out of SLP (C) No. 32013 of 2012

‡† **Ed.**: Misra, J. delivered a concurring judgment.

[1] 1913 AC 107 : (1911-13) All ER Rep 241 (HL)

[2] 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)

[3] (1997) 7 SCC 592

[4] (2001) 3 SCC 635

[5] (2007) 8 SCC 418

[6] (2008) 13 SCC 628

[7] (2004) 2 SCC 476

[8] PLD 1994 SC 102

[9] Case No. 11-1045, decided on 8-6-2012 (US CA)

[10] 57 L Ed 2d 595 : 438 US 59 (1978)

[11] (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086

[12] (1996) 3 SCC 212

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[13] (1996) 5 SCC 647

[14] (1989) 2 SCC 540 : 1989 SCC (Cri) 416

[15] (1991) 4 SCC 584 : AIR 1992 SC 248

[16] (1986) 4 SCC 753 : AIR 1987 SC 374

[17] (1994) 1 WLR 570 : (1994) 4 All ER 321 (CA)

[18] (1994) 4 All ER 352

[19] 2002 Env L Rev 24 (CA)

[20] 2002 EWCA Civ 3 : (2002) 127 ILR 574

[21] 2007 Env LR 29

[22] 3 RUOH (1991)

[23] 75 L Ed 2d 534 : 460 US 766 (1983)

[24] (1996) 137 DLR (4th) 177 (FCA Can)

[25] 2001 FCA 203 (Can)

[26] (1996) 2 SCC 549

[27] AIR 1965 SC 491

[28] (1975) 3 SCC 602 : 1975 SCC (L&S) 51

[29] (1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528

[30] (1997) 8 SCC 31

[31] (2001) 5 SCC 486

[32] (2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640

[33] (2012) 5 SCC 275

[34] (1992) 4 CLJ 2207 (Malaysia)

[35] 5 L Ed 242 : 19 US (6 Wheat) 204 (1821)

[36] (1990) 1 SCC 613

[37] (1989) 3 SCC 38

[38] 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356

[39] (2004) 4 SCC 684 : 2004 SCC (Cri) 1387

[40] (2006) 3 SCC 549

[41] (2006) 3 SCC 434

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* **Ed.**: Eutrophication of a water body is a phenomenon that can impel a great deal of algae and other plankton or other plant life to reproduce quickly and lead to the extermination of other aquatic life such as fish. Eutrophication occurs when excessive nutritional substances such as nitrogen and phosphorus are discharged into lakes, reservoirs and gulfs, etc.

[42] (2004) 12 SCC 118

[43] (2000) 10 SCC 664

[44] (1999) 2 SCC 718

[45] (2009) 9 SCC 737

[46] (2008) 2 SCC 222

[47] (2009) 6 SCC 142

[48] (2002) 10 SCC 606

[49] *G. Sundarrajan* v. *Union of India*, WP No. 22253 of 2012, order dated 31-8-2012 (Mad). See also, order dated 31-8-2012 in *G. Sundarrajan* v. *Union of India*, (2012) 6 MLJ 529

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(2000) 10 Supreme Court Cases 664 : 2000 SCC OnLine SC 1439

(BEFORE DR A.S. ANAND, C.J. AND S.P. BHARUCHA AND B.N. KIRPAL, JJ.)

NARMADA BACHAO ANDOLAN . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petitions (C) No. 319 of 1994 with Nos. 345 of 1994[1], 104 of 1997, SLP (C) No. 3608 of 1985, TC (C) No. 35 of 1995 and CA No. 6014 of 1994, decided on October 18, 2000

A. Constitution of India — Arts. 32, 226 and 21 — Maintainability — Delay or laches — Peculiar circumstances warranting entertainment of belated writ petition — Sardar Sarovar Dam cleared in 1987 by the Ministry concerned — Writ petition filed in 1994 to challenge the decision to construct the dam and the clearance given thereto — The writ petition raising, inter alia, issues relating to relief and rehabilitation of affected families — Held, per majority, such a petition, held, was highly belated and should have normally been dismissed — But, on account of Supreme Court's concern for protection of oustees' fundamental rights under Art. 21, entertained to examine the implementation of rehabilitation and relief measures — However, certain other issues raised in the petition also considered — Per Bharucha, J. (partly dissenting), writ petition having been filed during the continuance of relief and rehabilitation process, the petitioners are not guilty of laches in that regard — Articles 32 and 226 — PIL — Belated filing of, to challenge policy decision — Impermissibility*

B. Constitution of India — Art. 32 — Issue of directions and orders — PIL — Even in PIL cases, held, no directions can be issued in conflict with legal provisions — They can be issued when law is silent and inaction on the part of authorities is likely to result in violation of fundamental rights or other legal provisions

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A dispute arose between the State of Gujarat and its neighbouring States in the matter of use, distribution and control of the waters of the inter-State River Narmada including the height of Sardar Sarovar Dam to be constructed in Gujarat. Acting under Section 4 of the Inter-State Water Disputes Act, 1956, the Government of India constituted a Tribunal and referred the said dispute to it for adjudication. On 7-12-1979 the Water Disputes Tribunal (WDT) gave its final order and the same was published in the Extraordinary Gazette by the Government of India on 12-12-1979. WDT determined the height of Sardar Sarovar Dam at RLF 455 ft providing gross storage of 7.70 MAF. It directed the State of Gujarat to take up and complete the construction of the dam. The final award contained directions regarding submergence, land acquisition and rehabilitation of displaced persons. It directed the Gujarat Government to pay to M.P. and Maharashtra all costs including compensation, charges and expenses incurred by them for and in respect of compulsory acquisition of land. It provided for rehabilitation of oustees and civic amenities to be provided to them. It also provided that no

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submergence of any area would take place unless the oustees were rehabilitated. It also allocated the quantum of utilisable water among M.P., Gujarat, Rajasthan and Maharashtra. The award directed for the constitution of: (i) an inter-State administrative authority i.e. Narmada Control Authority (NCA) for the purpose of securing compliance with and implementation of the decision and directions of the Tribunal, and (ii) a Review Committee consisting of the Union Minister for Irrigation (now substituted by Union Minister for Water Resources) as its Chairperson and the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan as its members. The Review Committee might review the decisions of NCA and the Sardar Sarovar Construction Advisory Committee. The Sardar Sarovar Construction Advisory Committee headed by the Secretary, Ministry of Water Resources as its Chairperson was directed to be constituted for ensuring efficient, economical and early execution of the project. NCA is a high-powered committee having the Secretary, Ministry of Water Resources, Government of India as its Chairperson. On 24-6-1987 the Ministry of Environment and Forests, Government of India accorded environmental clearance to Sardar Sarovar Project subject to the following conditions:

(i) NCA will ensure that environmental safeguard measures are planned and implemented pari passu with progress of work on project.

(ii) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.

(iii) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

(iv) The Department should be kept informed of progress on various works periodically.

In November 1987 for monitoring and implementation of various environmental activities effectively, an independent machinery of Environment Subgroup was created by NCA. This Subgroup was headed by the Secretary, Ministry of Environment and Forests, Government of India. On 5-10-1988 the Planning Commission approved investment for an estimated cost of Rs 6406 crores with the direction to comply with the conditions laid down in the environment clearance accorded on 24-6-1987. According to the State of Gujarat and Union of India, the studies as required to be done by the OM dated 24-6-

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1987, whereby environmental clearance was accorded, have been undertaken and the requisite work carried out. The construction of the dam had commenced in 1987.

In a proceeding arising out of a letter which was treated as a writ petition, the Supreme Court gave a direction on 20-9-1991 to constitute a Committee headed by Secretary (Welfare) to monitor the rehabilitation aspects of the Sardar Sarovar Project. The construction of the dam continued and on 23-2-1994, under the decision of the Ministry of Water Resources closure of ten construction sluices was effected. The petitioners filed the instant writ petition in April 1994 seeking the Union of India and other respondents to be restrained from proceeding with the construction of the dam and to be directed to open the said sluices. The petitioners' arguments were divided into four different heads, namely, general issues, issues regarding environment, issues regarding relief and rehabilitation and issues regarding review of the Tribunal's award. They pleaded that some independent judicial authority should review the entire project, examine the current best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project was required in the form it was or it needed to be restructured/modified. They pleaded that till then further

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construction of the dam should be stopped. They contended that the environmental clearance which was granted in 1987 was without any or proper application of mind as complete studies in that behalf were not available and that till that was done the project should not be allowed to proceed further. They further contended that further submergence should not take place and the height of the dam should be considerably reduced as it was not possible to have satisfactory relief and rehabilitation of the oustees as per the Tribunal's award and thus their fundamental rights under Article 21 read with ILO Convention No. 107 were being violated. That Sardar Sarovar Dam was not required as an exceptional measure, that the project was not in the best national interest. They pleaded that an independent agency should examine the environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs were acceptable and mitigative measures practical. They contended that starting of impounding in 1994 while the catchment area treatment programme was still incomplete violated the condition that "the catchment area treatment programme and rehabilitation plans be drawn so as to be completed ahead of reservoir filling" contained in the clearance letter, dated 24-6-1987.

Held :

Kirpal, J. (for Dr A.S. Anand, C.J. and himself)

The petitioner is an anti-dam organisation and is opposed to the construction of the high dam. It has been in existence since 1986 but has chosen to challenge the clearance given in 1987 by filing a writ petition in 1994. The project, in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the Tribunal being given in 1978. For a number of years, thereafter, final clearance was still not given. In the meantime some environmental studies were conducted. The final clearance was not given because of the environmental concern which is quite evident. Even though complete data with regard to the

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environment was not available, the Government did in 1987 finally give environmental clearance. It is thereafter that the construction of the dam was undertaken and hundreds of crores have been invested before the petitioner chose to file the present writ petition. Therefore, it has to be held that the petitioner is guilty of laches in not approaching the Court at an earlier point of time.

(Paras 46 and 47)

When such projects are undertaken and hundreds of crores of public money is spent, individuals or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. The pleas relating to height of the dam and the extent of submergence, environment studies and clearance, hydrology, seismicity and other issues, except implementation of relief and rehabilitation, cannot be permitted to be raised at this belated stage. It was only the concern of the Supreme Court for the protection of the fundamental rights of the oustees under Article 21 of the Constitution of India which led to the entertaining of the present petition. However, some of the other issues have also been dealt with herein.

(Paras 48 to 50, 229 and 230)

While exercising jurisdiction in PIL cases the Court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of

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any authority in acting according to law or in non-action or acting in violation of the law that the Court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.

(Para 231)

Bharucha, J. (partly dissenting)

When the writ petition was filed the process of relief and rehabilitation, such as it was, was going on. The writ petitioners were not guilty of any laches in that regard. In the writ petition they raised other issues, one among them being related to the environmental clearance of the project. Given what has been held in respect of the environmental clearance, when the public interest is so demonstrably involved, it would be against public interest to decline relief only on the ground that the Court was approached belatedly.

(Para 281)

C. Constitution of India — Arts. 32 and 21 — Ecology — Construction of dams — Policy decision to construct a high dam — Scope of judicial review of, on merits of such decision — When not in conflict with law or mala fide or arbitrary, held, courts would not interfere with such a decision — Where two or more views are possible and the Government adopts one, the court would not sit in appeal over such decision — However, even on merits, the decision, held, could not be faulted — Height of Sardar Sarovar Dam in Gujarat having been determined by WDT at FRL 455 ft and the Government having given clearance thereto subject to certain conditions, in a writ petition seeking stoppage of construction of the dam or reduction of its height on account of its adverse effect on the oustees or on flora and fauna etc., held, the only point for the consideration of the Court was: (i) completion of the project at the earliest, and (ii) completion of the conditions of clearance including relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection under the Government's scheme and thereby protecting the affected persons' fundamental rights under Art. 21 — Detailed directions issued for

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the said purpose — Administrative Law — Judicial review — Limits of — Policy decisions — Scope of judicial review of — Environment Protection and Pollution Control — Dams — Judicial review of construction of — Benefits and detriment to environment considered*

D. Constitution of India — Art. 21 — Right to water — Held, is a fundamental right under Art. 21 — UNO resolution also recognises this right — Ecology

E. Administrative Law — Judicial Review — Limits — Execution of project as per plans or system devised for that purpose — Court would not intervene unless the system is arbitrary or mala fides are shown

Held :

There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project are to be regarded as a policy decision. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a

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system in place for the execution of a project and such a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged.

(Para 227)

The courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

(Para 229)

The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.

(Para 233)

When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

(Paras 234, 238 and 240)

What the petitioner wants the Court to do in this case is precisely that. There is no material to enable the Supreme Court to come to the conclusion that the decision was mala fide. A hard decision need not necessarily be a bad decision.

(Para 235)

Furthermore, environmental concern has not only to be of the area which is going to be submerged but also its surrounding area. The impact on environment should be seen in relation to the project as a whole. While an area of land will submerge but the construction of the dam will result in multifold improvement in the environment of the areas where the canal waters will reach. Considering

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the benefits which have been reaped by the people all over India with the construction of the dams, the Government cannot be faulted for deciding to construct the high dam on River Narmada with a view to provide water not only to the scarcity areas of Gujarat but also to the small areas of the State of Rajasthan where shortage of water has been there since time immemorial.

(Para 236)

Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. A properly-drafted relief and rehabilitation plan would improve the living standards of displaced persons after displacement. In the present case, the relief and rehabilitation packages of the

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States, specially of Gujarat, are such that the living conditions of the oustees will be much better than what they had in their tribal hamlets.

(Para 241)

The loss of forest because of any activity is undoubtedly harmful. But these large dams also cause conversion of wasteland into agricultural land and making the area greener. Large dams can also become instruments in improving the environment.

(Para 242)

Water is the basic need for the survival of human beings and is part of right of life and human rights as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none. The resolution of UNO in 1977 to which India is a signatory, has also during the United Nations Water Conference unanimously recognised this right.

(Para 248)

The State of Madhya Pradesh is keen for the reduction of the dam's height to 436 ft. Apart from Gujarat and Rajasthan the State of Maharashtra also is not agreeable to this. The only benefit from the project which Maharashtra would get is its share of hydel-power from the project. The lowering of the height from 455 ft to 436 ft will take away this benefit even though 9399 hectares of its land will be submerged. With the reduction of height to 436 ft not only will there be loss of power generation but it would also render the generation of power merely seasonal.

(Para 251)

Moreover, in the present case, a considered decision has been taken and an award made, whereby a high dam having an FRL of 455 ft with capability of developing hydel-power is to be constructed. In the facts and circumstances of the present case, even if the Supreme Court could go into the question, the decision so taken cannot be faulted.

(Para 253)

The Supreme Court, as a Federal Court of the country specially in a case of inter-State river dispute where an award had been made has to ensure that the binding award is implemented. While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of project at the earliest, and (ii) ensuring compliance with the conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby protecting the rights under Article 21 of the Constitution.

(Para 254)

[Accordingly, the Supreme Court issued necessary directions.]

F. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Environmental clearance to, by Ministry of Environment and Forests, Government of India OM dated 24-6-1987 whether was given without proper study and without proper planning of mitigative measures — Per majority answered in the negative — Per Bharucha, J., answered in the

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affirmative and suggested that till necessary surveys and studies are completed, further construction of the dam should be stopped — Constitution of India, Art. 21 — Ecology — Sardar Sarovar Dam — Adverse impact on environment — Disastrous consequences of — Taken note of (per Bharucha, J.) — Environment Protection and Pollution Control — Dams — Environment clearance for Sardar Sarovar Dam, if properly given*

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Per majority

From various documents and letters produced before the Court it is more than evident that the Government of India was deeply concerned with the environmental aspects of the Narmada Sagar and Sardar Sarovar Project. Inasmuch as there was some differences of opinion between the Ministries of Water Resources and Environment and Forests with regard to the grant of environmental clearance, the matter was referred to the Prime Minister. Thereafter, a series of discussions took place in the Prime Minister's Secretariat and the concern of the Prime Minister with regard to the environment and desire to safeguard the interest of the tribals resulted in some time being taken. The Prime Minister gave environmental clearance on 13-4-1987 and a formal letter was issued thereafter on 24-6-1987. In such circumstances, it is not possible to hold that the environmental clearance of the project was given without application of mind. It is evident, and in fact this was the grievance made by Shri Vaghela, the then Member of Parliament that the environmental clearance of the project was unduly delayed. The Government was aware of the fact that a number of studies and data had to be collected relating to environment. Keeping this in mind, a conscious decision was taken to grant environmental clearance and in order to ensure that environmental management plans were implemented pari passu with engineering and other works, the Narmada Management Authority was directed to be constituted. This is also reflected from the letter dated 24-6-1987 giving formal clearance to the project.

(Paras 89 and 90)

At the time when the environmental clearance was granted by the Prime Minister whatever studies were available were taken into consideration. It was known that the construction of the dam would result in submergence and the consequent effect which the reservoir will have on the ecology of the surrounding areas was also known. Various studies relating to environmental impact had been carried out. There are different facets of environment and if in respect of a few of them adequate data was not available it does not mean that the decision taken to grant environmental clearance was in any way vitiated. The clearance required further studies to be undertaken and this has been and is being done. Care for the environment is an ongoing process and the system in place would ensure that ameliorative steps are taken to counter the adverse effect, if any, on the environment with the construction of the dam.

(Para 127)

Per Bharucha, J.

In view of the note prepared by the Ministry of Water Resources in or about October 1986 on the environmental aspects of the Sardar Sarovar and the Narmada Sagar Multipurpose Projects, the same Ministry's note forwarded to the Additional Secretary to the Prime Minister on 20-11-1986, note of the Ministry of Environment and Forests on the environment aspects of the Narmada Sagar and the Sardar Sarovar Projects sent to the Secretary to the Prime Minister on 19-12-1986, and the note prepared in the Prime Minister's office on 15-1-1987 and certain other documents, it is clear that the environment clearance was based on next to no data in regard to the environmental impact of the project. It was, therefore, contrary to the terms of the then policy of the

Union of India in regard to environmental clearances and, therefore, no clearance at all.

(Paras 261, 262 and 267)

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The environmental clearance of 24-6-1987 stated that details had been sought from the project authorities in respect of the rehabilitation master plan, phased catchment area treatment scheme, compensatory afforestation plan, command area development, survey of flora and fauna, carrying capacity of surrounding area, seismicity and health aspects; field surveys had yet to be completed and complete details had been assured by 1989. Clearly, therefore, the necessary particulars in regard to the environmental impact of the project, as required by the Guidelines for Environmental Impact Assessment of River Valley Projects issued in January 1985 by the Department of Environment in the Ministry of Environment and Forests of the Union Government, were not available when the environmental clearance was given, and it, therefore, could not have been given.

(Paras 268 and 258)

The conditions upon which the environmental clearance was given were that detailed surveys and studies would be carried out and the Narmada Control Authority would ensure that "environmental safeguard measures" were planned and implemented pari passu with the progress of work on the project. No further assessment of the environmental impact of the project was contemplated by the environmental clearance, nor, indeed, was it ever carried out.

(Para 269)

What environmental safeguard measures the Narmada Control Authority was to ensure were, and what their cost would be, was not known when the environmental clearance was given. There was, therefore, no way in which this cost could be included in the cost of the project, which was a requirement of the Guidelines.

(Para 270)

G. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Ministry of Environment and Forests, GOI OM dated 24-6-1987 — Condition in, that "the catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling" — Whether stood violated by starting impounding of water in 1994 while the catchment area treatment programme was still to be completed — Per majority, answered in the negative — Further held, Environmental Impact Assessment Notification not applicable in the present case as it had no retrospective effect — Per Bharucha, J., answered in the affirmative and further construction directed to be stopped till the entire necessary data was gathered and clearance was given after assessment thereof — Environmental Impact Assessment Notification, 1994, although not applicable, in present case, constitution of a Committee on the model of the Committee stipulated therein suggested for this purpose — Words and Phrases — "Catchment area" — Environment Protection and Pollution Control — Environmental Impact Assessment Notification, 1994 (as amended on 4-5-1994), Sch. III — Held, not applicable retrospectively — Environment Protection and Pollution Control — Environment (Protection) Act, 1986, S. 3

H. Constitution of India — Arts. 32 and 21 — Ecology — Cases pertaining to environment — Onus of proof — Sustainable development principle and precautionary principle — Applicability — Where the effect of the proposed project is known, the principle of sustainable development and not the precautionary principle, held, applicable — Hence, in a writ petition challenging the clearance of Sardar Sarovar Dam, plea to require

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the Government to prove that the construction of Sardar Sarovar Dam would not lead to

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environmental degradation, rejected — Words and Phrases — "Sustainable development" — Environment Protection and Pollution Control — Precautionary principle — Sustainable development principle — Scope and applicability*

I. Environment Protection and Pollution Control — Project clearance — That clearance was given by the Prime Minister instead of the Ministry of Environment and Forests is immaterial (per Bharucha, J.)

Per majority

The clearance of June 1987 required the work to be done pari passu with the construction of the dams and the filling of the reservoir. The area wherein the rainfall water is collected and drained into the river or reservoir is called catchment area and the catchment area treatment was essentially aimed at checking of soil erosion and minimising the silting in the reservoir within the immediate vicinity of the reservoir in the catchment area. The respondents had proceeded on the basis that the requirement in the letter of June 1987 that catchment area treatment programme and rehabilitation plans be drawn up and completed ahead of reservoir filling would imply that the work was to be done pari passu, as far as catchment area treatment programme was concerned, with the filling of reservoir. Even though the filling of the reservoir started in 1994, the impoundment award was much less than the catchment area treatment which had been affected. The status of compliance with respect to pari passu conditions indicated that in the year 1999, the reservoir level was 88.0 metres, the impoundment area was 6881 hectares (19%) and the area where catchment treatment had been carried out was 1,28,230 hectares being 71.56% of the total work required to be done. The minutes of the Environmental Subgroup as on 28-9-1999 stated that catchment area treatment works were nearing completion in the States of Gujarat and Maharashtra. Though, there was some slippage in Madhya Pradesh, however, overall works by and large were on schedule. This clearly showed that the monitoring of the catchment treatment plan was being done by the Environmental Subgroup quite effectively.

(Para 103)

The "precautionary principle" and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

(Para 123)

In the present case what is being established is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the

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construction of large dams. What is the impact on environment with the construction of a dam is well known in India.

(Para 124)

A.P. Pollution Control Board v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718, *distinguished*

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

Sierra Club et. v. *Robert F. Froehlke*, 350 b F Supp 1280 (1973); *Tennessee Valley Authority* v. *Hiram G. Hill*, 437 US 153 : 57 L Ed 2d 117 : 98 S Ct 2279; *Arlington Coalition on Transportation* v. *John A. Volpe*, 458 F 2d 1323 (1972); *Environmental Defense Fund, Inc.* v. *Corps of Engineers of United States Army*, 325 F Supp 749 (1971), *distinguished*

The Environmental Impact Assessment Notification, 1994 dated 27-1-1994 issued under Section 3 of the Environment Protection Act is clearly prospective and the procedure provided therein for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto.

(Para 129)

Per Bharucha, J. (dissenting)

While the environmental safeguard measures were to be planned and implemented pari passu with the progress of the work on the project, the catchment area treatment programme and the rehabilitation plans were required to be "so drawn as to be completed ahead of reservoir filling". This condition clearly required that before any water was impounded in the reservoir the catchment area treatment programme was not only to be drawn but also to be completed; so also the rehabilitation plans. If, as the project authorities interpreted this clause, only the drawing of the catchment area treatment programme and the rehabilitation plans were to be completed ahead of reservoir filling, the clause would have read: "The catchment area treatment programme and the rehabilitation plans shall be drawn ahead of reservoir filling." What the clause as drawn required was that the catchment area treatment programme and the rehabilitation plans should be drawn in such a manner that the catchment area treatment and the rehabilitation works would be completed ahead of impoundment in the reservoir. This, plainly, was intended to offset, so far as was possible in the circumstances, the adverse effect of the impoundment of water in the reservoir upon the catchment and those who were required to be settled elsewhere. In fact, the impoundment began much before.

(Para 271)

The fact that the environmental clearance was given by the Prime Minister and not by the Ministry of Environment and Forests, as it would ordinarily have been done, makes no difference at all. Under its own policy, as indicated by the Guidelines, the Union of India was bound to give environmental clearance only after (a) all the necessary data in respect of the environmental impact of the project had been collected and assessed; (b) the assessment showed that the project could proceed; and (c) the environmental safeguard measures, and their cost, had been worked out.

(Para 273)

An adverse impact on the environment can have disastrous consequences for this generation and generations to come. The Supreme Court has in its judgments on Article 21 of the Constitution recognised this. The Supreme Court cannot place its seal of approval on so vast an undertaking as the project without first ensuring that those best fitted to do so have had the opportunity of gathering all necessary data on the environmental impact of the project and of assessing it. They

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must then decide if environmental clearance to the project can be given, and, if it can, what environmental safeguard measures have to be adopted, and their cost. While surveys and studies on the environmental aspects of the project

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have been carried out subsequent to the environmental clearance, they are not complete. Those who now examine whether environmental clearance to the project should be given must be free to commission or carry out such surveys and studies and the like as they deem necessary. They must also, of course, consider such surveys and studies as have already been carried out. Given that the construction of the dam and other work on the project has already commenced, this factor must play a part in their deciding whether or not environmental clearance should be accorded. Until environmental clearance to the project is accorded by them, further construction work on the dam shall cease.

(Para 274)

The Union of India had issued a notification on 27-1-1994 called the "Environmental Impact Assessment Notification, 1994" (and amended it on 4-5-1994). Its terms are not applicable to the present proceedings, but its provisions are helpful insofar as they prescribe who is to assess the environmental impact assessment reports and environment management plans that are submitted by applicants for new projects, including hydroelectric projects. The Environmental Impact Agency of the Union Ministry of Environment and Forests shall now appoint a Committee of Experts composed of experts in the fields mentioned in Schedule III of the Notification and that Committee of Experts shall assess the environmental impact of the project.

(Para 275)

J. Constitution of India — Art. 32 — Standing/Locus standi — Award of Water Disputes Tribunal — Locus standi to challenge — Such an award when published, held, is binding on the States — No third party has a right to challenge the correctness thereof — Inter-State Water Disputes Act, 1956, Ss. 5 & 6 — Award of Water Disputes Tribunal — Binding nature of, and locus standi to challenge the award

K. Constitution of India — Art. 21 — Ecology — Displacement of tribals on account of construction of Sardar Sarovar Dam up to a height of 455 ft — Legality — In view of relief and rehabilitation measures provided in WDT award, held, not violative of Art. 21 — ILO Convention No. 107, Art. 12 — Environment Protection and Pollution Control — Ecology

L. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Environmental costs and corresponding mitigative measures to be undertaken, whether needed examination by some independent agency — Answered in the negative — Environment Protection and Pollution Control — Ecology

M. Constitution of India — Art. 32 — Ecology — Compensatory afforestation — Quality of — If done on wasteland or lesser quality land, held, would not be necessarily of lesser quality or quantity — Environment Protection and Pollution Control — Ecology

Held :

Per majority

The Water Disputes Tribunal has in its award come to the conclusion that the height of the dam should be 455 ft. It had rejected the contention of the State of Madhya Pradesh for fixing the height at a lower level. At the same time in arriving at this figure, it had considered the relief and

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rehabilitation problems and had issued directions in respect thereof. Any issue which has been decided by the Tribunal would, in law, be binding on the respective States. Once the award is binding on the States, it will not be open to a third party like the

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petitioners to challenge the correctness thereof. In terms of the award, the State of Gujarat has a right to construct a dam up to the height of 455 ft and, at the same time, the oustees have a right to demand relief and resettlement as directed in the award. Therefore, it is not necessary herein to deal with any contention which, in fact, seems to challenge the correctness of an issue decided by the Tribunal.

(Paras 52 and 245)

There is merit in the contention of the respondents that there would be a positive impact on preservation of ecology as a result from the project. SSP would be making positive contribution for preservation of environment in several ways.

(Para 61)

The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than which they enjoyed in their tribal hamlets. The gradual assimilation in the main stream of the society will lead to betterment and progress.

(Para 62)

Gramophone Co. of India Ltd. v. *Birendra Bahadur Pandey*, (1984) 2 SCC 534 : 1984 SCC (Cri) 313; *People's Union for Civil Liberties* v. *Union of India*, (1997) 3 SCC 433 : 1997 SCC (Cri) 434; *Consumer Education & Research Centre* v. *Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604, *referred to*

There is no reason whatsoever as to why independent experts should be required to examine the quality, accuracy, recommendations and implementation of the studies carried out. The Narmada Control Authority and the Environmental Subgroup in particular have the advantage of having with them the studies which had been carried out and there is no reason to believe that they would not be able to handle any problem, if and when, it arises or to doubt the correctness of the studies made.

(Para 101)

If afforestation was taking place on wasteland or lesser quality land, it did not necessarily follow.

(Para 106)

N. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Major sons of PAFs — Right to allotment of land — Cut-off date of 1-1-1987 — Legality — As per WDT award, only the sons who had become major one year prior to the issuance of the notification for land acquisition (issued in 1981-82 in this case), held, were entitled to be allotted land — Hence, fixation of 1-1-1987 as cut-off date so as to give extra benefit to those sons who attained the age of majority at a later date, held, could not be faulted — Constitution of India, Art. 14 — Cut-off date — Ecology

(Para 176)

O. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and

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rehabilitation of oustees — Monitoring arrangement and grievance redressal system — Whether there was a need for review of the project and monitoring of relief and rehabilitation of oustees, by an independent agency — Answered in the negative — Further held, Narmada Control Authority was itself an independent authority and its decisions could be reviewed by the Review Committee — Moreover, there existed grievance redressal bodies to hear appeals from the decisions of rehabilitation officers — Also, there are certain other independent monitoring and evaluation agencies as well

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Held :

Per majority

WDT's award is final and binding on the States. The machinery of the Narmada Control Authority has been envisaged and constituted under the award itself. It is not possible to accept that Narmada Control Authority is not to be regarded as an independent authority. Of course some of the members are government officials but apart from the Union of India, the other States are also represented in this Authority. The project is being undertaken by the Government and it is for the governmental authorities to execute the same. With the establishment of the R&R Subgroup and constitution of the grievances redressal authorities by the States of Gujarat, Maharashtra and Madhya Pradesh, there is a system in force which will ensure satisfactory resettlement and rehabilitation of the oustees. There is no basis for contending that some outside agency or National Human Rights Commission should see to the compliance with the Tribunal's award.

(Paras 177 and 228)

As a consequence of the Tribunal's award, the Narmada Control Authority was created to coordinate and oversee the overall work of the project and to monitor the relief and rehabilitation activities including environmental safeguard measures. The Review Committee of the Narmada Control Authority may suo motu or on the application of any party-State or the Secretary, Ministry of Environment and Forests review any decision of the Narmada Control Authority. In the Narmada Control Authority, Resettlement & Rehabilitation (R&R) Subgroup has been created for closely monitoring the R&R progress. This Subgroup is headed by the Secretary, Government of India, Ministry of Social Justice and Empowerment and is represented by members/invitees of participating States, academic institutions having expertise in R&R, independent socio-anthropological experts and non-governmental organisations.

(Para 178)

State of Karnataka v. *State of A.P.*, (2000) 9 SCC 572 : (2000) 3 Scale 505, *referred to*

The appeal mechanism has been established in the policy statements by all the three State Governments for the redressal of grievances of PAFs. According to this mechanism, if a displaced person is aggrieved by the decision of the rehabilitation officers in respect of any R&R process, he may appeal to the agency/officers concerned. Vide resolution dated 17-2-1999 the Government of Gujarat set up a high-level authority called "Grievance Redressal Authority (GRA)" before which the oustees already resettled and to be resettled in Gujarat could ventilate their grievances for redressal after their resettlement till the process of resettlement and rehabilitation is fully completed. The said Grievance Redressal Authority has Mr Justice P.D. Desai, retired Chief Justice as its Chairman. The

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Gujarat Rehabilitation Authority has installed a permanent in-house Grievance Redressal Cell (GRC) within Sardar Sarovar Punarvasavat Agency. The Grievance Redressal Cell deals with the grievances of PAFs and the grievances redressal is undertaken by it.

(Paras 182 and 183)

At the instance of the Grievance Redressal Authority, an agricultural cell is set up in Sardar Sarovar Punarvasavat Agency with effect from 1-7-1999. This was done with an objective of enhancing the productivity of agricultural land allotted to PAFs by adopting suitable farm management practices and in assisting in resolving land-related grievances. Similarly, w.e.f. 1-5-1999, medical cells have been set up in Sardar Sarovar Punarvasavat Agency for ensuring effective functioning of medical infrastructure and providing organised

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system of supervising and monitoring and also for conducting health survey-cum-medical check-up activities. The Grievance Redressal Authority has become an effective monitoring and implementing agency with regard to relief and rehabilitation of the PAFs in Gujarat. Apart from resolving independent grievances of PAFs and ensuring compliance with the provisions of the award through its exhaustive machinery and mechanism, it is also trying to guide in respect of various other issues not covered by the provisions of the award.

(Para 188)

Vide notification dated 17-4-2000 the Government of Maharashtra has set up a Grievance Redressal Authority and Mr Justice S.P. Kurdukar, retired Judge of the Supreme Court, has been appointed as its Chairman.

(Para 189)

By notification dated 30-3-2000 the Government of Madhya Pradesh has constituted a Grievance Redressal Authority similar to the one in Gujarat with Mr Justice Sohni, retired Chief Justice of the Patna High Court as its Chairman.

(Para 190)

The monitoring and evaluation of the rehabilitation programme is also being carried out by the independent socio-anthropological agencies appointed by the State Governments of Maharashtra, Madhya Pradesh and Gujarat as well as the Narmada Control Authority.

(Para 191)

Thus there is in place an elaborate network of authorities which have to see to the execution and implementation of the project in terms of the award.

(Para 195)

P. Constitution of India — Art. 32 — Ecology — Dams — Sardar Sarovar Dam — Downstream impacts of — Contention that it would have adverse effect on fishing activity and would result in salt water ingress, rejected — Environment Protection and Pollution Control — Dams — Impact of

(Paras 107 and 108)

Q. Constitution of India — Art. 32 — Ecology — Dams — Sardar Sarovar Dam — Apprehension of adverse impacts of, on health around the submergence area and in the command area, held, incorrect — On facts, held, area of public health was not being neglected by State Government — Ecology

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(Para 117)

R. Constitution of India — Art. 32 — Ecology — Narmada Control Authority — Allegation of ineffective functioning against — Environment Subgroup of, made on the basis of conjecture and surmises, rejected — Evidence Act, 1872, S. 114 Ill. (e) — Ecology

(Para 119)

S. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation of project-affected families (PAF) — Surveys of, for determining the number of — Contention that such surveys had not been properly done and that their number had been shown by the authorities at a much lower side, rejected — Ecology

Held :

Each of the States concerned has drawn detailed action plan and it is after requisite study had been made that the number of PAFs have been identified. The number has substantially increased from what was estimated in the Tribunal's award. The reason for the same is the liberalisation of the R&R packages by the State Governments. Except for a bald assertion, there appears to be no material on which the Supreme Court can come to the conclusion that no

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proper surveys had been carried out for determining the number of PAFs who would be adversely affected by the construction of the dam.

(Para 165)

B.D. Sharma v. *Union of India*, 1992 Supp (3) SCC 93, *referred to*

T. Constitution of India — Arts. 32 and 14 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation packages offered to oustees by different States (Gujarat, Maharashtra and M.P.) — Comparatively liberal package offered by Gujarat State — Legality — Upheld — Contention that it had the effect of restricting the choice of oustees and forced them to shift to Gujarat, rejected

Held :

The resettlement and rehabilitation packages in the three States were different due to different geographical, local and economic conditions and availability of land in the States. The liberal packages available to the Sardar Sarovar Project oustees in Gujarat are not even available to the project-affected people of other projects in Gujarat. It is incorrect to say that the difference in relief and rehabilitation packages, the package of Gujarat being the most liberal, amounts to restricting the choice of the oustees. Each State has its own package and the oustees have an option to select the one which was most attractive to them. There is no requirement that the liberalisation of the packages by the three States should be to the same extent and at the same time, the States cannot be faulted if the package which is offered, though not identical to each other, is more liberal than the one envisaged in the Tribunal's award.

(Para 166)

U. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation of non-farmer oustees — Such oustees, held, would be entitled to rehabilitation as per the award of WDT and to benefits of the package offered and chosen — Ecology

(Para 167)

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V. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Colony-affected people — People whose land was acquired for construction of colony for the purpose of the dam, held, were either provided employment in the project works or were paid an ex gratia sum of Rs 36,000 — Ecology

(Para 168)

W. Constitution of India — Arts. 32 and 14 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Canal-affected families — Families whose land was acquired for construction of canals, held, not entitled to parity in relief with the oustees of submergence area — Ecology

(Paras 169 and 131)

X. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and rehabilitation — Pattern of resettlement of oustees — Interpretation of WDT award — Requirement in the award to establish rehabilitation villages for oustees on the norms mentioned for rehabilitation of families willing to migrate to Gujarat, held, did not mean resettlement of oustees as a homogeneous group in a village exclusively set up for them — Ecology

(Para 171)

Y. Constitution of India — Art. 32 — Ecology — Sardar Sarovar Dam — Relief and Rehabilitation — Provision for grazing land and fuel wood for PAFs, held, was not a requirement of WDT award — Environment Protection and Pollution Control — Relief and rehabilitation programme — For oustees of major projects*

(Para 175)

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10. 350 b F Supp 1280 (1973), *Sierra Club et.* v. *Robert F. Froehlke* 728*c*

11. 325 F Supp 749 (1971), *Environmental Defense Fund, Inc.* v. *Corps of Engineers of United States Army* 729*g*

The Judgments of the Court were delivered by

KIRPAL, J. (*for Anand, C.J. and himself*)— Narmada is the fifth largest river in India and largest west-flowing river of the Indian Peninsula. Its annual flow approximates to the combined flow of Rivers Sutlej, Beas and Ravi. Originating from the Maikala Ranges at Amarkantak in Madhya Pradesh, it flows westwards over a length of about 1312 km before draining into the Gulf of Cambay, 50 km west of Bharuch city. The first 1077 km stretch is in Madhya Pradesh and the next 35 km stretch of the river forms the boundary between the States of Madhya Pradesh and Maharashtra. Again, the next 39 km forms the boundary between Maharashtra and Gujarat and the last stretch of 161 km lies in Gujarat.

2. The basin area of this river is about 1 lakh sq km. The utilisation of this river basin, however, is hardly about 4%. Most of the water of this peninsular river goes into the sea. In spite of the huge potential, there was hardly any development of the

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Narmada water resources prior to independence.

3. In 1946, the then Government of Central Provinces and Berar and the then Government of Bombay requested the Central Waterways, Irrigation and Navigation Commission (CWINC) to take up investigations on the Narmada river system for basinwise development of the river with flood

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control, irrigation, power and extension of navigation as the objectives in view. The study commenced in 1947 and most of the sites were inspected by engineers and geologists who recommended detailed investigation for seven projects. Thereafter in 1948, the Central Ministry of Works, Mines and Power appointed an ad hoc committee headed by Shri A.N. Khosla, Chairman, CWINC to study the projects and to recommend the priorities. This ad hoc committee recommended as an initial step detailed investigations for the following projects keeping in view the availability of men, materials and resources:

1. Bargi Project,

2. Tawa Project near Hoshangabad,

3. Punasa Project, and

4. Broach Project.

4. Based on the recommendations of the aforesaid ad hoc committee, estimates for investigations of the Bargi, Tawa, Punasa (Narmada Sagar) and Broach Projects were sanctioned by the Government of India in March 1949.

5. The Central Water and Power Commission carried out a study of the hydroelectric potential of the Narmada basin in the year 1955. After the investigations were carried out by the Central Water and Power Commission, the Navagam site was finally decided upon in consultation with the erstwhile Government of Bombay for the construction of the dam. The Central Water and Power Commission forwarded its recommendations to the then Government of Bombay. At that time the implementation was contemplated in two stages. In Stage I, full reservoir level (hereinafter referred to as "FRL") was restricted to 160 ft with provision for wider foundations to enable raising of the dam to FRL 300 ft in Stage II. A high-level canal was envisaged in Stage II. The erstwhile Bombay Government suggested two modifications, first FRL of the dam be raised from 300 to 320 ft in Stage II and second the provision of a powerhouse in the riverbed and a powerhouse at the head of the low-level canal be also made. This project was then reviewed by a panel of consultants appointed by the Ministry of Irrigation and Power who in a report in 1960 suggested that the two stages of the Navagam Dam as proposed should be combined into one and the dam be constructed to its final FRL 320 ft in one stage only. The consultants also stated that there was scope for extending irrigation from the high-level canal towards the Rann of Kutch.

6. With the formation of the State of Gujarat on 1-5-1960 the Narmada Project stood transferred to that State. Accordingly, the Government of Gujarat gave an administrative approval to Stage I of the Narmada Project in February 1961. The project was then inaugurated by late Pandit Jawaharlal Nehru on 5-4-1961. The

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preliminary works such as approach roads and bridges, colonies, staff buildings and remaining investigations for dam foundations were soon taken up.

7. The Gujarat Government undertook surveys for the high-level canal in 1961. The submergence area survey of the reservoir enabled assessment of

the storage capability of the Navagam Reservoir, if its height should be raised beyond FRL 320 ft. The studies indicated that a reservoir with FRL +460 ft would enable realisation of optimum benefits from the river by utilising the untapped flow below Punasa Dam and would make it possible to extend irrigation to a further area of over 20 lakh acres. Accordingly, explorations for locating a more suitable site in the narrower gorge portion were taken in hand and finally in November 1963, Site No. 3 was found to be most suitable on the basis of the recommendations of the Geological Survey of India and also on the basis of exploration and investigations with regard to the foundation as well as construction materials available in the vicinity of the dam site.

8. In November 1963 the Union Minister of Irrigation and Power held a meeting with the Chief Ministers of Gujarat and Madhya Pradesh at Bhopal. As a result of the discussions and exchange of views, an agreement (Bhopal Agreement) was arrived at. The salient features of the said agreement were:

> "(*a*) That the Navagam Dam should be built to FRL 425 by the Government of Gujarat and its entire benefits were to be enjoyed by the State of Gujarat.
>
> (*b*) Punasa Dam (Madhya Pradesh) should be built to FRL 850. The costs and power benefits of Punasa Power Project shall be shared in the ratio 1:2 between the Governments of Gujarat and Madhya Pradesh. Out of the power available to Madhya Pradesh half of the quantum was to be given to the State of Maharashtra for a period of 25 years for which the State of Maharashtra was to provide a loan to the extent of one-third the cost of Punasa Dam. The loan to be given by the State of Maharashtra was to be returned within a period of 25 years.
>
> (*c*) Bargi Project was to be implemented by the State of Madhya Pradesh. Bargi Dam was to be built to FRL 1365 in Stage I and FRL 1390 in Stage II and the Governments of Gujarat and Maharashtra were to give a total loan assistance of Rs 10 crores for the same."

9. In pursuance of the Bhopal Agreement, the Government of Gujarat prepared a brief project report envisaging the Navagam Dam FRL 425 ft and submitted the same to the Central Water and Power Commission under Gujarat Government's letter dated 14-2-1964. Madhya Pradesh, however, did not ratify the Bhopal Agreement. In order to overcome the stalemate following the rejection of the Bhopal Agreement by Madhya Pradesh, a high-level committee of eminent engineers headed by Dr A.N. Khosla, the then Governor of Orissa, was constituted on 5-9-1964 by the Government of India. The terms of reference of this committee were decided by the Government of India in consultation with the States of Madhya Pradesh, Maharashtra and Gujarat. The same read as under:

> (*i*) Drawing up of a master plan for the optimum and integrated development of

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the Narmada water resources.

(*ii*) The phasing of its implementation for maximum development of the resources and other benefits.

(*iii*) The examination, in particular, of Navagam and alternative projects, if any, and determining the optimum reservoir level or levels.

(*iv*) Making recommendations of any other ancillary matters.

10. The Khosla Committee submitted the unanimous report to the Government of India in September 1965 and recommended a master plan of the Narmada water development. In Chapter XI of the said report, the Khosla Committee outlined its approach to the plan of Narmada development. An extract from this chapter is reproduced below:

"*11.1.* In their meeting from 14-12-1964 to 18-12-1964 at which the State representatives were also present, the Committee laid down the following basic guidelines in drawing up the master plan for the optimum and integrated development of the Narmada water resources:

(*1*) national interest should have overriding priority. The plan should, therefore, provide for maximum benefits in respect of irrigation, power generation, flood control, navigation etc. irrespective of State boundaries;

(*2*) rights and interests of the State concerned should be fully safeguarded subject to (*1*) above;

(*3*) requirements of irrigation should have priority over those of power;

Subject to the provision that suitable apportionment of water between irrigation and power may have to be considered, should it be found that with full development of irrigation, power production is unduly affected;

(*4*) irrigation should be extended to the maximum area within physical limits of command, irrespective of State boundaries, subject to availability of water; and in particular, to the arid areas along the international border with Pakistan both in Gujarat and Rajasthan to encourage sturdy peasants to settle in these border areas (later events have confirmed the imperative need for this); and

(*5*) all available water should be utilised to the maximum extent possible for irrigation and power generation and, when no irrigation is possible, for power generation. The quantity going waste to the sea without doing irrigation or generating power should be kept to the unavoidable minimum."

11. The master plan recommended by the Khosla Committee envisaged 12 major projects to be taken up in Madhya Pradesh and one, viz., Navagam in Gujarat. As far as Navagam Dam was concerned, the Committee recommended as follows:

"*1*. The terminal dam should be located at Navagam.

2. The optimum FRL of the Navagam Dam worked out to RL 500 ft.

3. The FSL (full supply level) of the Navagam Canal at off-take should be RL 300

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ft.

4. The installed capacity at the riverbed power station and canal power station should be 1000 MW and 240 MW respectively with one

standby unit in each power station (in other words the total installed capacity at Navagam would be 1400 MW)."

The benefits of the Navagam Dam as assessed by the Khosla Committee were as follows:

"(*1*) Irrigation of 15.80 lakh hectares (39.4 lakh acres) in Gujarat and 0.4 lakh hectares (1.00 lakh acres) in Rajasthan. In addition, the Narmada waters when fed into the existing Mahi Canal System would release Mahi water to be diverted on higher contours enabling additional irrigation of 1.6 to 2.0 lakh hectares (4 to 5 lakh acres) approximately in Gujarat and 3.04 lakh hectares (7.5 lakh acres) in Rajasthan.

(*2*) Hydropower generation of 951 MW at 60% LF in the mean year of development and 511 MW on ultimate development of irrigation in Gujarat, Madhya Pradesh, Maharashtra and Rajasthan."

12. The Khosla Committee stressed an important point in favour of high Navagam Dam, namely, additional storage. They emphasised that this additional storage will permit greater carry-over capacity, increased power production and assured optimum irrigation and flood control and would minimise the wastage of water to the sea. The Khosla Committee also observed that instead of higher Navagam Dam as proposed, if Harinphal or Jalsindhi Dams were raised to the same FRL as at Navagam, the submergence would continue to remain about the same because the cultivated and inhabited areas lie mostly above Harinphal while in the intervening 113 km (70 mile) gorge between Harinphal and Navagam, there was very little habitation or cultivated areas.

13. The Khosla Committee Report could not be implemented on account of disagreement among the States. On 6-7-1968 the State of Gujarat made a complaint to the Government of India under Section 3 of the Inter-State Water Disputes Act, 1956 stating that a water dispute had arisen between the State of Gujarat and the respondent States of Madhya Pradesh and Maharashtra over the use, distribution and control of the waters of the inter-State River Narmada. The substance of the allegation was that executive action had been taken by Maharashtra and Madhya Pradesh which had prejudicially affected the State of Gujarat and its inhabitants. The State of Gujarat objected to the proposal of the State of Madhya Pradesh to construct Maheshwar and Harinphal Dams over River Narmada in its lower reach and also to the agreement reached between the States of Madhya Pradesh and Maharashtra to jointly construct the Jalsindhi Dam over Narmada in its course between the two States. The main reason for the objection was that if these projects were implemented, the same would prejudicially affect the rights and interests of Gujarat State by compelling it to restrict the height of the dam at Navagam to FRL 210 ft or less. Reducing the height of the dam would mean the permanent detriment of irrigation and power benefits that would

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be available to the inhabitants of Gujarat and this would also make it impossible for Gujarat to reclaim the desert area in the Rann of Kutch.

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According to the State of Gujarat, the principal matters in disputes were as under:

> "(*i*) the right of the State of Gujarat to control and use the waters of the Narmada river on well-accepted principles applicable to the use of waters of inter-State rivers;
>
> (*ii*) the right of the State of Gujarat to object to the arrangement between the State of Madhya Pradesh and the State of Maharashtra for the development of Jalsindhi Dam;
>
> (*iii*) the right of the State of Gujarat to raise the Navagam Dam to an optimum height commensurate with the efficient use of Narmada waters including its control for providing requisite cushion for flood control; and
>
> (*iv*) the consequential right of submergence of area in the States of Madhya Pradesh and Maharashtra and areas in the Gujarat State."

14. Acting under Section 4 of the Inter-State Water Disputes Act, 1956, the Government of India constituted a Tribunal headed by Hon'ble Mr Justice V. Ramaswamy, a retired Judge of this Court. On the same day, the Government made a reference of the water dispute to the Tribunal, the reference being in the following terms:

> "In exercise of the powers conferred by sub-section (1) of Section 5 of the Inter-State Water Disputes Act, 1956 (33 of 1956), the Central Government hereby refers to the Narmada Water Disputes Tribunal for adjudication of the water dispute regarding the inter-State River Narmada, and the river-valley thereof, emerging from Letter No. MIP-5565/C-10527-K dated 6-7-1968, from the Government of Gujarat."

15. On 16-10-1969 the Government of India made another reference of certain issues raised by the State of Rajasthan to the said Tribunal.

16. The State of Madhya Pradesh filed a demurrer before the Tribunal stating that the constitution of the Tribunal and reference to it were ultra vires of the Act. The Tribunal framed 24 issues which included the issues relating to Gujarat having a right to construct a high dam with FRL 530 feet and a canal with FSL 300 feet or thereabouts. Issues 1(*a*), 1(*b*), 1(A), 2, 3 and 19 were tried as preliminary issues of law and by its decision dated 23-2-1972 the said issues were decided against the respondents herein. It was held that the notification of the Central Government dated 16-10-1969 referring the matters raised by the State of Rajasthan by its complaint was ultra vires of the Act but constitution of the Tribunal and making a reference of the water dispute regarding inter-State River Narmada was not ultra vires of the Act and the Tribunal had jurisdiction to decide the dispute referred to it at the instance of the State of Gujarat. It further held that the proposed construction of the Navagam Project involving consequent submergence of portions of the territories of Maharashtra and Madhya Pradesh could form the subject-matter of a "water dispute" within the

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meaning of Section 2(*c*) of the 1956 Act. It also held that it had the jurisdiction to give appropriate direction to Madhya

Pradesh and Maharashtra to take steps by way of acquisition or otherwise for making submerged land available to Gujarat in order to enable it to execute the Navagam Project and the Tribunal had the jurisdiction to give consequent directions to Gujarat and other party-States regarding payment of compensation to Maharashtra and Madhya Pradesh, for giving them a share in the beneficial use of Navagam Dam, and for rehabilitation of displaced persons.

17. Against the aforesaid judgment of the Tribunal on the preliminary issues, the States of Madhya Pradesh and Rajasthan filed appeals by special leave to this Court and obtained a stay of the proceedings before the Tribunal to a limited extent. This Court directed that the proceedings before the Tribunal should be stayed but discovery, inspection and other miscellaneous proceedings before the Tribunal may go on. The State of Rajasthan was directed to participate in these interlocutory proceedings.

18. It appears that on 31-7-1972, the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan had entered into an agreement to compromise the matters in dispute with the assistance of the Prime Minister of India. This led to a formal agreement dated 12-7-1974 being arrived at between the Chief Ministers of Madhya Pradesh, Maharashtra and Rajasthan and the advisor to the Governor of Gujarat on a number of issues which the Tribunal otherwise would have had to go into. The main features of the agreement, as far as this case is concerned, were that the quantity of water in Narmada available for 75% of the year was to be assessed at 28 million acre feet and the Tribunal in determining the disputes referred to it was to proceed on the basis of this assessment. The net available quantity of water for use in Madhya Pradesh and Gujarat was to be regarded as 27.25 million acre feet which was to be allocated between the States. The height of the Navagam Dam was to be fixed by the Tribunal after taking into consideration various contentions and submissions of the parties and it was agreed that the appeals filed in this Court by the States of Madhya Pradesh and Rajasthan would be withdrawn. It was also noted in this agreement that "development of Narmada should no longer be delayed in the best regional and national interests".

19. After the withdrawal of the appeals by the States of Madhya Pradesh and Rajasthan, the Tribunal proceeded to decide the remaining issues between the parties.

20. On 16-8-1978, the Tribunal declared its award under Section 5(2) read with Section 5(4) of the Inter-State Water Disputes Act, 1956. Thereafter, References Nos. 1, 2, 3, 4 and 5 of 1978 were filed by the Union of India and the States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan respectively under Section 5(3) of the Inter-State Water Disputes Act, 1956. These references were heard by the Tribunal, which on 7-12-1979 gave its final order. The same was published in the Extraordinary Gazette by the Government of India on 12-12-1979. In arriving at its final decision, the

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issues regarding allocation, height of dam, hydrology and other related issues came to be subjected to comprehensive and thorough examination by the Tribunal. Extensive studies were done by the Irrigation Commission and Drought Research Unit of India, Meteorological Department in matters of catchment area of Narmada basin, major tributaries of Narmada basin, drainage area of Narmada basin, climate, rainfall, variability of rainfall, arid and semi-arid zones and scarcity area of Gujarat. The perusal of the report shows that the Tribunal also took into consideration various technical literature before giving its award.

Award of the Tribunal

21. The main parameters of the decision of the Tribunal were as under:

(*a*) *Determination of the height of Sardar Sarovar Dam*

The height of the Sardar Sarovar Dam was determined at FRL 455 ft. The Tribunal was of the view that FRL +436 ft was required for irrigation use alone. In order to generate power throughout the year, it would be necessary to provide all the live storage above MDDL for which an FRL +453 ft with MDDL +362 ft would obtain gross capacity of 7.44 MAF. Therefore, the Tribunal was of the view that FRL of the Sardar Sarovar Dam should be +455 ft providing gross storage of 7.70 MAF. It directed the State of Gujarat to take up and complete the construction of the dam.

(*b*) *Geological and seismological aspects of the dam site*

The Tribunal accepted the recommendations of the Standing Committee under Central Water and Power Commission that there should be seismic coefficient of 0.10 g for the dam.

(*c*) *Relief and rehabilitation*

The final award contained directions regarding submergence, land acquisition and rehabilitation of displaced persons. The award defined the meaning of land, oustee and family. The Gujarat Government was to pay to Madhya Pradesh and Maharashtra all costs including compensation, charges, expenses incurred by them for and in respect of compulsory acquisition of land. Further, the Tribunal had provided for rehabilitation of oustees and civic amenities to be provided to the oustees. The award also provided that if the State of Gujarat was unable to resettle the oustees or the oustees were unwilling to occupy the area offered by the States, then the oustees will be resettled by home State and all expenses for this were to be borne by Gujarat. An important mandatory provision regarding rehabilitation was the one contained in clause XI sub-clause (IV)(6)(*ii*) which stated that no submergence of any area would take place unless the oustees were rehabilitated.

(*d*) *Allocation of the Narmada waters*

The Tribunal determined the utilisable quantum of water of the Narmada at Sardar Sarovar Dam site on the basis of 75% dependability

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at 28 MAF. It further ordered that out of the utilisable quantum of Narmada water, the allocation between the States should be as under:

Madhya Pradesh	18.25 MAF
Gujarat	9.00 MAF
Rajasthan	0.50 MAF
Maharashtra	0.25 MAF

(*e*) *Period of non-reviewability of certain award terms*

The award provided for the period of operation of certain clauses of the final order and decision of the Tribunal as being subject to review only after a period of 45 years from the date of the publication of the decision of the Tribunal in the Official Gazette. What is important to note however is that the Tribunal's decision contained in clause II relating to determination of 75% dependable flow as 28 MAF was non-reviewable. The Tribunal decision of the determination of the utilisable quantum of Narmada water at Sardar Sarovar Dam site on the basis of 75% dependability at 28 MAF is not a clause which is included as a clause whose terms can be reviewed after a period of 45 years.

22. The Tribunal in its award directed for the constitution of an inter-State administrative authority i.e. Narmada Control Authority for the purpose of securing compliance with and implementation of the decision and directions of the Tribunal. The Tribunal also directed for constitution of a Review Committee consisting of the Union Minister for Irrigation (now substituted by Union Minister for Water Resources) as its Chairperson and the Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan as its members. The Review Committee might review the decisions of the Narmada Control Authority and the Sardar Sarovar Construction Advisory Committee. The Sardar Sarovar Construction Advisory Committee headed by the Secretary, Ministry of Water Resources as its Chairperson was directed to be constituted for ensuring efficient, economical and early execution of the project.

23. The Narmada Control Authority is a high-powered committee having the Secretary, Ministry of Water Resources, Government of India as its Chairperson, Secretaries in the Ministry of Power, Ministry of Environment and Forests, Ministry of Welfare, Chief Secretaries of the four States concerned as members. In addition thereto, there are a number of technical persons like Chief Engineers as the members.

24. The Narmada Control Authority was empowered to constitute one or more sub-committees and assign to them such of the functions and delegate such of its powers as it thought fit. Accordingly, the Narmada Control Authority constituted the following discipline-based subgroups:

(*i*) Resettlement and Rehabilitation Subgroup under the Chairmanship of Secretary, Ministry of Welfare.

(*ii*) Rehabilitation Sub-Committee under Secretary, Minister of Welfare to supervise the rehabilitation process by undertaking visits to R&R sites and submergence villages.

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(*iii*) Environment Subgroup under the Chairmanship of Secretary, Ministry of Environment and Forests.

(*iv*) Hydromet Subgroup under the Chairmanship of Member (Civil), Narmada Control Authority.

(*v*) Power Subgroup under the Chairmanship of Member (Power), Narmada Control Authority.

(*vi*) Narmada Main Canal Sub-Committee under the Chairmanship of Executive Member, Narmada Control Authority.

25. The award allocated the available water resources of the Narmada river between the four States. Based on this allocation, an overall plan for their utilisation and development had been made by the States. Madhya Pradesh was the major sharer of the water. As per the water resources development plan for the basin, it envisaged in all 30 major dams, 135 medium dam projects and more than 3000 minor dams. The major terminal dam at Sardar Sarovar was in Gujarat, the remaining 29 being in Madhya Pradesh. Down the main course of the river, the four major dams were the Narmada Sagar (now renamed as Indira Sagar), Omkareshwar and Maheshwar, all in Madhya Pradesh and Sardar Sarovar in Gujarat. Rajasthan was to construct a canal in its territory to utilise its share of 0.5 MAF.

Relevant details of the Sardar Sarovar Dam

26. As a result of the award of the Tribunal, the Sardar Sarovar Dam and related constructions, broadly speaking, are to comprise of the following:

(*a*) Main dam across the flow of the river with gates above the crest level to regulate the flow of water into the Narmada Main Canal.

(*b*) An underground riverbed power through which a portion of the water is diverted to generate power (1200 MW). This water joins the main channel of the Narmada river downstream of the dam.

(*c*) A saddle dam located by the side of the main reservoir through which water to the main canal system flows.

(*d*) A canal head powerhouse located at the toe of the saddle dam, through which the water flowing to the main canal system is to be used to generate power (250 MW).

(*e*) The main canal system known as Narmada Main Canal, 458-km long which is to carry away the water meant for irrigation and drinking purposes to the canal systems of Gujarat and Rajasthan.

Expected benefits from the project

27. The benefits expected to flow from the implementation of the Sardar Sarovar Project had been estimated as follows:

Irrigation: 17.92 lakh hectares of land spread over 12 districts, 62 talukas and 3393 villages (75% of which are drought-prone areas) in Gujarat and 73,000 hectares in the arid areas of Barmer and Jallore Districts of Rajasthan.

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Drinking water facilities to 8215 villages and 135 urban centres in Gujarat, both within and outside command. These include 5825 villages

and 100 urban centres of Saurashtra and Kutch which are outside the command. In addition, 881 villages affected due to high contents of fluoride will get potable water.

Power generation: 1450 megawatt.

Annual employment potential: 7 lakh men — years during construction, 6 lakh men — years in post-construction.

Protection against advancement of Little Rann of Kutch and Rajasthan desert.

Flood protection to riverine reaches measuring 30,000 ha, 210 villages including Bharuch city and 7.5 lakh population.

Benefits to:

(*a*) Dhumkhal Sloth Bear Sanctuary.

(*b*) Wild Ass Sanctuary in Little Rann of Kutch.

(*c*) Black Buck Sanctuary at Velavadar.

(*d*) Great Indian Bustard Sanctuary in Kutch.

(*e*) Nal Sarovar Bird Sanctuary.

Development of fisheries: Deepening of all village tanks of command which will increase their capacities, conserve water, will recharge groundwater, save acquisition of costly lands for getting earth required for constructing canal banks and will reduce health hazard.

Facilities of sophisticated communication system in the entire command.

Increase in additional annual production on account of

	(Rs in crores)
Agricultural production	900
Domestic water supply	100
Power generation	400
Total	1400

Post-award clearances

28. In order to meet the financial obligations, consultations had started in 1978 with World Bank for obtaining a loan. World Bank sent its reconnaissance mission to visit the project site and carried out the necessary inspection. In May 1985, the Narmada Dam and Power Project and Narmada Water Delivery and Drainage Project were sanctioned by World Bank under International Development Agency, Credit No. 1552. The agreement in this respect was signed with the Bank on 10-5-1985 and credit was to be made available from 6-1-1986.

29. With regard to giving environmental clearance, a lot of discussion took place at different levels between the Ministry of Water Resources and the Ministry of Environment. Ultimately on 24-6-1987 the Ministry of Environment and Forests, Government of India accorded clearance subject to

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certain conditions. The said office memorandum containing the environmental clearance reads as follows:

"OFFICE MEMORANDUM

Subject: Approval of Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat from environmental angle.

1. The Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat have referred to this Department for environmental clearance.

2. On the basis of examination of details on these projects by the Environmental Appraisal Committee for River Valley Projects and discussions with the Central and State authorities the following details were sought from the project authorities:

1. rehabilitation master plan,

2. phased catchment area treatment scheme,

3. compensatory afforestation plan,

4. command area development,

5. survey of flora and fauna,

6. carrying capacity of surrounding area,

7. seismicity, and

8. health aspects.

3. Field surveys are yet to be completed. The first set of information has been made available and complete details have been assured to be furnished in 1989.

4. NCA has been examined and its terms of reference have been amplified to ensure that environmental safeguard measures are planned and implemented in depth and in its pace of implementation pari passu with the progress of work on the projects.

5. After taking into account all relevant facts the Narmada Sagar Project, Madhya Pradesh and the Sardar Sarovar Project, Gujarat State are hereby accorded environmental clearance subject to the following conditions:

(*i*) The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented pari passu with progress of work on project.

(*ii*) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the Department for assessment.

(*iii*) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

(*iv*) The Department should be kept informed of progress on various works periodically.

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6. The approval under the Forest (Conservation) Act, 1980 for diversion of forest land will be obtained separately. No work should be initiated on forest area prior to this approval.

7. Approval from environmental and forestry angles for any other irrigation, power or development projects in the Narmada basin should be obtained separately.

sd/-
(S. Mudgal)
Director (IA)"

30. In November 1987 for monitoring and implementation of various environmental activities effectively, an independent machinery of Environment Subgroup was created by the Narmada Control Authority. This Subgroup was appointed with a view to ensure that the environmental safeguards were properly planned and implemented. This Subgroup is headed by the Secretary, Ministry of Environment and Forests, Government of India, as its Chairperson and various other independent experts in various fields relating to environment as its members.

31. After the clearance was given by the Ministry of Environment and Forests, the Planning Commission, on 5-10-1988, approved investment for an estimated cost of Rs 6406 crores with the direction to comply with the conditions laid down in the environment clearance accorded on 24-6-1987.

32. According to the State of Gujarat and Union of India, the studies as required to be done by the OM dated 24-6-1987, whereby environmental clearance was accorded, have been undertaken and the requisite work carried out. The construction of the dam had commenced in 1987.

33. In November 1990, one Dr B.D. Sharma wrote a letter to this Court for setting up of National Commission for Scheduled Castes and Scheduled Tribes including proper rehabilitation of oustees of Sardar Sarovar Dam. This letter was entertained and treated as a writ petition under Article 32 of the Constitution being Writ Petition No. 1201 of 1990.

34. On 20-9-1991 this Court in the said writ petition bearing No. 1201 of 1990 gave a direction to constitute the Committee headed by Secretary (Welfare) to monitor the rehabilitation aspects of the Sardar Sarovar Project.

35. The Narmada Bachao Andolan, the petitioner herein, had been in the forefront of agitation against the construction of the Sardar Sarovar Dam. Apparently because of this, the Government of India, Ministry of Water Resources vide office memorandum dated 3-8-1993 constituted a Five-Member Group to be headed by Dr Jayant Patil, Member, Planning Commission and Dr Vasant Gowariker, Mr Ramaswamy R. Iyer, Mr L.C. Jain and Dr V.C. Kulandaiswamy as its members to continue discussions with the Narmada Bachao Andolan on issues relating to the Sardar Sarovar Project. Three months' time was given to this Group to submit its report.

36. During this time, the construction of the dam continued and on 22-2-1994 the Ministry of Water Resources conveyed its decision regarding

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closure of the construction sluices. This decision was given effect to and on 23-2-1994 closure of ten construction sluices was effected.

37. In April 1994 the petitioner filed the present writ petition inter alia praying that the Union of India and other respondents should be restrained from proceeding with the construction of the dam and they should be ordered to open the aforesaid sluices. It appears that the Gujarat High Court had passed an order staying the publication of the report of the Five-Member Group established by the Ministry of Water Resources. On 15-11-1994 this Court called for the report of the Five-Member Group and the Government of India was also directed to give its response to the said report.

38. By order dated 13-12-1994, this Court directed that the report of the Five-Member Group be made public and responses to the same were required to be filed by the States and the report was to be considered by the Narmada Control Authority. This report was discussed by the Narmada Control Authority on 2-1-1995 wherein disagreement was expressed by the State of Madhya Pradesh on the issues of height and hydrology. Separate responses were filed in this Court to the said Five-Member Group report by the Government of India and the Governments of Gujarat and Madhya Pradesh.

39. On 24-1-1995, orders were issued by this Court to the Five-Member Group for submitting detailed further report on the issues of:

(*a*) height,

(*b*) hydrology, and

(*c*) resettlement and rehabilitation and environmental matters.

Dr Patil who had headed the Five-Member Group expressed his unwillingness to continue on the ground of ill-health and on 9-2-1995 this Court directed the remaining four members to submit their report on the aforesaid issues.

40. On 17-4-1985 the Four-Member Group submitted its report. The said report was not unanimous, unlike the previous one, and the members were equally divided. With regard to hydrology, Professor V.C. Kulandaiswamy and Dr Vasant Gowariker were for adoption of 75% dependable flow of 27 MAF for the design purpose, on the basis of which the Tribunal's award had proceeded. On the other hand, Shri Ramaswamy R. Iyer and Shri L.C. Jain were of the opinion that for planning purposes, it would be appropriate to opt for the estimate of 23 MAF. With regard to the question relating to the height of the dam, the views of Dr Gowariker were that the Tribunal had decided FRL 455 ft after going into exhaustive details including social, financial and technical aspects of the project and that it was not practicable at the stage when an expenditure of Rs 4000 crores had been incurred and an additional contract amounting to Rs 2000 crores entered into and the various parameters and features of the project having been designed with respect to FRL 455 ft that there should be a reduction of the height of the dam. The other three members proceeded to answer this question by first observing as follows:

"We must now draw conclusions from the foregoing analysis, but a preliminary point needs to be made. SSP is now in an advanced stage of

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construction, with the central portion of the dam already raised to 80 m; the canal constructed up to a length of 140 km; and most of the equipment for various components of the project ordered and some of it already wholly or partly manufactured. An expenditure of over Rs 3800 crores is said to have been already incurred on the project; significant social costs have also been incurred in terms of displacement and rehabilitation. The benefits for which these costs have been and are being incurred have not materialised yet. In that situation, anyone with a concern for keeping project costs under check and for ensuring the early commencement of benefits would generally like to accelerate rather than retard the completion of the project as planned. If any suggestion for major changes in the features of the project at this juncture is to be entertained at all, there will have to be the most compelling reasons for doing so."

41. It then addressed itself to the question whether there were any compelling reasons. The answer, they felt, depended upon the view they took on the displacement and rehabilitation problem. The two views which, it examined, were, firstly whether the problem of displacement and rehabilitation was manageable and, if it was, then there would be no case of reduction in the height. On the other hand, if relief and rehabilitation was beset with serious and persistent problems then they might be led to the conclusion that there should be an examination of the possibility of reducing submergence and displacement to a more manageable size. These three members then considered the question of the magnitude of the relief and rehabilitation problem. After taking into consideration the views of the States of Madhya Pradesh and Gujarat, the three members observed as follows:

> "We find that the Government of India's idea of phased construction outlined earlier offers a practical solution; it does not prevent FRL from being raised to 455 ft in due course if the necessary conditions are satisfied; and it enables the Government of Madhya Pradesh to take stock of the position at 436 ft and call to it a halt if necessary. We would, however, reiterate the presumption expressed in para 3.9.2. above, namely, that no delinking of construction from R&R is intended and that by 'phased construction' the Government of India does not mean merely tiered construction which facilitates controlled submergence in phases. We recommend phased construction in a literal sense, that is to say, that at each phase it must be ensured that the condition of advance completion of R&R has been fulfilled before proceeding to the next phase (i.e. the installation of the next tier of the gates). This would apply even to the installation of the first tier. 'Judicious operation of the gates' (while necessary) cannot be a substitute for the aforesaid condition."

The possibility of further construction when the FRL 436 ft was reached or a stoppage at that stage was left open by the members. With regard to the environment it observed that this subject had been by and large covered in the first FMG report.

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Rival contentions

42. On behalf of the petitioners, the arguments of Shri Shanti Bhushan, learned Senior Counsel, were divided into four different heads, namely, general issues, issues regarding environment, issues regarding relief and rehabilitation and issues regarding review of the Tribunal's award. The petitioners have sought to contend that it is necessary for some independent judicial authority to review the entire project, examine the current best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project is required in its present form in the national interest or whether it needs to be restructured/modified. It is further the case of the petitioners that no work should proceed till environment impact assessment has been fully done and its implications for the project's viability been assessed in a transparent and participatory manner. This can best be done, it is submitted, as a part of the comprehensive review of the project.

43. While strongly championing the cause of environment and of the tribals who are to be ousted as a result of the submergence, it was submitted that the environmental clearance which was granted in 1987 was without any or proper application of mind as complete studies in that behalf were not available and till this is done the project should not be allowed to proceed further. With regard to relief and rehabilitation a number of contentions were raised with a view to persuade this Court that further submergence should not take place and the height of the dam, if at all it is to be allowed to be constructed, should be considerably reduced as it is not possible to have satisfactory relief and rehabilitation of the oustees as per the Tribunal's award as a result of which their fundamental rights under Article 21 would be violated.

44. While the State of Madhya Pradesh has partly supported the petitioners inasmuch as it has also pleaded for reduction in the height of the dam so as to reduce the extent of submergence and the consequent displacement, the other States and the Union of India have refuted the contentions of the petitioners and of the State of Madhya Pradesh. While accepting that initially the relief and rehabilitation measures had lagged behind but now adequate steps have been taken to ensure proper implementation of relief and rehabilitation at least as per the award. The respondents have, while refuting other allegations, also questioned the bona fides of the petitioners in filing this petition. It is contended that the cause of the tribals and environment is being taken up by the petitioners not with a view to benefit the tribals but the real reason for filing this petition is to see that a high dam is not erected per se. It was also submitted that at this late stage this Court should not adjudicate on the various issues raised, specially those which have been decided by the Tribunal's award.

45. We first propose to deal with some legal issues before considering the various submissions made by Shri Shanti Bhushan regarding

environment, relief and rehabilitation, alleged violation of rights of the tribals and the need for review of the project.

Laches

46. As far as the petitioner is concerned, it is an anti-dam organisation and is

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opposed to the construction of the high dam. It has been in existence since 1986 but has chosen to challenge the clearance given in 1987 by filing a writ petition in 1994. It has sought to contend that there was lack of study available regarding the environmental aspects and also because of the seismicity, the clearance should not have been granted. The rehabilitation packages are dissimilar and there has been no independent study or survey done before decision to undertake the project was taken and construction started.

47. The project, in principle, was cleared more than 25 years ago when the foundation stone was laid by late Pandit Jawahar Lal Nehru. Thereafter, there was an agreement of the four Chief Ministers in 1974, namely, the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan for the project to be undertaken. Then dispute arose with regard to the height of the dam which was settled with the award of the Tribunal being given in 1978. For a number of years, thereafter, final clearance was still not given. In the meantime some environmental studies were conducted. The final clearance was not given because of the environmental concern which is quite evident. Even though complete data with regard to the environment was not available, the Government did in 1987 finally give environmental clearance. It is thereafter that the construction of the dam was undertaken and hundreds of crores have been invested before the petitioner chose to file a writ petition in 1994 challenging the decision to construct the dam and the clearance as was given. In our opinion, the petitioner which had been agitating against the dam since 1986 is guilty of laches in not approaching the Court at an earlier point of time.

48. When such projects are undertaken and hundreds of crores of public money is spent, any individual or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project.

49. The petitioner has been agitating against the construction of the dam since 1986, before environmental clearance was given and construction started. It has, over the years, chosen different paths to oppose the dam. At its instance a Five-Member Group was constituted, but its report could not result in the stoppage of construction pari passu with relief and rehabilitation measures. Having failed in its attempt to stall the project the petitioner has resorted to court proceedings by filing this writ petition long after the environmental clearance was given and construction started. The pleas relating to height of the dam and the extent of submergence, environment

studies and clearance, hydrology, seismicity and other issues, except implementation of relief and rehabilitation, cannot be permitted to be raised at this belated stage.

50. This Court has entertained this petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures at least to the extent they have been ordered by the Tribunal's award. In short, it was only the concern of this Court for the protection of the fundamental rights of the oustees under Article 21

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of the Constitution of India which led to the entertaining of this petition. It is the relief and rehabilitation measures that this Court is really concerned with and the petition in regard to the other issues raised is highly belated. Though it is, therefore, not necessary to do so, we however presently propose to deal with some of the other issues raised.

Award — binding on the States

51. It has been the effort on the part of the petitioners to persuade this Court to decide that in view of the difficulties in effectively implementing the award with regard to relief and rehabilitation and because of the alleged adverse impact the construction of the dam will have on the environment, further construction of the dam should not be permitted. The petitioners support the contention on behalf of the State of Madhya Pradesh to the effect that the height of the dam should be reduced in order to decrease the number of oustees. In this case, the petitioners also submit that with regard to hydrology, the adoption of the figure 27 MAF is not correct and the correct figure is 23 MAF and in view thereof the height of the dam need not be 455 feet.

52. The Tribunal in this award has decided a number of issues which have been summarised hereinabove. The question which arises is as to whether it is open to the petitioners to directly or indirectly challenge the correctness of the said decision. Briefly stated the Tribunal had in no uncertain terms come to the conclusion that the height of the dam should be 455 ft. It had rejected the contention of the State of Madhya Pradesh for fixing the height at a lower level. At the same time in arriving at this figure, it had considered the relief and rehabilitation problems and had issued directions in respect thereof. Any issue which has been decided by the Tribunal would, in law, be binding on the respective States. That this is so has been recently decided by a Constitution Bench of this Court in *State of Karnataka* v. *State of A.P.*[2] That was a case relating to a water dispute regarding inter-State River Krishna between the three riparian States and in respect of which the Tribunal constituted under the Inter-State Water Disputes Act, 1956 had given an award. Dealing with Article 262 and the scheme of the Inter-State Water Disputes Act, this Court at SCC pp. 630-31 observed as follows: (SCC para 44)

> "The Inter-State Water Disputes Act having been framed by Parliament under Article 262 of the Constitution is a complete Act by

itself and the nature and character of a decision made thereunder has to be understood in the light of the provisions of the very Act itself. A dispute or difference between two or more State Governments having arisen which is a water dispute under Section 2(*c*) of the Act and complaint to that effect being made to the Union Government under Section 3 of the said Act the Central Government constitutes a Water Disputes Tribunal for the adjudication of the dispute in question, once it forms the opinion that the dispute cannot be settled by negotiations. The Tribunal thus constituted, is required to investigate the matters referred to it and then forward to the Central Government a report setting out the facts as found by it and giving its decision on it as provided under sub-section (2) of Section 5 of the Act. On

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consideration of such decision of the Tribunal if the Central Government or any State Government is of the opinion that the decision in question requires explanation or that guidance is needed upon any point not originally referred to the Tribunal then within three months from the date of the decision, reference can be made to the Tribunal for further consideration and the said Tribunal then forwards to the Central Government a further report giving such explanation or guidance as it deems fit. Thereby the original decision of the Tribunal is modified to the extent indicated in the further decision as provided under Section 5(3) of the Act. Under Section 6 of the Act the Central Government is duty-bound to publish the decision of the Tribunal in the Official Gazette whereafter the said decision becomes final and binding on the parties to the dispute and has to be given effect to, by them. The language of the provisions of Section 6 is clear and unambiguous and unequivocally indicates that it is only the decision of the Tribunal which is required to be published in the Official Gazette and on such publication that decision becomes final and binding on the parties."

Once the award is binding on the States, it will not be open to a third party like the petitioners to challenge the correctness thereof. In terms of the award, the State of Gujarat has a right to construct a dam up to the height of 455 ft and, at the same time, the oustees have a right to demand relief and resettlement as directed in the award. We, therefore, do not propose to deal with any contention which, in fact, seems to challenge the correctness of an issue decided by the Tribunal.

General issues relating to displacement of tribals and alleged violation of the rights under Article 21 of the Constitution

53. The submission of Shri Shanti Bhushan, learned Senior Counsel for the petitioners was that the forcible displacement of tribals and other marginal farmers from their land and other sources of livelihood for a project which was not in the national or public interest was a violation of their fundamental rights under Article 21 of the Constitution of India read with ILO Convention No. 107 to which India is a signatory. Elaborating this contention, it was submitted that this Court had held in a large number of cases that international treaties and covenants could be read into the domestic

law of the country and could be used by the courts to elucidate the interpretation of fundamental rights guaranteed by the Constitution. Reliance in support of this contention was placed on *Gramophone Co. of India Ltd.* v. *Birendra Bahadur Pandey*[3], *People's Union for Civil Liberties* v. *Union of India*[4] and *Consumer Education & Research Centre* v. *Union of India*[5]. In this connection, our attention was drawn to ILO Convention No. 107 which stipulated that tribal populations shall not be removed from their lands without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security or in the interest of national economic development. It was further stated that the said Convention provided that in such cases where removal of this population is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of lands previously occupied by them, suitable to provide for their present

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needs and future development. Shri Shanti Bhushan further contended that while Sardar Sarovar Project will displace and have an impact on thousands of tribal families, it had not been proven that this displacement was required as an exceptional measure. He further submitted that given the seriously flawed assumptions of the project and the serious problems with the rehabilitation and environmental mitigation, it could not be said that the project was in the best national interest. It was also submitted that the question arose whether the Sardar Sarovar Project could be said to be in the national and public interest in view of its current best estimates of cost, benefits and evaluation of alternatives and specially in view of the large displacement of tribals and other marginal farmers involved in the project. Elaborating this contention, it was contended that serious doubts had been raised about the benefits of the project — the very rationale which was sought to justify the huge displacement and the massive environmental impacts etc. It was contended on behalf of the petitioners that a project which was sought to be justified on the grounds of providing a permanent solution to water problems of the drought-prone areas of Gujarat would touch only the fringes of these areas, namely, Saurashtra and Kutch and even this water, which was allocated on paper, would not really accrue due to a host of reasons. It was contended that in spite of concentrating on small-scale decentralised measures which were undertaken on a large scale could address the water problem of these drought-prone areas. Huge portions of the State resources were being diverted to the Sardar Sarovar Project and as a result the small projects were ignored and the water problem in these areas persists. It was submitted that the Sardar Sarovar Project could be restructured to minimise the displacement.

54. Refuting the aforesaid arguments, it has been submitted on behalf of the Union of India and the State of Gujarat that the petitioners have given a highly exaggerated picture of the submergence and other impacts of this

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project. It was also submitted that the petitioner's assertion that there was large-scale relocation and uprooting of tribals was not factually correct. According to the respondents, the project would affect only 245 villages in Gujarat, Maharashtra and Madhya Pradesh due to pondage and backwater effect corresponding to 1 in 100-year flood. The Statewise break-up of affected villages and the number of project-affected families (PAFs) shows that only four villages would be fully affected (three in Gujarat and one in Madhya Pradesh) and 241 would be partially affected (16 in Gujarat, 33 in Maharashtra and 192 in Madhya Pradesh). The total project-affected families who would be affected were 40,827. The extent of the submergence was minimum in the State of Madhya Pradesh. The picture of this submergence as per the Government of Madhya Pradesh Action Plan of 1993 is as follows:

> "Abadi will be fully submerged in 39 villages and partially in 116 villages, agricultural land will be affected up to 10% in 82 villages, up to 25% in 32 villages, 26 to 50% in 30 villages, 51 to 75% in 14 villages, 76 to 90% in 4 villages and 100% in only 1 village. In 21 villages, only abadi will be affected and government land only in 9 villages. Thus, in most of the villages, submergence is only partial."

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The submergence area of SSP can be divided into two areas:

(*i*) Fully tribal, hilly area covering the initial reach of about 105 villages with mainly subsistence economy. It includes 33 villages of Maharashtra, 19 of Gujarat and about 53 of Madhya Pradesh.

(*ii*) Mixed population area in the plains of Nimad, with a well-developed economy and connected to the mainstream. This area includes about 140 villages in Madhya Pradesh.

These two areas have quite different topographic and habitation features which result in totally different types of submergence impacts. The state of the hilly area to be affected by its submergence and where most of the tribal population exists is described by the Government of Madhya Pradesh Action Plan, 1993 as follows:

"The Narmada flows in hilly gorge from the origin to the Arabian Sea. The undulating hilly terrain in the lower submergence area of Sardar Sarovar Project exhibits naked hills and depleted forests. Even small forest animals are very rarely seen because of lack of forest cover and water. The oft-quoted symbiotic living with forests is a misnomer in this area because the depleted forests have nothing to offer but fuel wood. Soil is very poor, mostly disintegrated, granite and irrigation is almost nil due to undulating and hilly land. Anybody visiting this area finds the people desperately sowing even in the hills with steep gradient. Only one rainfed crop of mostly maize is sown and so there is no surplus economy.

PAPs inhabiting these interior areas find generous rehabilitation and resettlement packages as a means to assimilate in the mainstream in the valley."

55. In 193 villages of Madhya Pradesh to be affected by the project, a very high proportion of the houses would be affected whereas the land

submergence was only 14.1%. The reason for this is that the riverbed is a deep gorge for about 116 km upstream of the dam and as a result the reservoir will be long (214 km), narrow (average width of 1.77 km) and deep. The result of this is that as one goes further upstream, the houses on the river banks are largely affected while agricultural land which is at a distance from the river banks is spared. A majority of 33,014 families of Madhya Pradesh (which would include 15,018 major sons) would lose only their houses and not agricultural lands and would be required to be resettled in Madhya Pradesh by constructing new houses in the new abadi. According to the award, agricultural land was to be allotted only if the project-affected families lost 25% or more of agricultural land and on this basis as per the Government of Madhya Pradesh, only 830 project-affected families of Madhya Pradesh were required to be allotted agricultural land in Madhya Pradesh.

56. According to the Government of Gujarat the tribals constituted the bulk of project-affected families who would be affected by the dam in Gujarat and Maharashtra, namely, 97% and 100% respectively. Out of the oustees of project-affected families of Madhya Pradesh, tribals constituted only 30% while 70% were non-tribals. The total number of tribal project-affected families were 17,725 and out of

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these, 9546 are already resettled. It was further the case of the respondents that in Madhya Pradesh the agricultural land of the tribal villages was affected on an average to the extent of 28% whereas in the upper reaches i.e. Nimad where the agriculture was advanced, the extent of submergence, on an average, was only 8.5%. The surveys conducted by HMS Gour University (Sagar), the Monitoring and Evaluation Agency set up by the Government of Madhya Pradesh, reveals that the major resistance to relocation was from the richer, non-tribal families of Nimad who feared shortage of agricultural labour if the landless labourers from the areas accepted resettlement. In the biannual report, 1996 of HMS Gour University, Sagar, it was observed as follows:

> "The pre-settlement study of submerging villages has revealed many startling realities. Anti-dam protagonists present a picture that tribals and backward people are the worst sufferers of this kind of development project. This statement is at least not true in case of the people of these five affected villages. Though, these villages comprise a significant population of tribals and people of weaker sections, but majority of them will not be a victim of displacement. Instead, they will gain from shifting. The present policy of compensation is most beneficial for the lot of weaker section. These people are living either as labourers or marginal farmers. The status of oustee will make them the owner of two hectares of land and a house. In fact, it is the land-owning class which is opposing the construction of dam by playing the card of tribals and weaker sections. The landowners are presently enjoying the benefit of cheap labour in this part of the region. Availability of cheap labour is a boon for agricultural activities. This makes them to get higher return with less inputs."

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It is apparent that the tribal population affected by the submergence would have to move but the rehabilitation package was such that living conditions would be much better than what they were there before. Furthermore, though 140 villages of Madhya Pradesh would be affected in the plains of Nimad, only 8.5% of the agricultural land of these villages shall come under submergence due to SSP and as such the said project shall have only a marginal impact on the agricultural productivity of the area.

57. While accepting the legal proposition that international treaties and covenants can be read into the domestic laws of the country the submission of the respondents was that Article 12 of ILO Convention No. 107 stipulates that "the populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations relating to national security, or in the interest of national economic development or of the health of the said populations".

58. The said article clearly suggested that when the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury. The rehabilitation package contained in the award of the Tribunal as improved further by the State of Gujarat and the other

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States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned.

59. The allegation that the said project was not in the national or public interest is not correct seeing to the need of water for the burgeoning population which is most critical and important. The population of India, which is now one billion, is expected to reach a figure between 1.5 billion and 1.8 billion in the year 2050, would necessitate the need of 2788 billion cubic metres of water annually in India to be above water-stress zone and 1650 billion cubic metres to avoid being a water-scarce country. The main source of water in India is rainfall which occurs in about 4 months in a year and the temporal distribution of rainfall is so uneven that the annual averages have very little significance for all practical purposes. According to the Union of India, one-third of the country is always under threat of drought not necessarily due to deficient rainfall but many times due to its uneven occurrence. To feed the increasing population, more foodgrain is required and effort has to be made to provide safe drinking water, which, at present, is a distant reality for most of the population specially in the rural areas. Keeping in view the need to augment water supply, it is necessary that water storage capacities have to be increased adequately in order to ward off the difficulties in the event of monsoon failure as well as to meet the demand during dry season. It is estimated that by the year 2050 the country needs to create storage of at least 600 billion cubic metres against the existing storage of 174 billion cubic metres.

60. Dams play a vital role in providing irrigation for food security, domestic and industrial water supply, hydroelectric power and keeping flood

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waters back. On full development, the Narmada has a potential of irrigating over 6 million hectares of land and generating 3000 MW of power. The present stage of development is very low with only 3 to 4 MAF of waters being used by the party-States for irrigation and drinking water against 28 MAF availability of water at 75% dependability as fixed by NWDT and about 100 MW power developed. 85% of the waters are estimated as flowing waste to sea. The project will provide safe and clean drinking water to 8215 villages and 135 towns in Gujarat and 131 villages in desert areas of Jalore District of Rajasthan, though against these only 241 villages are getting submerged partially and only 4 villages fully due to the project.

61. The cost and benefit of the project were examined by World Bank in 1990 and the following passage speaks for itself:

> "The argument in favour of the Sardar Sarovar Project is that the benefits are so large that they substantially outweigh the costs of the immediate human and environmental disruption. Without the dam, the long-term costs for people would be much greater and lack of an income source for future generations would put increasing pressure on the environment. If the waters of the Narmada river continue to flow to the sea unused there appears to be no alternative to escalating human deprivation, particularly in the dry areas of Gujarat. The project has the potential to feed as many as 20 million people, provide domestic and industrial water for about 30 million, employ about 1 million, and provide valuable peak electric power in an

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area with high unmet power demand (farm pumps often get only a few hours' power per day). In addition, recent research shows substantial economic 'multiplier' effects (investment and employment triggered by development) from irrigation development. Set against the futures of about 70,000 project-affected people, even without the multiplier effect, the ratio of beneficiaries to affected persons is well over 100:1…."

There is merit in the contention of the respondents that there would be a positive impact on preservation of ecology as a result from the project. SSP would be making positive contribution for preservation of environment in several ways. The project by taking water to drought-prone and arid parts of Gujarat and Rajasthan would effectively arrest ecological degradation which was returning to make these areas inhabitable due to salinity ingress, advancement of desert, groundwater depletion, fluoride and nitrite-affected water and vanishing green cover. The ecology of water-scarcity areas is under stress and transfer of Narmada water to these areas will lead to sustainable agriculture and spread of green cover. There will even be improvement of fodder availability which will reduce pressure on biodiversity and vegetation. SSP by generating clean eco-friendly hydropower will save the air pollution which would otherwise take place by thermal generation power of similar capacity.

62. The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see

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that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress.

Environmental issues

63. The four issues raised under this head by Shri Shanti Bhushan are as under:

I. Whether the execution of a large project, having diverse and far-reaching environmental impact, without the proper study and understanding of its environmental impact and without proper planning of mitigative measures is a violation of fundamental rights of the affected people guaranteed under Article 21 of the Constitution of India?

II. Whether the diverse environmental impacts of the Sardar Sarovar Project have been properly studied and understood?

III. Whether any independent authority has examined the environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs are acceptable and mitigative measures practical?

IV. Whether the environmental conditions imposed by the Ministry of Environment have been violated and if so, what is the legal effect of the violations?

64. It was submitted by Shri Shanti Bhushan that a large project having diverse and far-reaching environmental impacts in the States concerned would require a proper study and understanding of the environmental impacts. He contended that the

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study and planning with regard to environmental impacts must precede construction. According to Shri Shanti Bhushan, when the environmental clearance was given in 1987, proper study and analysis of the environmental impacts and mitigative measures which were required to be taken, were not available and, therefore, this clearance was not valid. The decision to construct the dam was stated to be a political one and was not a considered decision after taking into account the environmental impacts of the project. The execution of SSP without a comprehensive assessment and evaluation of its environmental impacts and a decision regarding its acceptability was alleged to be a violation of the rights of the affected people under Article 21 of the Constitution of India. It was further submitted that no independent authority has examined vehemently the environmental costs and mitigative measures to be undertaken in order to decide whether the environmental costs are acceptable and mitigative measures practical. With regard to the environmental clearance given in June 1987, the submission of Shri Shanti Bhushan was that this was the conditional clearance and the conditions imposed by the Ministry of Environment and Forests had been violated. The letter granting clearance, it was submitted, disclosed that even the basic minimum studies and plans required for the environmental impact assessment had not been done.

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Furthermore it was contended that in the year 1990, as the deadline for completion of the studies was not met, the Ministry of Environment and Forests had declared that the clearance had lapsed. The Secretary of the said Ministry had requested the Ministry of Water Resources to seek extension of the clearance but ultimately no extension was sought or given and the studies and action plans continued to lag to the extent that there was no comprehensive environmental impact assessment of the project, proper mitigation plans were absent and the costs of the environmental measures were neither fully assessed nor included in the project costs. In support of his contentions, Shri Shanti Bhushan relied upon the report of a commission called the Independent Review or the Morse Commission. The said Commission had been set up by World Bank and it submitted its report in June 1992. In its report, the Commission had adversely commented on practically all aspects of the project and in relation to environment, it was stated as under:

> "Important assumptions upon which the projects are based are now questionable or are known to be unfounded. Environmental and social trade-off have been made, and continue to be made, without a full understanding of the consequences. As a result, benefits tend to be overstated, while social and environmental costs are frequently understated. Assertions have been substituted for analysis.
>
> We think that the Sardar Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the projects is not possible under the prevailing circumstances, and that the environmental impacts of the projects have not been properly considered or adequately addressed.
>
> The history of environmental aspects of Sardar Sarovar is a history of non-compliance. There is no comprehensive impact statement. The nature and

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magnitude of environmental problems and solutions remain elusive."

65. Shri Shanti Bhushan submitted that it had become necessary for some independent judicial authority to review the entire project, examine the current-best estimates of all costs (social, environmental, financial), benefits and alternatives in order to determine whether the project is required in its present form in the national interest, or whether it needs to be restructured/modified.

66. Shri Shanti Bhushan further submitted that environmental impacts of the projects were going to be massive and full assessment of these impacts had not been done. According to him the latest available studies show that studies and action plans had not been completed and even now they were lagging behind pari passu. It was also contended that mere listing of the studies does not imply that everything is taken care of. Some of the studies were of poor quality and based on improper data and no independent body had subjected these to critical evaluation.

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Re: environmental clearance

67. As considerable stress was laid by Shri Shanti Bhushan challenging the validity of the environmental clearance granted in 1987 inter alia on the ground that it was not preceded by adequate studies and it was not a considered opinion and there was non-application of mind while clearing the project, we first propose to deal with the contention.

68. The events after the award and up to the environmental clearance granted by the Government vide its letter dated 24-6-1987 would clearly show that some studies, though incomplete, had been made with regard to different aspects of the environment. Learned counsel for the respondents stated that in fact on the examination of the situation, the claim made with regard to the satisfactory progress was not correct. In order to carry out the directions in the award about the setting up of an authority, the Inter-State Water Disputes Act, 1956 was amended and Section 6-A was inserted to set out how a statutory body could be constituted under the Act. On 10-9-1980 in exercise of the powers conferred by Section 6-A of the Act the Central Government framed a scheme, constituted Narmada Control Authority to give effect to the decision of the award.

69. In January 1980, the Government of Gujarat submitted to the Central Water Commission a detailed project report in 14 volumes. This was an elaborate report and dealt with various aspects like engineering details, canal systems, geology of area, coverage of command area etc. On 15-2-1980 the Central Water Commission referred SSP to the then Department of Environment in Department of Science and Technology. At that point of time, environmental clearance was only an administrative requirement. An environmental checklist was forwarded to the Government of Gujarat on 27-2-1980 which sought to elucidate information including the following ecological aspects:

(*i*) excessive sedimentation of the reservoir,

(*ii*) waterlogging,

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(*iii*) increase in salinity of the groundwater,

(*iv*) groundwater recharge,

(*v*) health hazard, water-borne diseases, industrial pollution etc.

(*vi*) submergence of important minerals,

(*vii*) submergence of monuments,

(*viii*) fish culture and aquatic life,

(*ix*) plant life, forests,

(*x*) life of migratory birds,

(*xi*) national park and sanctuaries,

(*xii*) seismicity due to filling of reservoir.

The Government of Gujarat accordingly submitted information from September 1980 till March 1983. The information was also submitted on physio-social and economic studies for the Narmada Command Area

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covering cropping pattern, health aspects, water requirement etc. A note of influence of Navagam Dam on fish yield including impact on downstream fisheries was also submitted.

70. The techno-economic appraisal of the project was undertaken by the Central Water Commission which examined water availability, command area development, construction etc. The project was considered in the 22nd meeting of the Technical Advisory Committee on Irrigation, Flood Control and Multipurpose Projects held on 6-1 -1983 and found a acceptable subject to environmental clearance.

71. At this point of time, the matter was handled by the Department of Science and Technology which also had a department dealing with Environment. Environmental Appraisal Committee of the Department of Environment, then headed by a Joint Secretary, had in its meeting held on 12-4-1983 approved the project, in principle, and required that further data be collected. This Environmental Appraisal Committee dealt with the project on two other occasions, namely, on 29-3-1985 when it deferred meeting to await report of Dewan Committee on soil conservation and thereafter on 6-12-1985 when it deferred the meeting to await comments from the Forest Department. As stated hereafter, subsequently the Secretary of newly-constituted Ministry of Environment and Forests took up further consideration of this project along with other higher officials.

72. After the project was approved, in principle, studies and collections of data were continuing. In May 1983 the Narmada Planning Group, Government of Gujarat after completion of preliminary surveys submitted work plans for various activities such as cropping pattern, health aspects, water requirements, distribution system, layout and operation, development plan of the command, drainage and groundwater development.

73. In July 1983, a study report on "Ecology and Environmental Impact of Sardar Sarovar Dam and its Environs" prepared by MS University was also submitted by the Government of Gujarat, covering the issues as mentioned below:

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— Climate
— Geology
— Soil
— Land use
— Forest and wildlife, aquatic vegetation
— Water regime (salinity, tidal movements etc.)
— Fisheries
— Health
— Seismicity

74. A review meeting was convened by the Secretary, Ministry of Water Resources in January 1984 which was attended by a representative of the Department of Environment. During this meeting, it was emphasised that the issues regarding catchment area treatment, impact on wildlife, health, waterlogging etc. should be studied in depth for assessment. The issue of

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charging of cost of catchment area treatment to the project was also discussed. To sort out this matter, a meeting was subsequently convened by the Member, Planning Commission on 23-5-1984 in which the Ministry of Environment and Forests took a stand that there was a need for an integrated approach to basin development covering the catchment and command area. A project report, therefore, should be prepared to cover these aspects. Since the catchment area for Narmada Sagar and Sardar Sarovar was very vast, it was decided that an Inter-Departmental committee should be set up by the Ministry of Agriculture under the Chairmanship of Dr M.L. Dewan. This group could submit its report only in August 1985 covering areas of catchment of Narmada and Sardar Sarovar and recommended that at least 25-30% of the area might require treatment for these projects.

75. The consideration of the project in the Ministry, therefore, got deferred for this report on catchment area treatment. During this time, the Government of Madhya Pradesh entrusted the studies on flora for Narmada Valley Project to Botanical Survey of India and other related surveys were being carried out. Even though there was a request on 10-6-1985 from the Chief Minister of Gujarat to the Minister of State for Environment and Forests for delinking of catchment area treatment works on clearance of the project, but this request was not agreed.

76. By this time the approval of SSP was being considered by the Secretary, Ministry of Environment and Forests who invited other high officials in a review meeting which was held on 31-12-1985 under his chairmanship. In this meeting, detailed presentations were made by the State officials of Gujarat, Madhya Pradesh and Maharashtra as well as the experts who were involved in preparation of plans. The Secretary, Ministry of Environment and Forests assessed and reviewed readiness on various environmental aspects like catchment area treatment, compensatory afforestation, rehabilitation, command area development, labour force and health issues, aquatic species, seismicity etc. and discussed the available reports in detail in

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the presence of the officers of the Central/State Governments, Botanical Survey of India, senior officers of Forest Department, Planning Commission, Agriculture Department, Additional Inspector of Forests, Government of India, Deputy Inspector General, Assistant Inspector General of Forests, Government of India, senior officers of the Ministry of Environment and Forests, Secretary, Irrigation.

77. As a follow-up, the Government of Maharashtra submitted environmental data regarding affected areas in Maharashtra. This included:

— Impact assessment on wildlife.

— Impact assessment on genetics, specifically identifying the plant types which are likely to be lost as a result of submergence.

— Socio-anthropological studies on tribals.

— The suitability of alternative land suggested for compensatory afforestation for growing.

— Data regarding alternate land in large blocks.

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— Arrangements made for exploitation of mineral resources going under submergence.

— Alternative fuels to the labourers.

— Micro-climatic changes.

— Arrangements made for treatment of catchment area including soil conservation, afforestation.

— Steps taken for preserving archaeological and historical monuments.

— Proper land use.

— Actions taken by the Government of Maharashtra in pursuance of the Dewan Committee Report.

— Arrangements for monitoring of environmental impact of the project.

— Data related to rehabilitation of project-affected persons.

78. The Government of Gujarat also forwarded to the Government of India work plans on the following:

— Forests and wildlife

— Fish and fisheries

— Health aspects

The work plan on forests and wildlife incorporated actions to be taken on the recommendations of the Inter-Departmental Committee headed by Dr Dewan on soil conservation and afforestation works in the catchment area.

79. In March 1986, a meeting was convened by the Ministry of Water Resources in order to discuss the issues of fisheries, flora/fauna, health, archaeology with the officers of the Botanical Survey of India, Zoological Survey of India, Archaeological Survey of India and the officers of the various departments of the State and Centre to gear up the preparation of the environmental work plans. The next meeting was held

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on 11-4-1986. The Secretary, Ministry of Environment and Forests, who chaired the meeting of senior officials, representatives of States and other agencies, sought additional information to be made available by 30-4-1986 before assessment and management decision.

80. In October 1986, the Ministry of Water Resources prepared and forwarded to the Ministry of Environment and Forests, a note on environmental aspects of the two projects and noted the urgency of the decision. It also considered the importance of the project, should the project be taken at all, environmental aspects of the project and ultimately rehabilitation, compensatory afforestation, fauna and flora, catchment area treatment, public health aspect, prevention of waterlogging. It then considered what remained to be done and enumerated the same with time schedule as follows:

1. Madhya Pradesh to complete the detailed survey of population likely to be affected in all phases of NSP

... Three years

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2. Maharashtra to prepare a detailed rehabilitation plan for 33 villages under Phase 1 of SSP

... Three years

3. Madhya Pradesh to identify degraded forest lands twice the forest area to be submerged for compensatory afforestation

... Six months

4. Survey of flora in Narmada valley assigned to Botanical Survey of India

... Two years

5. Survey of wildlife by Zoological Survey of India

... Two years

6. Aerial photographs and satellite imagery to be analysed by All-India Soil and Land Use Survey Organisation and National Remote Sensing Agency and critically-degraded areas in catchment.

Field Surveys

... Three years

Pilot studies to determine measures for CAT

... Three years

in 25,000 ha

after aerial survey.

81. In this note two options were considered — one to postpone the clearance and the other was to clear it with certain conditions with appropriate monitoring authorities to ensure that the action is taken within the time-bound programme. It was concluded that in the light of the position set out, it was necessary that the project should be cleared from the environmental angle, subject to conditions and stipulations outlined.

82. The Department of Environment and Forests made its own assessment through

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a note of the Secretary, Ministry of Environment and Forests. It took the view that the following surveys/studies as set out therein might take at least 2-3 years. It noted in this regard that:

(*i*) The estimate of Ministry of Water Resources on analysis of aerial photographs and satellite imageries is 2-3 years.

(*ii*) Catchment area treatment programme can be formulated by three years thereafter.

(*iii*) Wildlife census by Zoological Survey of India would take at least three years.

(*iv*) Survey by Botanical Survey of India would take three years.

It further took the view that it was essential that there should be a strong management authority. It finally concluded that if the Government should decide to go ahead with the project it should be done with provision of environmental management authority with adequate powers and teeth to ensure that environment management plan is implemented pari passu with engineering and other works. It concluded that effective implementation of the engineering and environmental measures simultaneously will go a long way and that such a project could be implemented by harmonising environmental conservation needs with the developmental effort.

83. The Ministry of Environment and Forests had not given environmental clearance of Narmada Sagar and Sardar Sarovar Dam despite all discussions which had taken place. The documents filed along with the

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affidavit of Shri P.K. Roy, Under-Secretary, Prime Minister's Office dated 27-4-2000 indicate that there was difference of opinion with regard to the grant of environmental clearance between the Ministry of Water Resources and the Ministry of Environment and Forests. This led to the matter being referred to the Prime Minister's Secretariat for clearance at the highest level. A note dated 20-11-1986 prepared by the Ministry of Water Resources was forwarded to the Prime Minister Secretariat as well as to the Ministry of Environment and Forests after dealing with the environmental aspects relating to rehabilitation, catchment area treatment, command area development, compensatory afforestation, flora and fauna. This note indicated that there were two options with regard to the clearance of the said project. One was to wait for two to three years for the completion of the operational plans and other detailed studies and the second option was that the project should be given the necessary clearance subject to the stipulation with regard to the action to be taken in connection with various environmental aspects and appropriate monitoring arrangements to ensure that the actions were taken in a time-bound manner. The Ministry of Water Resources recommended that it should be possible to give environmental clearance of the project and ensure that the conditions are properly met through a process of clear assignment of responsibility and frequent monitoring. The modus operandi for instituting a monitoring system could be discussed at the meeting.

84. On 26-11-1986 a meeting took place which was attended, inter alia, by the Secretary, Ministry of Water Resources, Secretary, Ministry of Environment and Forests, Additional Secretary, Prime Minister Secretariat and representatives of the

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Governments of Madhya Pradesh and Gujarat regarding the environmental aspects of the Narmada Sagar and Sardar Sarovar Project. The minutes of the meeting, inter alia, disclosed

> "it was decided that the Government of Gujarat would identify lands for allocation to the project-affected persons of Madhya Pradesh within a specified period of time. The meeting also envisaged the arrangement of a monitoring and enforcement authority to monitor the project and to ensure that the actions on the environmental aspects proceed according to the schedule and pari passu with the rest of the project".

This authority was not to be mainly an advisory one but was to be given executive powers of enforcement including the power to order stoppage of construction activity in the event of it being of the opinion that there was lack of progress in action on the environmental front.

85. On 19-12-1986 the Secretary, Ministry of Environment and Forests sent to the Secretary to the Prime Minister a combined note on the environmental aspects of both the projects, namely, Narmada Sagar and Sardar Sarovar Project. In this note, it was, inter alia, stated that there was absence and inadequacy on some important environmental aspects even though the Sardar Sarovar Project was in a fairly advanced stage of preparedness. The note also recommended the establishment of Narmada

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Management Authority with adequate powers and teeth to ensure that the environmental management plan did not remain only on paper but was implemented; and implemented pari passu with engineering and other works. In the end, in the note, it was stated as follows:

> "If, despite the meagre availability of data and the state of readiness on NSP, the Government should decide to go ahead with the project it is submitted that it should do so only on the basis of providing a management authority as outlined above with the hope that the public opposition, not just by vested interests but by credible professional environmentalists, can be overcome. Effective implementation of the engineering and environmental measures simultaneously would go a long way to prove that even such a project can be implemented by harmonising environmental conservation needs with the development effort.
>
> The choice is difficult but a choice has to be made."

Along with this note was the statement showing the cost and the benefits of the Narmada Sagar and the Sardar Sarovar Dam. The same reads as follows:

"*Costs*		*Narmada Sagar*	*Sardar Sarovar*
1.	Dam construction	Rs 1400 crores (1981 price level)	Rs 4240 crores (1982 price level)
2.	Loss of forest	Rs 320 crores	

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3.	Environmental cost of loss of forests	Rs 30,923 crores	+ Rs 8190 crores
4.	Catchment area development	Rs 300 crores	Not available
5.	Command area evelopment	Rs 243.7 crores	Rs 604.0 crores Rs 300.0 crores (conjunctive use)
6.	Loss of mineral reserves	—	—
7.	Diversion of 42-km railway line	—	—
8.	Population affected	1,29,396 (1981 census) 86,572 (excluding population with land submerged for short period every year)	
9.	Land submerged	91,348 ha	39,134 ha
Benefits			
10.	Area irrigated Net culturable land	1,23,000 ha 1,40,960 ha	17,92,000 ha 21,20,000 ha
	Power generations	223.5 MW (firm power) 1000 MW (installed capacity) 118.3 MW in 2023 AD”	300 MW 1450 (Installed)

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11.

86. After a series of meetings held between the Secretary to Prime Minister's Office as well as the Ministry of Water Resources, a detailed note dated 15-1-1987 was prepared by Mrs Otima Bordia, Additional Secretary to the Prime Minister. The note opened by saying that Narmada Sagar and Sardar Sarovar Multipurpose Projects have been pending approval of the Government of India for a considerable amount of time. The States of Madhya Pradesh and Gujarat have been particularly concerned and have been pressing for their clearance. The main issues of environmental concern related to the rehabilitation of the affected population, compensatory afforestation, treatment of the catchment area, command area development, pertaining particularly to drainage,

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waterlogging and salinity. The said note mentioned that the Department of Environment and Forests had sent a note with the approval of the Minister for Environment and Forests and had recommended conditional approval to the Narmada Sagar and Sardar Sarovar Projects subject to three conditions:

(*i*) review of design parameters to examine the feasibility of modifying the height of the dam;

(*ii*) preparation in due time, detailed and satisfactory plans for rehabilitation, catchment area treatment, compensatory afforestation and command area development;

(*iii*) setting up of the Narmada Management Authority with adequate powers and teeth to ensure that environmental management plans are implemented pari passu with engineering and other works.

87. It is further stated in the note that the Ministry of Water Resources and the State Governments had no difficulty in accepting Conditions (*ii*) and (*iii*). With regard to review of design parameters and dam height, the Ministry of Water Resources had examined the same after taking into consideration the comments of the Central Water Commission and concluded that the reduction of the FRL of the Narmada Sagar Project would not be worthwhile. The Secretary to the Prime Minister had discussed the matter with the Secretary, Ministry of Water Resources and Secretary, Ministry of Environment and Forests and it was agreed that the recommendation of the Minister of Environment and Forests of giving clearance on the condition that Items (*ii*) and (*iii*) referred to hereinabove be accepted. The note also stated that in view of the technical report, reduction in the dam height did not appear to be feasible. This note of Mrs Otima Bordia recommended that the Prime Minister's approval was sought on giving conditional clearance. On this note Mrs Sarla Grewal, Secretary to the Prime Minister noted as follows:

"Proposal at para 17 may kindly be approved. This project has been pending clearance for the last 7 years and both the CMs of Gujarat and

Madhya Pradesh are keenly awaiting the clearance of the same. The agency, which is proposed to be set up to monitor the implementation of this project, will fully take care of the environmental degradation about which PM was concerned. The Ministry of Environment and Forests has recommended clearance of this project subject to conditions which will take care of PM's apprehensions. I shall request Secretary, Water Resources, who will be the Chairman of the Monitoring Agency, to see that no violation of any sort takes place and PM's Office will be kept informed of the progress of this project every quarter. The matter is urgent as last week CM Gujarat had requested for green signal to be given to him before 20th January.

PM may kindly approve."

The Prime Minister Shri Rajiv Gandhi, instead of giving the approval, made the following note:

"Perhaps this is a good time to try for a river valley authority. Discuss."

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It appears that the Ministry of Environment and Forests gave its clearance to the setting up of Inter-Ministerial Committee and on 8-4-1987, the following note was prepared and forwarded to the Prime Minister:

> "This case has got unduly delayed. PM was anxious that speedy action should be taken. As such, since the Ministry of Environment has given its clearance subject to setting up of an Inter-Ministerial Committee as indicated at 'A' above, we may give the necessary clearance. The three Chief Ministers may be requested to come over early next week to give their clearance in principle for the setting up of a River Valley Authority so that simultaneous action can be initiated for giving practical shape to this concept. The clearance of the project, however, should be communicated within two weeks as I have been informed by Shri Shiv Shanker and Shri Bhajan Lal that interested parties are likely to start an agitation and it is better if clearance is communicated before mischief is done by the interested parties."

88. Along with another affidavit of Shri P.K. Roy, Under-Secretary, Prime Minister's Office dated 2-5-2000, some correspondence exchanged between the legislature and the Prime Minister has also been placed on record relating to the granting of the environmental clearance by the Prime Minister. On 31-3-1987, Shri Shanker Singh Vaghela, the then Member of Parliament, Rajya Sabha had written a letter to the Prime Minister in which it was, inter alia, stated that the foundation stone for the Narmada Project had been laid 25 years ago by the late Pandit Jawahar Lal Nehru and that after the Tribunal's award, Mrs Indira Gandhi had cleared the project in 1978, but still the environmental clearance had not so far been given. It was also stated in his letter that the project was now being delayed on account of so-called environmental problems. It was further stated in his letter that the Sardar Sarovar Project, when completed, will solve more of the pressing problems

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of environment than creating them. To this letter of Shri Vaghela, the Prime Minister sent a reply dated 8-4-1987 stating as follows:

> "I have seen your letter of 31st March regarding the Narmada Project. All aspects have to be carefully considered before decisions are taken on a project of this size. This is being done.
>
> The environment and ecological factors cannot be disregarded. We cannot also dismiss the needs of our tribal people. Safeguards are required to ensure that rehabilitation plans are effective.
>
> All these aspects are being examined and a decision will be taken soon."

On 30-4-1987 a press note was released by the Government of India, in which it was stated that in a meeting presided over by the Prime Minister, it was agreed by the Chief Ministers of Madhya Pradesh and Gujarat and representatives of the Maharashtra Government that a high-level River Valley Authority would be set up for the control and development of the river basin. This press note also stated that the Narmada Sagar and the Sardar Sarovar Project on River Narmada had been cleared. Soon, thereafter Shri Ahmad Patel, Member of Parliament from Gujarat wrote a letter dated 14-4-1987 to Shri Rajiv Gandhi expressing his gratitude for according clearance to the

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Narmada Multipurpose Project. This letter was replied to on 22-4-1987 by Shri Rajiv Gandhi who thanked Shri Patel for writing his letter dated 14-4-1987 regarding the Narmada Project. On 20-4-1987 Shri Shanker Singh Vaghela wrote another letter to the Prime Minister. While thanking him for clearing the project, it was stated that there was apprehension about the environment and ecological factors and also about the needs of the tribal people. The Prime Minister was requested

> "to clarify to the people of Gujarat whether or not these aspects have finally been cleared or not and all the doubts on this front have been finally set at rest or not".

On 4-5-1987 the Prime Minister replied to this letter in which it was stated as follows:

> "There should be no grounds for any misunderstanding in this regard. The Narmada Project has been cleared while at the same time ensuring that environmental safeguards will be enforced and effective measures taken for the rehabilitation of the tribals. You could ask the Ministry of Water Resources or the State Government for details."

Lastly, we need to make reference to a letter dated 10-6-1987 written by Smt Chandraben Sureshbhai Shrimali, an MLA of Gujarat and the reply of the Prime Minister thereto. In the said letter dated 10-6-1987 Smt Shrimali thanked the Prime Minister for clearing the Narmada Project and it was stated that the dry land of Gujarat and Saurashtra would be fertilised through Narmada Yojna. To this, reply dated 30-6-1987 of the Prime Minister was as follows:

> "Thank you for your letter of 10th June. The visit to Surendranagar was useful and educative. We are all looking forward to the early

implementation of the Sardar Sarovar Project. The question of environmental protection also needs serious attention. I wish you and the people of Surendranagar a good monsoon."

89. From the documents and the letters referred to hereinabove, it is more than evident that the Government of India was deeply concerned with the environmental aspects of the Narmada Sagar and Sardar Sarovar Project. Inasmuch as there was some difference of opinion between the Ministries of Water Resources and Environment and Forests with regard to the grant of environmental clearance, the matter was referred to the Prime Minister. Thereafter, a series of discussions took place in the Prime Minister's Secretariat and the concern of the Prime Minister with regard to the environment and desire to safeguard the interest of the tribals resulted in some time being taken. The Prime Minister gave environmental clearance on 13-4-1987 and a formal letter was issued thereafter on 24-6-1987.

90. It is not possible, in view of the aforesaid state of affairs, for this Court to accept the contention of the petitioner that the environmental clearance of the project was given without application of mind. It is evident, and in fact this was the grievance made by Shri Vaghela, that the environmental clearance of the project was unduly delayed. The Government was aware of the fact that a number of studies and data had to be collected relating to environment. Keeping this in mind, a conscious decision was

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taken to grant environmental clearance and in order to ensure that environmental management plans are implemented pari passu with engineering and other works, the Narmada Management Authority was directed to be constituted. This is also reflected from the letter dated 24-6-1987 of Shri Mudgal giving formal clearance to the project.

Re: other issues relating to environment

91. Prior to the grant of the environmental clearance on 24-6-1987 sufficient studies were made with regard to different aspects of environment on the basis of which conditional clearance was granted on 24-6-1987, one of the conditions of clearance being that the balance studies should be completed within a stipulated time-frame. According to the Government of Gujarat, the conditions imposed in the environmental clearance granted on 24-6-1987 were:

(*a*) NCA would ensure that the environmental safeguard measures are planned and implemented pari passu with the progress of work on the project.

(*b*) The detailed survey/studies assured will be carried out as per the schedule proposed and details made available to the department for assessment.

(*c*) The catchment area treatment programme and rehabilitation plans be so drawn so as to be completed ahead of reservoir filling.

(*d*) The department should be informed of progress on various works periodically.

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92. It was further submitted by the Government of Gujarat that none of these conditions were linked to any concrete time-frame.

(*a*) The first condition casts a responsibility on NCA to ensure that the environmental aspects are always kept in view. The best way to attain the first and the fourth condition — was to create an Environmental Subgroup headed by the Secretary in the Ministry of Environment and Forests.

(*b*) The second condition — the conducting of surveys by its very nature — could not be made time-bound. The surveys related to various activities to undo any damage or threat to the environment not only by the execution of the project but in the long term. Therefore, any delay in the conduct of surveys was not critical. Besides, a perusal of the latest status report on environment shows that a large number of surveys were carried out right from 1983 and also after 1987.

(*c*) The third condition has already stood fully complied with as observed by Environment Subgroup.

(*d*) The fourth condition again involved keeping the department informed.

93. It was submitted that the concept of "lapsing" is alien to such conditions. In other words, formal environmental and forest clearances granted by the Ministry of Environment and Forests, Government of India have not lapsed and are very much alive and subsisting.

94. With regard to the lapsing of the clearance granted in 1987, it was contended by Mr Harish Salve that a letter dated 25-5-1992 was written by the Secretary, Ministry of Environment and Forests, Government of India to the Secretary, Ministry of

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Water Resources stating, inter alia, that the conditions of clearance of the project were not yet met and, therefore, a formal request for extension of environmental clearance, as directed by the Review Committee of the Narmada Control Authority, may be made and failing which, a formal notification may be issued revoking the earlier clearance. It is, however, an admitted position that no formal notification has ever been issued revoking and/or cancelling the aforesaid two clearances at any point of time by the Ministry of Environment and Forests, Government of India. The Secretary, Ministry of Environment and Forests has continued to hold and chair the meetings of Environment Subgroup, Narmada Control Authority, closely monitoring the execution of SSP for ensuring that environmental safeguard measures are implemented pari passu with the progress of work. On 11-8-1992, a letter was written by the Narmada Control Authority to the Secretary, Ministry of Environment and Forests sending action plan and status in respect of environmental safeguard measures taken and also stating amongst other details, the following:

> "A number of letters were exchanged between MOWR and MOEF and a great deal of discussion took place both in the Environment Subgroup and NCA as to whether an application for extension of time as above is at all necessary. After a detailed discussion in the last NCA

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meeting on 25-7-1992 it has been decided that NCA should clearly indicate the additional time required for the completion of the remaining studies like flora and fauna and some aspects of fisheries and a revised action plan based thereon be also sent expeditiously.

* * *

> Keeping in view the fact and circumstances mentioned above, I request you to kindly agree to the schedule of the studies and the follow-up actions as presented here. A brief account of the action plan together with bar charts are enclosed, presenting a pictorial view."

On 15-12-1992, a letter was written to the Secretary, Ministry of Environment and Forests, more particularly stating as under, amongst other things:

> "Narmada Control Authority has already prepared an action plan and status on the environmental measures of Sardar Sarovar Project and submitted to the Ministry of Environment and Forests vide their Letter No. NCA/EM/683 dated 11-8-1992 for concurrence. As may be seen from their report on action, so far there are no safeguard measures.
>
> During field season of every year this will be closely reviewed to attain pari passu objectives so that the submergence during monsoon is taken care of.
>
> The above actions are scheduled to be completed by June 1993. No doubt, action in Maharashtra is lagging. The matter was taken up with the Chief Secretary of Maharashtra. A copy of his reply dated 7-11-1992 is enclosed. You will observe that the reasons for the lag are largely due to the uncooperative and agitational approach adopted by some people.

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Taking all these into account, you will appreciate that the action plans are adequate."

The Minister for Water Resources, Government of India wrote a letter on 27-1-1993 to the Minister of State for Environment and Forests stating that there had been no violation of environmental safeguard measures. On 7-7-1993, the Secretary, Ministry of Water Resources, Government of India wrote a letter to the Secretary, Ministry of Environment and Forests, Government of India, more particularly stating as under:

"Progress of all the environmental works is summarised in the sheet enclosed herewith. I share your concern for initial delay in some of the studies but now it seems that the work has started in full swing. However, there is a need to keep a close watch and I am advising NCA for the same."

By letter dated 17-9-1993 the Minister of State for Environment and Forests, Government of India wrote to the Minister for Water Resources, Government of India appreciating the efforts made by the State Governments concerned in making the environmental plans. The exchange of the aforesaid correspondence and the conduct of various meetings of the Environment Subgroup from time to time under the Chairmanship of the Secretary,

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Ministry of Environment and Forests, dispels the doubt of the environment clearance having been lapsed. In other words, there could not have been any question of the environmental clearance granted to SSP having lapsed more particularly when the Environment Subgroup had been consistently monitoring the progress of various environmental works and had been observing in its minutes of various meetings held from time to time, about its analysis of the works done by the respective States in the matter of the status of studies, surveys and environmental action plans in relation with:

(*i*) phased catchment area treatment;
(*ii*) compensatory afforestation;
(*iii*) command area development;
(*iv*) survey of flora, fauna etc.;
(*v*) archaeological and anthropological survey;
(*vi*) seismicity and rim stability of reservoir;
(*vii*) health aspects; and
(*viii*) fisheries development of SSP and NSP reservoirs.

95. Shri Shanti Bhushan in the course of his submissions referred to the report of the Morse Commission in support of his contentions that the project was flawed in more ways than one.

96. The Morse Commission was constituted, as already noted, by World Bank. Its recommendations were forwarded to World Bank. Apart from the criticism of this report from other quarters, World Bank itself, did not accept this report as is evident from its press release dated 22-6-1992 where it was, inter alia, stated as follows:

"The Morse Commission provided a draft of its report to the Bank for

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management's comments several weeks prior to the final release of the document. About two weeks before this release, the Commission provided a draft of its findings and recommendations. The final version of the report is the sole responsibility of its authors; the report was not cleared by World Bank.

On resettlement and rehabilitation (R&R), bank management agrees with the description of the R&R situation in each of the three States and with the report's conclusions about the shortcomings in the preparation and appraisal of the project's R&R aspects. We also agree that work should have been done earlier on the issue of people affected by the canal in Gujarat. However, we do not share the view that resettlement would be virtually impossible even if Maharashtra and Madhya Pradesh adopted the liberal resettlement package provided for displaced people by the State of Gujarat. Given the experience so far, and the fact that most of the impact of submergence on people will not occur until 1997, there is still time to develop meaningful R&R packages and programmes in consultation with the affected peoples. Efforts are being intensified to achieve this.

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On environment, the bank management agrees with the independent review on the need for a more effective central management in the Narmada basin on environment impact studies and mitigation programmes. The management also agrees on the need to accelerate work on estuary studies and health matters in Gujarat. However, management does not share the review's conclusions about the environmental severity of the study delays. Command area issues are being addressed, including issues of waterlogging and salinity. On water availability (hydrology), the bank management disagrees with the finding that there is insufficient impoundment of water upstream of the Sardar Sarovar Dam site to make the irrigation system work as designed."

The Government of India vide its letter dated 7-8-1992 from the Secretary, Ministry of Environment and Forests did not accept the report and commented adversely on it.

97. In view of the above, we do not propose, while considering the petitioners' contentions, to place any reliance on the report of Morse Commission.

98. It was submitted on behalf of the petitioners that the command area development was an important aspect as the benefits of the project depended on this and if proper studies and plans were not done and not implemented, the very areas that were supposed to benefit will end up being rendered unfit for cultivation and the waterlogging and salinisation could render vast areas of the command unproductive. It was also submitted that still there was no integrated command area environmental impact assessment. After referring to the status reports and studies regarding the command area development, it was submitted that there was need for some independent agency to examine the various studies, action plans and the experience and to see whether there was ground to believe that the proposed measures will work or not. It was contended that master plan for drainage and command area development was still not in place and even the full studies had not been done.

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99. While refuting the aforesaid contentions it was argued on behalf of learned counsel for the respondents that SSP will provide irrigation water for a cultivable command area of 1.9 million hectares in Gujarat and 75,000 hectares in Rajasthan. The introduction of fresh water to the drought-prone areas of Gujarat will create obvious benefits for the farming communities. In order to safeguard these benefits, control and monitoring was suggested by the Secretary, Ministry of Environment and Forests and Chairman of the Environment Subgroup in the following areas from time to time:

— drainage, waterlogging and soil salinity;
— water quality;
— forest loss;
— potential impact on flora and fauna;
— effects on public health;
— socio-economic impacts.

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100. Pursuant thereto, fifty in-depth studies had been carried out by the State Governments of Gujarat and Rajasthan and some of the studies were still in progress. One of the main objectives of carrying out these studies was to prevent excessive use of groundwater and waterlogging.

101. There is no reason whatsoever as to why independent experts should be required to examine the quality, accuracy, recommendations and implementation of the studies carried out. The Narmada Control Authority and the Environmental Subgroup in particular have the advantage of having with them the studies which had been carried out and there is no reason to believe that they would not be able to handle any problem, if and when, it arises or to doubt the correctness of the studies made.

102. It was submitted by Shri Shanti Bhushan that the catchment area treatment programme was not to be done pari passu but was required to be completed before the impoundment. This contention was based on the terms of the letter dated 24-6-1987 wherein conditional environmental clearance was granted, inter alia, on the condition that "the catchment area treatment programme and rehabilitation plans be drawn so as to be completed ahead of reservoir filling". Admittedly, the impounding began in 1994 and the submission of Shri Shanti Bhushan was that catchment area treatment programme had not been completed by them and, therefore, this very important condition had been grossly violated. Reference was also made to the minutes of the Environmental Subgroup meetings to show that there had been slippage in catchment area treatment work.

103. The clearance of June 1987 required the work to be done pari passu with the construction of the dams and the filling of the reservoir. The area wherein the rainfall water is collected and drained into the river or reservoir is called catchment area and the catchment area treatment was essentially aimed at checking of soil erosion and

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minimising the silting in the reservoir within the immediate vicinity of the reservoir in the catchment area. The respondents had proceeded on the basis that the requirement in the letter of June 1987 that catchment area treatment programme and rehabilitation plans be drawn up and completed ahead of reservoir filling would imply that the work was to be done pari passu, as far as catchment area treatment programme is concerned, with the filling of reservoir. Even though the filling of the reservoir started in 1994, the impoundment award was much less than the catchment area treatment which had been affected. The status of compliance with respect to pari passu conditions indicated that in the year 1999, the reservoir level was 88.0 metres, the impoundment area was 6881 hectares (19%) and the area where catchment treatment had been carried out was 1,28,230 hectares being 71.56% of the total work required to be done. The minutes of the Environmental Subgroup as on 28-9-1999 stated that catchment area treatment works were nearing completion in the States of Gujarat and Maharashtra. Though, there was some slippage in Madhya Pradesh, however, overall works by and large were on schedule. This clearly showed that the monitoring of the catchment treatment plan was being done by the Environmental Subgroup quite effectively.

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104. With regard to compensatory afforestation it was contended by Shri Shanti Bhushan that it was being carried out outside the project impact area. Further, it was submitted that the practice of using wasteland or lesser quality land for compensatory afforestation means that the forest will be of lesser quality. Both of these together defeated the spirit of the compensatory afforestation. It was contended that the whole compensatory afforestation programme was needed to be looked at by independent experts.

105. While granting approval in 1987 to the submergence of forest land and/or diversion thereof for SSP, the Ministry of Environment and Forests had laid down a condition that for every hectare of forest land submerged or diverted for construction of the project, there should be compensatory afforestation on one hectare of non-forest land plus reforestation on two hectares of degraded forest. According to the State of Gujarat, it had fully complied with the condition by raising afforestation in 4650 hectares of non-forest areas and 9300 hectares in degraded forest areas before 1995-96 against the impoundment area of 19%. The pari passu achievement of afforestation in Gujarat was stated to be 99.62%.

106. If afforestation was taking place on wasteland or lesser quality land, it did not necessarily follow, as was contended by the petitioners, that the forests would be of lesser quality or quantity.

107. It was also contended on behalf of the petitioners that downstream impacts of the project would include not only destruction of downstream fisheries, one of the most important ones in Gujarat on which thousands of people are dependent but will also result in salt water ingress. The project, it was contended, will have grave impacts on the Narmada estuary and unless the possible impacts were properly studied and

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made public and mitigation plans demonstrated with the requisite budget, one could not accept the claim that these matters were being looked into. The need to assess the problem was stated to be urgent as according to the petitioners rich fisheries downstream of the dam, including the famed hilsa would be almost completely destroyed. The salinity ingress threatened the water supply and irrigation use of over 210 villages and towns and Bharuch city. All these would not only have serious economic and other impacts but would also directly destroy the livelihood of at least 10,000 fisher families.

108. Again all these contentions were based on the Morse Commission Report which World Bank and the Union of India had already rejected. That apart, according to the respondents, in 1992 Sardar Sarovar Narmada Nigam Limited issued an approach paper on environmental impact assessment for the river reach downstream. This provided technical understanding of the likely hydrological changes and possible impact in relation thereto. It was further submitted by learned counsel for the respondents that the potential for environmental changes in the lower river and estuary had to be seen in the context of the long-term development of the basin. The current stage was clearly beneficial. The three stages could be identified as follows:

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> Stage 1 covers the period roughly from the completion of Sardar Sarovar Dam to the year 2015. Events occurring during this stage include (*a*) SSP Canal Command will have reached full development and require diversion of some water, (*b*) the upstream demand will reach about 8 MAF, and (*c*) the Narmada Sagar Dam will have been built and placed into operation.
>
> Stage 2 covers the period from 2015 and 2030 during which the demands upstream of SSP will continue to grow and will reach about 12 MAF, still below the volume of 18 MAF that Madhya Pradesh can take in a 75% year.
>
> Stage 3 covers the period up to and beyond full basin development.

The report given by M/s H.R. Wallingford in March 1993 in respect of the downstream impacts of Sardar Sarovar Dam observes, inter alia, as under:

> "The overall conclusion of the team undertaking the assessment described in this report is that there are no downstream impacts whose magnitude and effect are such as to cause doubts to be cast over the wisdom of proceeding with the Sardar Sarovar Projects provided that appropriate monitoring and mitigation measures are applied. Much of this work is already in progress under the auspices of NPG, SSNNL and NCA. The recommendations in this report are intended to provide a synthesis of their work and suggestions as to whether it might be modified to enhance its usefulness."

The said M/s H.R. Wallingford in the findings of 1995 stated as under:

> "It is thought unlikely that any significant negative environmental impacts will occur over the next 30 years as a result of the project. Some possible adverse effects have been identified, the main one being the effect of flood attenuation on

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hilsa migration. These need to be monitored and more studies undertaken to better understand the conditions which trigger spawning. Beneficial impacts in this period include reduced flooding and more reliable dry season flows as well as an overall improvement of the health and well-being of the people to the reliable domestic water supply, improved nutrition and enhanced economic activity."

The above report clearly demonstrates that the construction of dam would result in more regulated and perennial flow into the river with an overall beneficial impact. It is also evident that until all the dams are constructed upstream and the entire flow of river is harnessed, which is not likely in the foreseeable future, there is no question of adverse impact including the fishing activity and the petitioner's assertions in this regard are ill-conceived.

109. The area of submergence was stated to be rich in archaeological remains but it still remained to be studied. It was contended that there was danger of rich historical legacy being lost and even a small increase in the dam height would threaten to submerge many of the sites listed in the report of the Archaeological Survey of India. There were stated to be five monuments which would be affected at the dam height of 90 metres or above

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and no work was stated to have commenced to protect any of the five monuments.

110. According to the State of Gujarat, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 charged the Central and/or State Department of Archaeology with responsibility for the protection of important cultural sites. Under the Act, sites were classified into three categories as follows:

Type 1: monuments of national importance which are protected by the Central Government;

Type 2: monuments of religious or cultural importance which are protected by the State Government; and

Type 3: monuments which are neither Centrally nor State-protected, but which are considered to be an important part of cultural heritage.

Under the same law, the authorities charged with the protection of the monuments are permitted to take suitable measures to ensure the preservation of any protected site under threat from decay, misuse or economic activity.

111. In the case of Sardar Sarovar, where several sites may be submerged, NDWT award stipulated that the entire cost of relocation and protection should be chargeable to Gujarat. Relocation work was to be supervised by the Department of Archaeology under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

112. The three State Governments carried out a complete survey of cultural and religious sites within the submergence zone. The principle of these surveys was to list all archaeological sites, identify and name any site under State protection and further identify sites of religious or cultural significance which, although not protected under national law, were of sufficient value to merit relocation. So far as the State of Gujarat

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is concerned the Department of Archaeology surveyed archaeological sites in nineteen villages of submergence zone in Gujarat under the title of "Archaeological Survey of Nineteen Villages in Gujarat Submerged by Sardar Sarovar Reservoir, 1989".

113. In addition to baseline studies on archaeological aspects, work had been carried out on the anthropological heritage of Narmada basin, including examination of evidence of ancient dwellings and cultural artefacts. The principal studies in this behalf are described below:

Anthropological Survey of India: Narmada Salvage Plan.— The Narmada Salvage Plan contains detailed background data on palaeoanthropological, human ecological and other aspects of the Narmada valley. By May 1992, surface scanning of 17 sample villages coming under the submergence had been carried out and 424 specimens including ancient tools etc. had been collected.

Anthropological Survey of India: peoples of India.— This project entailed a complete survey of 33 tribes of India including those of the

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Narmada basin. The study covered all aspects of tribal culture in India and was published in 61 volumes in 1992.

Summary of current situation and progress, Government of Gujarat:

Survey of villages in submergence zone	Complete for all items in the State
Identification of cultural sites	Complete for all items in the State
Collection of data and documentation of sites	Complete
Selection of appropriate sites	Complete
Action plan	Complete

It was further submitted on behalf of the respondents that no Centrally- or State-protected cultural sites were located in the submergence area of the project. In Gujarat, the Department of Archaeology concluded that the temples of Shoolpaneshwar and Hampheshwar were important monuments and should be moved to a higher level. Sites were selected for constructing new Shoolpaneshwar and Hampheshwar temples in consultation with temple trustees. Shoolpaneshwar had been relocated and reconstructed near Gora, about 15 km downstream from the present location. Hampheshwar was also constructed at higher ground in consultation with the temple trustees and pranpratistha was also planned on 22-4-2000 to 24-4-2000 i.e. before the temple was submerged.

114. In relation to flora and fauna studies, it was contended by the petitioners that the studies had finished only recently and the action plans were awaited in many cases. In the meanwhile, extensive deforestation of the submergence zone had taken place, as also part of the area had been submerged, even as the studies have been on. It was also contended that the impact on some of the Wild Ass Sanctuary in Kutch would be very severe.

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115. The guidelines of the Ministry of Environment and Forests required that while seeking environmental clearance for the hydropower projects, surveys should be conducted so that the status of the flora and fauna present could be assessed. A condition of environmental clearance of 1987 as far as it related to flora and fauna was that the Narmada Control Authority would ensure in-depth studies on flora and fauna needed for implementation of environmental safeguard measures. It is the case of the respondents that a number of studies were carried out and reports submitted. It was observed that the submergence area and catchment area on the right bank of the proposed reservoir exhibited a highly-degraded ecosystem which was in contrast to the left bank area where there was fairly good forest cover which formed part of Shoolpaneshwar Wildlife Sanctuary. With regard to the study of fauna, the said report indicated that a well-balanced and viable ecosystem existed in the Shoolpaneshwar Sanctuary. Moreover, with the construction of dam, water availability and soil moisture will increase and support varieties of plants and animals.

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116. It was also contended on behalf of the petitioners that the whole project will have serious impacts on health, both around the submergence area and in the command. The preventive aspects had not been given attention. There was no linkage between the studies and work.

117. On behalf of the State of Gujarat, it was contended that a large number of studies had been carried out on the health profile of villagers including studies on water-related diseases in SSP Command Area including the area downstream of the dam. The study of M.S. University in 1983 and other studies concluded that the most common diseases in the basin were malaria, scabies, dysentery and diarrhoea. Of these only a threat to malaria needed to be of concern. The study concluded that the incidence of hygiene-related diseases other than malaria could be reduced by better water availability. The Gujarat Work Plan covered villages within 10-km radius of the reservoir including resettled population and made provision for the monitoring, surveillance and control of malaria. The principal features of the Gujarat Work Plan included establishment of a hospital at Kevadia near the dam site, strengthening of laboratory facility including establishment of mobile unit residual insecticidal spraying operations etc. This showed that the area of public health was in no way being neglected.

118. The petitioner was also critical of the functioning of the Environmental Subgroup as it was contended that the claims of the studies and the progress report were accepted at their face value and without verification. It was also contended that the Ministry of Environment and Forests had grossly abdicated its responsibility. This submission was based on the premise that clearance, which had been granted, had lapsed and the Ministry of Environment and Forests did not insist on the Ministry of Water Resources for its renewal and furthermore the Ministry of Environment and Forests had not taken any cognizance of the criticism about environmental aspects contained in the Morse Commission Report. Lastly the Five-Member Group in its first

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report was critical in many respects and pointed out studies which had remained incomplete but no cognizance was taken by the Ministry of Environment and Forests. The repeated abdication, it was submitted, of the responsibility by the Ministry of Environment and Forests indicated that it was not taking the whole issue with the seriousness it deserved.

119. On behalf of the State of Gujarat, it was contended that various alleged dangers relating to environment as shown by the petitioners were mostly based on the recommendations of the Morse Commission Report and Five-Member Group. While the report of Morse Commission does not require our attention, the same not having been accepted either by World Bank or the Government of India, para 4.5.2 of the report of Five-Member Group which relates to creation of the Environment Subgroup and commends its establishment, its observation about its powers is as follows:

> "*4.5.2*. It must be noted that the Environmental Subgroup is not a body which merely observes and reports, but is a watchdog body which can recommend even the stoppage of work if it feels dissatisfied with the

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progress on the environment front. The recommendations of the Environmental Subgroup will have to be considered by NCA, and if there is any difference of opinion at that level, it will have to be referred to the Review Committee, which has the Minister of Water and Environment and Forests as a member. *It seems doubtful whether any more effective mechanism could have been devised or made to work within the framework of our existing political and administrative structures, particularly in the context of a federal system*. The Secretary (Environment and Forests) has, in fact, been given a special position in NCA inasmuch as he can insist on matters being referred to the Review Committee and at the Review Committee the Minister of Environment and Forests can forcefully plead the environmental cause; he can also make the environmental point of view heard at the highest level. If in spite of all these arrangements, the environmental point of view fails to be heard adequately, and if project construction tends to take an overriding precedence, that is a reflection of the relative political importance of these two points of view in our system. This can be remedied only in the long term through persuasion and education, and not immediately through institutional arrangements which run counter to the system."

(emphasis added)

Apart from the fact that we are not convinced that construction of the dam will result in there being an adverse ecological impact, there is no reason to conclude that the Environmental Subgroup is not functioning effectively. The subgroup which is headed by the Secretary, Ministry of Environment and Forests is a high-powered body whose work cannot be belittled merely on the basis of conjectures or surmises.

120. Shri Shanti Bhushan, learned Senior Counsel while relying upon *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*[6] submitted that in cases pertaining to environment, the onus of proof is on the person who wants to change the status quo and, therefore, it is for the respondents to satisfy the Court that there will be no environmental degradation.

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121. In *A.P. Pollution Control Board case*[5] this Court was dealing with the case where an application was submitted by a company to the Pollution Control Board for permission to set up an industry for the production of "BSS castor oil derivatives". Though later on a letter of intent had been received by the said Company, the Pollution Control Board did not give its no-objection certificate to the location of the industry at the site proposed by it. The Pollution Control Board, while rejecting the application for consent, inter alia, stated that the unit was a polluting industry which fell under the red category of polluting industry and it would not be desirable to locate such an industry in the catchment area of Himayat Sagar, a lake in Andhra Pradesh. The appeal filed by the Company against the decision of the Pollution Control Board was accepted by the appellate authority. A writ petition was filed in the nature of public interest litigation and also by the

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Gram Panchayat challenging the order of the appellate authority but the same was dismissed by the High Court. On the other hand, the writ petition filed by the Company was allowed and the High Court directed the Pollution Control Board to grant consent subject to such conditions as may be imposed by it.

122. It is this decision which was the subject-matter of challenge in this Court. After referring to the different concepts in relation to environmental cases like the "precautionary principle" and the "polluter-pays principle", this Court relied upon the earlier decision of this Court in *Vellore Citizens' Welfare Forum* v. *Union of India*[7] and observed that there was a new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo and has become part of our environmental law. It was noticed that inadequacies of science had led to the precautionary principle and the said "precautionary principle" in its turn had led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. At p. 735, this Court, while relying upon a report of the International Law Commission, observed as follows: (SCC para 38)

> "*38*. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment."

123. It appears to us that the "precautionary principle" and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to

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suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be an ecological disaster. It is when the effect of the project is known that the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

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124. In the present case we are not concerned with the polluting industry which is being established. What is being constructed is a large dam. The dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in an ecological disaster. India has an experience of over 40 years in the construction of dams. The experience does not show that construction of a large dam is not cost-effective or leads to ecological or environmental degradation. On the contrary there has been ecological upgradation with the construction of large dams. What is the impact on environment with the construction of a dam is well known in India and, therefore, the decision in *A.P. Pollution Control Board case*[8] will have no application in the present case.

125. Reference was made by Shri Shanti Bhushan to the decision of the United States District Court in the case of *Sierra Club et.* v. *Robert F. Froehlke*[9]. In that case work had begun on Wallisville Project which, inter alia, consisted of construction of a low dam. It was the case of the plaintiff that the construction of the project would destroy hundreds of thousands of trees and enormous grain, fish and other wildlife will lose their habitat and perish. It was contended that the defendants were proceeding in violation of law by not complying with the requirements of the National Environmental Policy Act, 1969 (NEPA). The plaintiff, inter alia, sought an injunction for restraining the undertaking of the project in violation of the said Act. The District Court held that notwithstanding that a substantial amount of work had already been done in connection with the project but due to the failure to satisfy full disclosure requirement of NEPA, injunction would be issued to halt any further construction until requirements of NEPA had been complied with, that even though there was no Act like NEPA in India at the time when environmental clearance was granted in 1987, nevertheless by virtue of Stockholm Convention and Article 21 of the Constitution the principles of *Sierra Club decision* should be applied.

126. In India notification had been issued under Section 3 of the Environmental Act regarding prior environmental clearance in the case of undertaking of projects and setting up of industries including the inter-State river project. This notification has been made effective from 1994. There was, at the time when the environmental clearance was granted in 1987, no obligation to obtain any statutory clearance. The environmental clearance which was granted in 1987 was essentially administrative in

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nature, having regard and concern for the environment in the region. Change in the environment does not per se violate any right under Article 21 of the Constitution of India especially when ameliorative steps are taken not only to preserve but to improve the ecology and environment and in case of

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displacement, prior relief and rehabilitation measures take place pari passu with the construction of the dam.

127. At the time when the environmental clearance was granted by the Prime Minister whatever studies were available were taken into consideration. It was known that the construction of the dam would result in submergence and the consequent effect which the reservoir will have on the ecology of the surrounding areas was also known. Various studies relating to environmental impact, some of which have been referred to earlier in this judgment, had been carried out. There are different facets of environment and if in respect of a few of them adequate data was not available it does not mean that the decision taken to grant environmental clearance was in any way vitiated. The clearance required further studies to be undertaken and we are satisfied that this has been and is being done. Care for the environment is an ongoing process and the system in place would ensure that ameliorative steps are taken to counter the adverse effect, if any, on the environment with the construction of the dam.

128. Our attention was also drawn to the case of *Tennessee Valley Authority* v. *Hiram G. Hill*[10] where the Tennessee Valley Authority had begun construction of the Tellico Dam and Reservoir Project on a stretch of Little Tennessee River. While a major portion of the dam had been constructed the Endangered Species Act, 1973 was enacted wherein a small fish popularly known as the "snail darter" was declared an endangered species. Environmental groups brought an action in the United States District Court for restraining impounding of the reservoir on the ground, that such an action would violate the Endangered Species Act by causing extinction of the snail darter. The District Court refused injunction but the same was granted by the United States Court of Appeal. On further appeal the US Supreme Court held that the Endangered Species Act prohibited the authority for further impounding the river. The said decision has no application in the present case because there is no such Act like the Endangered Species Act in India or a declaration similar to the one which was issued by the Secretary of the Interior under that Act. What is, however, more important is that it has not been shown that any endangered species exists in the area of impoundment. In *Tennessee Valley Authority case*[8] it was an accepted position that the continued existence of snail darter which was an endangered species would be completely jeopardised.

129. Two other decisions were referred to by Shri Shanti Bhushan — *Arlington Coalition on Transportation* v. *John A. Volpe*[11] and *Environmental Defense Fund, Inc.* v. *Corps of Engineers of United States Army*[12]. In both these decisions it was decided that NEPA would be applicable even in case of a project which had commenced prior to the coming into force of the said Act but which had not been completed. In such cases there was a requirement

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to comply with the provisions of NEPA as already noticed earlier. The notification under Section 3 of the Environment Protection Act cannot be regarded as having any retrospective effect. The said notification dated 27-1-1994, inter alia, provides as follows:

> "Now therefore, in exercise of the powers conferred by sub-section (1) and clause (*v*) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (*d*) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette expansion or modernisation of any activity if pollution load is to exceed the existing one, or a new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification;"

This notification is clearly prospective and inter alia prohibits the undertaking of a new project listed in Schedule I without prior environmental clearance of the Central Government in accordance with the procedure now specified. In the present case clearance was given by the Central Government in 1987 and at that time no procedure was prescribed by any statute, rule or regulation. The procedure now provided in 1994 for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto.

Relief and rehabilitation

130. It is contended by the petitioner that as a result of construction of dam, over 41,000 families will be affected in three States spread over 245 villages. The number of families have increased from 7000 families assessed by the Tribunal. It was further contended that the submergence area can be broadly divided into two areas, fully tribal area which covers the initial reach of about 100 or so villages which are almost 100% tribal and hilly. These include all the 33 villages of Maharashtra, all 19 of Gujarat and many of Madhya Pradesh. The second part of the submergence area is the mixed-population area on the Nimad plains with a very well-developed economy that is well connected to the mainstream. While the tribal areas are stated to be having a rich and diverse resource base and a self-sufficient economy, the lack of so-called modern amenities like roads, hospitals and schools are far more a reflection of the neglect and disregard by the Government over the last fifty years than of anything else. Of the 193 villages stated to be affected by Sardar Sarovar submergence, 140 lie in the Nimad plains. The population of these villages is a mixture of caste and tribal and these villages have all the facilities like schools, post offices, bus service etc.

131. It was contended that whereas the project authorities talk only about the families affected by submergence, none of the other families affected by the project are considered as PAFs nor has any rehabilitation package been designed for them. These non-recognised categories for whom no

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rehabilitation package is given are stated to be those persons living in submergence area who are not farmers but are engaged in other occupation like petty traders, village shopkeepers who are to be affected by submergence; colony-affected people whose lands were taken in 1960 to build the project colony, warehouses etc.; canal-affected people who would be losing 25 per cent of their holdings because of the construction of the canals, drainage-affected people whose lands will be acquired for drainage; 10,000 fishing families living downstream whose livelihood will be affected; lands of the tribals whose catchment treatment area has been carried out; persons who are going to be affected by the expansion of Shoolpaneshwar Sanctuary; persons going to be affected by Narmada Sagar Project and Garudeshwar Weir. It was contended that there was an urgent need to assess comprehensively the totality of the impact and prepare category-specific rehabilitation policies for all of them.

132. It was also submitted that the total number of affected families in all the three States as per the master plan prepared by the Narmada Control Authority is 40,727. According to the petitioner, however, this figure is an underestimate and the estimate of the land required for these PAFs is also on a much lower side. The basis for making this submission is:

(*1*) In each village there are many persons left out of the government list of declared PAFs. These are joint-holders (non-recognised as landed oustees or PAFs) and the adult sons.

(*2*) Incorrect surveys have been conducted and the affected persons have serious apprehensions about the validity of the surveys since at many places the level markings are suspect, in many cases the people affected at higher levels have been given notices for lower levels, many others at the same levels have been left out and so on. It is also alleged that there have been shortcomings in the policies and if they are corrected many more oustees will be entitled to PAF status. Furthermore the cut-off date for PAFs in Madhya Pradesh including adult son is linked to the date of issuance of notification. Since land-acquisition process is still incomplete the number of adult sons entitled to land would increase with the issuance of fresh Section 4 notification.

133. From the aforesaid it was contended that the total impact in terms of number of oustees as well as land entitlement will be much larger than what is considered in the master plan.

134. It is also submitted that there was major lacuna in the said policy like the three States having dissimilar policy for R&R. This difference in rehabilitation packages of different States, with the package of Gujarat being more favourable, is leading to a situation where the oustees are forced to shift to Gujarat. The other lacunae which are stated to have many serious problems are alleged to be the non-provision for fuel wood and grazing land with fodder. There is no provision for rehabilitation of people involved in non-agricultural occupation. According to the petitioner the number of affected people even by submergence have been underestimated. The policy

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regime governing them has many serious lacunae. The increase in the numbers is due to lack of proper surveys and planning and the provision of just and due entitlements to PAFs. Since this process of providing just entitlements is still incomplete, and the policies need a thorough review, the numbers and entitlements are likely to go up further. Even the magnitude of the task of R&R cannot be assessed properly till the above are considered and proper policies introduced.

135. It is also contended that before embarking on the Sardar Sarovar Project it was necessary that the master plan for rehabilitation of the families to be affected is completed. According to the petitioner the master plan which was submitted in the Court cannot be regarded as an acceptable master plan inasmuch as it has no mention of people affected by Sardar Sarovar Project other than those affected by submergence and it has no estimate of resource base of the oustees in their original village. Further the plan makes no estimation of the forest land, grazing land and resources being used by the oustees. The master plan persists with the discriminatory and differential policies which are less than just to the oustees. There is also no planning for community resettlement even though the award of the Narmada Tribunal made detailed provision regarding rehabilitation of the oustees which required that there should be villagewise community rehabilitation.

136. In support of this contention reliance is placed on the following stipulation for rehabilitation contained in the award of the Narmada Tribunal "that Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of SSP on the norms hereafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat". The submission is that no specific rehabilitation village, as envisaged by the Tribunal's award, has been established in Gujarat. The issue of community resettlement is stated to be not merely an issue of community facility but is a more fundamental issue. The issue is really one of preserving social fabric and community relation of the oustees which, it is alleged, is being destroyed due to dispersal of the community who are being resettled at different sites.

137. Dealing with the situation of those oustees who have been resettled in Gujarat it is submitted by the petitioner that there are a large number of grievances of the said oustees in 35 resettlement sites. With the passage of time the number of problems overall would become much more, is the contention. The petitioner finds fault with the quality of land which has been given in Gujarat to the oustees contending that a large number of oustees have been given land outside the command area of irrigation and in some resettlement sites there is a serious waterlogging problem. It also contends that though some amenities have been provided but they are not adequate. It is also the case of the petitioner that sufficient land for resettlement of the oustees from Madhya Pradesh is not available in Gujarat despite the claim of the State of Gujarat to the contrary.

138. With regard to Maharashtra it is contended by the petitioner that the official figure of the total number of PAFs affected in Maharashtra is not

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correct and the number is likely to be more than 3113 PAFs estimated by the State of Maharashtra. Furthermore adequate land of desired quality has not been made available for resettlement till 90 m and even thereafter. Reference is made to the affidavit of the State of Maharashtra in which it is stated that it proposes to ask for the release of 1500 hectares of forest land for resettlement and the submission on behalf of the petitioner is that release of such land shall be in violation of the Forest Conservation Act, 1980 and is not in public interest for forest cover will be further depleted.

139. With regard to the State of Madhya Pradesh it is submitted that as per the award PAFs have a right to choose whether to go to Gujarat or to stay in the home State. The State of Madhya Pradesh is stated to have planned the whole resettlement based on the assumption that overwhelming proportion of oustees entitled to land will go to Gujarat, yet even for the limited number of oustees who are likely to stay in Madhya Pradesh the submission is that no land is available. The petitioner also disputes the averment of the State of Madhya Pradesh that the oustees have been given a choice as to whether they would like to go to Gujarat or stay in the home State. According to the petitioner the majority of the oustees would prefer to stay in the home State that is Madhya Pradesh but sufficient land for their resettlement in Madhya Pradesh is not available. According to the petitioner the State of Madhya Pradesh has stated that it does not have land for any PAFs above 830 and even for 830 PAFs the land is not available. It is also submitted that the Madhya Pradesh Government cannot wriggle out of its responsibility to provide land for the oustees by offering them cash compensation. The petitioner finds fault with the effort of the State of Madhya Pradesh to push the oustees to Gujarat whose rehabilitation scheme is more attractive and beneficial than that of Madhya Pradesh.

140. The petitioner further contends that one of the fundamental principles laid down is that all the arrangements and resettlement of the oustees should be made one year in advance of submersion. In *B.D. Sharma* v. *Union of India case*[13] this Court has held that resettlement and rehabilitation has to be done at least six months in advance of submersion, complete in all respects. It is, therefore, contended that since offers to the Madhya Pradesh oustees affected at 90 m to be settled in Madhya Pradesh has not been made, there cannot be any question of further construction till one year after the resettlement of these PAFs at 90 m.

141. The petitioner is also critical of the functioning of the R&R Subgroup and it is contended that the said Subgroup has not taken any cognizance of the various issues and problems enumerated by the petitioner. It is submitted that in assuring that the relief and rehabilitation arrangements are being done the said R&R Subgroup merely accepts the assertions of the Government rather than verifying the claims independently. There is also a complaint regarding the manner in which the R&R Committee takes decision on the spot when it makes frequent visits. It is contended that the decisions

which are taken in an effort to solve the grievances of the oustees is done in the most

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insensitive way. The R&R Subgroup, it is contended, is an official agency of the Government, itself being a subgroup of NCA, which is pushing the project ahead and the question raised by the petitioner is as to how can the same body which is building a project and executing the R&R be also monitoring it.

142. It is a case of the petitioners that there is a need for independent monitoring agency in the three States who should be asked to monitor the R&R of the oustees and see to the compliance with NWDT award. No construction should be permitted to be undertaken without clearance from this authority. Lastly it is contended that a large number of grievances are persisting even after twenty years and the pace of resettlement has been slow. The petitioner seems to have contended that the relief and rehabilitation can be manageable only if the height of the dam is significantly lessened which will reduce submersion and displacement of people.

143. In order to consider the challenge to the execution of the project with reference to relief and rehabilitation it is essential to see as to what is the extent and the nature of submergence.

144. The Sardar Sarovar reservoir level at 455 ft would affect 193 villages in Madhya Pradesh, 33 villages in Maharashtra and 19 villages in Gujarat. The submergence villages are situated on the banks of River Narmada having gentle to steep slopes of the Satpura Hills. A village is considered affected even when the water level touches the farm/hut at the lowest level. It may be noted that only 4 villages (3 villages in Gujarat and 1 village in Madhya Pradesh) are getting submerged fully and the rest 241 villages are getting affected partially.

145. The Statewise land coming under submergence (categorywise) is given below:

		STATES			*(in hectares)*
Sl. No.	*Type of land*	*Gujarat*	*Maharashtra*	*Madhya Pradesh*	*Total*
1.	Cultivated land	1877	1519	7883	11,279
2.	Forest land	4166	6488	2731	13,385
3.	Other land including riverbed	1069	1592	10,208	12,869
	Total land	7112	9599	20,822	37,533

146. The aforesaid table shows that as much as 12,869 hectares of the affected land is other than agricultural and forest and includes the riverbed area.

147. When compared to other similar major projects, the Sardar Sarovar Project has the least ratio of submergence to the area benefited (1.97% only). The ratio of some of the existing schemes is as much as 25% as can be seen from the table below:

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Sl. No.	*Name of project*	*State*	*Benefited area (in ha)*	*Submer-gence area (in ha)*	*Irriga-tion benefit per ha submer-gence*	*Percen-tage of area sub-merged to area irriga-ted*
1.	Hirakud	Orissa	2,51,150	73,892	3.40	29.42
2.	Shriram Sagar	Andhra Pradesh	2,30,679	44,517	5.24	19.14
3.	Gandhi Sagar	Madhya Pradesh	5,03,200	66,186	7.60	13.15
4.	Paithan	Maharash-tra	2,78,000	35,000	7.94	15.29
5.	Tungbha-dra	Karna-taka	3,72,000	37,814	9.84	10.16
6.	Pench	Maharash-tra	94,000	7750	12.13	8.24
7.	Nagarjuna Sagar	Andhra Pradesh	8,95,000	28,500	31.40	3.18
8.	Bhakra	Himachal Pradesh	6,76,000	16,800	40.24	2.48
9.	Sardar Sarovar	Gujarat	19,03,500	37,533	50.71	1.97

148. Countering the assertion that the construction of the dam would result in large-scale relocation and uprooting of tribals, the factual position seems to be that the tribals constitute bulk of PAFs in Gujarat and Maharashtra, namely, 97% and 100% respectively. In the case of Madhya Pradesh, the tribal PAFs are only 30% while 70% are non-tribals.

149. The tribals who are affected are in indigent circumstances and who have been deprived of the modern fruits of development such as tap water, education, road, electricity, convenient medical facilities, etc. The majority of the project-affected families are involved in rain-fed agricultural activities for their own sustenance. There is partial employment in the forestry sector. Since the area is hilly with difficult terrain, they are wholly dependent on the vagaries of the monsoon and normally only a single crop is raised by them. Out of PAFs of Madhya Pradesh who have resettled in Gujarat, more than 70% are tribal families. Majority of the total tribal PAFs are stated to have already been resettled in Gujarat after having exercised their option. It is the contention of the State of Gujarat that the tribals in large number have responded positively to the resettlement package offered by that State.

150. In Madhya Pradesh, the agricultural lands of the tribal villages are affected on an average to the extent of 28% whereas in the upper reaches i.e. Nimad where the agriculture is advanced, the extent of submergence, on an average, is only 8.5%. The surveys conducted by HMS Gour University, Sagar, the Monitoring and Evaluation

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Agency, set up by the Government of Madhya Pradesh, reveal that the major resistance to relocation is from the

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richer, non-tribal families of Nimad who fear shortage of agricultural labour if the landless labourers from the areas accept resettlement.

151. The displacement of the people due to major river valley projects has occurred in both developed and developing countries. In the past, there was no definite policy for rehabilitation of displaced persons associated with the river valley projects in India. There were certain project-specific programmes for implementation on a temporary basis. For the land acquired, compensation under the provisions of the Land Acquisition Act, 1894 used to be given to the project-affected families. This payment in cash did not result in satisfactory resettlement of the displaced families. Realising the difficulties of displaced persons, the requirement of relief and rehabilitation of PAFs in the case of Sardar Sarovar Project was considered by the Narmada Water Disputes Tribunal and the decision and final order of the Tribunal given in 1979 contains detailed directions in regard to acquisition of land and properties, provision for land, house plots and civic amenities for the resettlement and rehabilitation of the affected families. The resettlement policy has thus emerged and developed along with the Sardar Sarovar Project.

152. The award provides that every displaced family, whose more than 25% of agricultural landholding is acquired, shall be entitled to and be allotted irrigable land of its choice to the extent of land acquired subject to the prescribed ceiling of the State concerned with a minimum of two hectares land. Apart from this land-based rehabilitation policy, the award further provides that each project-affected family will be allotted a house plot free of cost and resettlement and rehabilitation grant. The civic amenities required by the award to be provided at places of resettlement include one primary school for every 100 families, one panchayat ghar, one dispensary, one seed store, one children's park, one village pond and one religious place of worship for every 500 families, one drinking-water well with trough and one tree platform for very 50 families, an approach road linking each colony to the main road, electrification, water supply, sanitary arrangement, etc. The State Governments have liberalised the policies with regard to resettlement and have offered packages more than what was provided for in the award e.g. the Governments of Madhya Pradesh, Maharashtra and Gujarat have extended the R&R benefits through their liberalised policies even to the encroachers, landless/displaced persons, joint-holders, tapu-land (island) holders and major sons (18 years old) of all categories of affected persons. The Government of Maharashtra has decided to allot one hectare of agricultural land free of cost even to unmarried major daughters of all categories of PAFs.

153. In the environmental clearance granted by the Ministry of Environment and Forests vide its letter dated 24-6-1987 one of the conditions stipulated therein was for information from the project authorities on various action plans including Rehabilitation Master Plan of 1989.

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154. It is the contention of the petitioners that the failure to prepare a "master plan" constitutes non-compliance with the requirement of the Tribunal's award as well as environmental clearance. The Tribunal's award does not use the expression "master plan" but as per clause XI sub-clause (IV)(2)(*iii*), what is required, is as under:

> "The three States by mutual consultation shall determine within two years of the decision of the Tribunal, the number and general location of rehabilitation villages required to be established by Gujarat in its own territory."

155. It is with regard to this clause in the award that, presumably, the aforesaid letter of 24-6-1987 granting environmental clearance required the preparation of the new master plan.

156. In 1988 when the project was first cleared by the Planning Commission from the investment angle, it was estimated that 12,180 families would be affected in three States. Based on these numbers, the State Governments independently prepared their action plans and announced their R&R policy based on the Tribunal's award. On the basis of the said action plans the Narmada Control Authority submitted the Rehabilitation Master Plan to the Ministry of Environment and Forests along with its letter dated 3-5-1989/4-5-1989. Out of the total population, which is affected by the submergence, a large number are tribals and hence attention was paid by the State Governments to liberalise their policies for protecting the socio-economic and cultural milieu and to extend the R&R benefits even to other categories of persons who were not covered by the Tribunal's award. This led to the liberalisation of the R&R packages by the three States, which packages have been referred to hereinabove. As a result of the liberalisation of the packages, the number of PAFs as estimated in 1992 by the State Governments were 30,144. Based on the material available, the three State Governments prepared individual action plans in 1993 but those action plans were integrated by the Narmada Control Authority first in 1993 and again in 1995 as an integrated master plan to present a holistic picture of the R&R programme. The master plan deals with socio-economic and cultural milieu of PAFs, the legal framework, R&R policy and procedures, implementation machinery, organisation for R&R, monitoring and evaluation, empowerment of women and youth, special care for vulnerable groups, financial plans for R&R etc. As per the 1990 Master Plan the total PAFs have increased to 40,227 from 30,144 due to addition of 100 more genuine PAFs in Maharashtra. This master plan includes villagewise, categorywise PAFs and their preference in R&R to settle in the home State or in Gujarat.

157. The reason for increase in the number of PAFs has been explained in the master plan and the reasons given, inter alia, are:

> (*a*) After CWC prepared backwater level data, the number of PAFs in Madhya Pradesh (MP) increased by 12,000 PAFs as their houses are affected in 1 in 100 years' flood.

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(*b*) The Government of Gujarat (GoG) included major sons of the dyke villages as PAFs.

(*c*) Cut-off date for major sons was extended by GoG and the Government of Maharashtra (GoM).

(*d*) PAFs affected in M.P., have increased due to delay in publication of Section 4 notification under the Land Acquisition Act.

(*e*) Persons socially or physically cut off due to impounding of water in the reservoir are also considered as PAFs by all the three States.

(*f*) All the three States decided to consider encroachers as PAFs.

(*g*) Major unmarried daughters in Maharashtra are considered as a separate family by the Government of Maharashtra.

(*h*) Some genuine PAFs were earlier left out (as many stayed in remote areas or used to undertake seasonal migration to towns and developed areas in search of casual work).

158. As far as the State of Gujarat is concerned, its contention is that the task of R&R is not impossible as recognised by the FMG-I in its 1994 report and according to the State, it is fully ready and prepared to resettle in Gujarat all PAFs up to FRL 455 ft.

159. On 13-11-1996, a meeting of the Review Committee of the Narmada Control Authority chaired by the Union Minister of Water Resources was held. This meeting was attended by the Chief Ministers of all the States including Rajasthan and representatives of the Ministry of Environment and Forests, Ministry of Social Justice and Empowerment, Government of India. In the meeting it was unanimously decided that the reviews of the implementation of resettlement and rehabilitation measures will be undertaken for every five-metre height of the dam jointly by the R&R Subgroup and Environmental Subgroup concerned so that work could progress pari passu with the implementation measures. In its meeting held on 6-1-1999, R&R Subgroup of the Narmada Control Authority observed that arrangements made by the States for R&R of the balance families pertaining to the dam height EL 90 metres were adequate and a meeting of the party-States should be convened shortly to finalise the action plan. Pursuant thereto a special inter-State meeting was convened under the chairmanship of the Secretary to the Government of India, Ministry of Social Justice and Empowerment on 21-1-1999 at New Delhi and action plan for resettlement and rehabilitation of balance families to dam height EL 90 metres was finalised for implementation by the States. It is the case of the State of Gujarat that it had issued notices and made offers in January 1998 to PAFs affected at RL 90 metres in connection with the selection of land and their resettlement in Gujarat. According to it, even in respect of PAFs affected at RL 95 metres, notices were issued in January 1999 and to PAFs included in the subsequent list, notices were issued in September 1999. The process of land selection by PAFs who had opted to resettle in Gujarat at RL 95 metres was already started. According to the Union of India, the master plan was under implementation and the progress of R&R at various elevations of dam

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viz. EL 90 metres, EL 95 metres, EL 110 metres and FRL 138.68 metres has been made.

160. The measures which have been implemented for sustainable development with regard to preserving the socio-cultural environment of the displaced persons in the States of Maharashtra, Gujarat and Madhya Pradesh are stated to be as follows:

— Three choices to the people for the selection of relocation sites.

— Integration of the displaced person with the neighbouring villages by organising medical check-up camps, animal husbandry camps, festivals, eye camps, rural development seminar for village workers, etc.

— Establishment of rehabilitation committees at different levels.

— Respect of traditional beliefs, rituals and rights at the starting of house construction, the day and time of leaving the old house and village and the day and time of occupying the new house etc.

— The sacred places at the native villages are being recreated along with their settlements at new sites.

— Installation of all the religious deities with the due consultation of religious heads.

— Promotion of cultural milieu viz. social festivals, religious rights, rights of passage, presence of priests, shaman, kinsmen, clansmen etc.

— Special consideration for the preservation of holistic nature of the culture.

— Proper use of built-in mechanism of cultural heritage of the displaced persons.

— Launching of culturally-appropriate development plan.

— Genuine representation of the traditional leader.

161. The Tribunal had already made provision of various civic amenities which were further liberalised by the State Governments during implementation. The existing development programmes were strengthened for ensuring sustainable development at the rehabilitation sites. These were Integrated Rural Development Programme (IRDP) for agriculture, business and village industries, Integrated Child Development Scheme (ICDS) for nutrition, health and education, Jawahar Rozgar Yojna (JRY), aids for improved seeds, fertilizers, irrigation, animal husbandry, Training Rural Youth for Self-Employment (TRYSEM), Employment Guarantee Scheme (EGS), social assistance, Industrial Training Institute (ITI), Tribal Development Programme (TDP), financial benefits to the backward classes, economically weaker sections, tribals and Other Backward Classes (OBC), eye camps, subsidies to farmers (seed, tractorisation, fertilizers, diesel, etc.) agricultural prices support subsidy etc.

162. Other benefits which were extended for improving the quality of life of the resettled PAFs included fodder farm, mobile sale, shop of fodder, seed cultivation training, initial help in land preparation for agricultural activities, better seeds and fertilizers, access to finance, special programme for women

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in the traditional skills' entrepreneurship development, employment skill formation, different plantation programmes, special emphasis for pasture management, environment awareness and education programme, programmes for biogas/smokeless chulhas, safe drinking water supply, electricity, lift irrigation, fertilizer kit distribution, gypsum treatment of soil, etc.

163. The project authorities in these three States of Madhya Pradesh, Gujarat and Maharashtra represented that comprehensive health care was available in the tribal areas where the displaced families had been resettled. It was contended that extensive preventive health measures like mass immunisation, anti-malaria programme, family welfare programmes, child development schemes etc. had been undertaken. What is important is that primary health centres were established at relocation sites for all necessary health facilities to PAFs.

164. The submission on behalf of the Union of India was that there was a well-established mechanism of the Government of India for coordination and monitoring of resettlement & rehabilitation (R&R) programmes in case of Sardar Sarovar Project. The R&R Subgroup and Rehabilitation Committee of the Narmada Control Authority are responsible for applying its independent mind on R&R. The Subgroup convenes its meeting regularly to monitor and review the progress of R&R while Rehabilitation Committee visits the submergence areas/relocation sites to see whether the rehabilitation is taking place physically and to hear the individual problems of PAFs. The R&R Subgroup, keeping in view the progress of relief and rehabilitation, has not permitted the height to be raised, until and unless it is satisfied that adequate satisfactory progress has been made with regard to R&R. Whereas at an earlier point of time in 1994, the construction schedule had required the minimum block level to be raised to 85 metres, the R&R Subgroup had permitted the same to be raised to EL 69 metres only during that period to match the R&R activity. It was in the meeting of R&R Subgroup on 6-1-1999 after the R&R Subgroup had reviewed the progress and had satisfied itself that the land for resettlement in Gujarat, Maharashtra and Madhya Pradesh, which was available, was more than required for the resettlement of the balanced PAFs, that it cleared the construction up to the dam height EL 90 metres. The action plan for the same had been approved and is under implementation by the States concerned.

165. The petitioners had contended that no proper surveys were carried out to determine the different categories of affected persons as the total number of affected persons had been shown at a much lower side and that many had been denied PAF status. From what is being stated hereinabove, it is clear that each State has drawn detailed action plan and it is after requisite study had been made that the number of PAFs have been identified. The number has substantially increased from what was estimated in the Tribunal's award. The reason for the same, as already noticed, is the liberalisation of the R&R packages by the State Governments. Except for a bald assertion, there appears to be no material on which this Court can come

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to the conclusion that no proper surveys had been carried out for determining the number of PAFs who would be adversely affected by the construction of the dam.

166. The resettlement and rehabilitation packages in the three States were different due to different geographical, local and economic conditions and availability of land in the States. The liberal packages available to the Sardar Sarovar Project oustees in Gujarat are not even available to the project-affected people of other projects in Gujarat. It is incorrect to say that the difference in R&R packages, the package of Gujarat being the most liberal, amounts to restricting the choice of the oustees. Each State has its own package and the oustees have an option to select the one which was most attractive to them. A project-affected family may, for instance, choose to leave its home State of Madhya Pradesh in order to avail the benefits of the more generous package of the State of Gujarat while other PAFs similarly situated may opt to remain at home and take advantage of the less liberal package of the State of Madhya Pradesh. There is no requirement that the liberalisation of the packages by the three States should be to the same extent and at the same time, the States cannot be faulted if the package which is offered, though not identical to each other, is more liberal than the one envisaged in the Tribunal's award.

167. Dealing with the contention of the petitioners that there were a large number of persons who were living in the submergence area and were not farmers and would lose their livelihood due to loss of the community and/or loss of the river and were not being properly rehabilitated, Mr Harish Salve, learned Senior Counsel contended that this averment was not true. According to him, all the families in the 105 hilly tribal villages were agriculturists, cultivating either their own land or government land and all of whom would be eligible for alternative agricultural land in Gujarat. Only a small number of non-agriculturists, mainly petty shopkeepers were found in these villages of tribal areas. In Gujarat there were 20 such non-agriculturist families out of a total of 4600 affected families and all of these had been resettled as per their choice so that they could restart their business. In Maharashtra out of 3213 affected families, not a single family was stated to fall under this category. Amongst the affected families of Madhya Pradesh, the figure of such non-agriculturist families was also stated to be not more than a couple of 100. In our opinion it is neither possible nor necessary to decide regarding the number of people likely to be so affected because all those who are entitled to be rehabilitated as per the award will be provided with the benefits of the package offered and chosen.

168. With regard to the colony-affected people whose 1380 acres of land was acquired in six villages for the construction of a colony, most of the landholders had continued to stay in their original houses and about 381 persons were stated to have been provided permanent employment in the project works. At the time, the land was acquired in 1962-63, compensation was paid and in addition thereto, the Government of Gujarat devised a special package in August 1992 providing ex gratia payment up to Rs 36,000

to the land losers for purchase of productive assets or land for those who had not

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received employment in the project.

169. Dealing with the contention of the petitioners that there will be 23,500 canal-affected families and they should be treated on a par with the oustees in the submergence area, the respondents have broadly submitted that there is a basic difference in the impacts of the projects in the upstream submergence area and its impacts in the beneficiary zone of the command area. While people, who were oustees from the submergence zone, required resettlement and rehabilitation, on the other hand, most of the people falling under the command area were in fact beneficiaries of the projects and their remaining land would now get relocated with the construction of the canal leading to greater agricultural output. We agree with this view and that is why, in the award of the Tribunal, the State of Gujarat was not required to give to the canal-affected people the same relief which was required to be given to the oustees of the submergence area.

170. Dealing with the contention of the petitioners that the oustees were not offered a chance to resettle in Gujarat as a community and that there was a clear requirement of villagewise communication (*sic* community) rehabilitation which had not been complied with, the contention of the respondents was that no provision of the Tribunal's award had been shown which caused any such obligation on the Government of Gujarat. What the award of the Tribunal required is resettlement of PAFs in Gujarat at places where civic amenities like dispensary, schools, as already been referred to hereinabove, are available.

171. Subsequent to the Tribunal's award, on the recommendation of World Bank, the Government of Gujarat adopted the principle of resettlement that the oustees shall be relocated as village units, village sections or families in accordance with the oustees' preference. The oustees' choice has actively guided the resettlement process. The requirement in the Tribunal's award was that the Gujarat Government shall establish rehabilitation villages in Gujarat in the irrigation command of the Sardar Sarovar Project on the norms mentioned for rehabilitation of the families who were willing to migrate to Gujarat. This provision could not be interpreted to mean that the oustees' families should be resettled as a homogeneous group in a village exclusively set up for each such group. The concept of communitywise resettlement, therefore, cannot derive support from the above-quoted stipulation. Besides, the norms referred to in the stipulation relate to provisions for civic amenities. They vary as regards each civic amenity vis-à-vis the number of oustees' families. Thus, one panchayat ghar, one dispensary, one children's park, one seed store and one village pond is the norm for 500 families, one primary school (3 rooms) for 100 families and a drinking-water well with trough and one platform for every 50 families. The number of families to which the civic amenities were to be provided was thus not uniform and it was not possible to derive therefrom a standardised pattern for the establishment of a site which had a nexus with the number of oustees' families of a particular community or group to be

resettled. These were not indicators envisaging resettlement of the oustees' families on the basis of tribes, subtribes, groups or subgroups.

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172. While resettlement as a group in accordance with the oustees' preference was an important principle/objective, the other objectives were that the oustees should have improved or regained the standard of living that they were enjoying prior to their displacement and they should have been fully integrated in the community in which they were resettled. These objectives were easily achievable if they were resettled in the command area where the land was twice as productive as the affected land and where large chunks of land were readily available. This was what the Tribunal's award stipulated and one objective could not be seen in isolation of the other objectives.

173. Master Plan, 1995 of the Narmada Control Authority also pointed out that "the Bhils, who are individualistic people building their houses away from one another, are getting socialised, they are learning to live together". Looking to the preferences of the affected people to live as a community, the Government of Gujarat had basically relied on the affected families' decision as to where they would like to relocate, instead of forcing them to relocate as per a fixed plan.

174. The underlined principle in forming the R&R policy was not merely of providing land for PAFs but there was a conscious effort to improve the living conditions of PAFs and to bring them into the mainstream. If one compares the living conditions of PAFs in their submerging villages with the rehabilitation packages first provided by the Tribunal's award and then liberalised by the States, it is obvious that PAFs had gained substantially after their resettlement. It is for this reason that in the action plan of 1993 of the Government of Madhya Pradesh it was stated before this Court that

> "therefore, the resettlement and rehabilitation of people whose habitat and environment makes living difficult does not pose any problems and so the rehabilitation and resettlement does not pose a threat to the environment".

In the affidavit of Dr Asha Singh, Additional Director (Socio & CP), NVDA, as produced by the Government of Madhya Pradesh in respect of visit to R&R sites in Gujarat during 21-2-2000 to 23-2-2000 for ascertaining the status relating to grievances and problems of Madhya Pradesh PAFs resettled in Gujarat, it was, inter alia, mentioned that

> "PAFs had informed that the land allotted to them is of good quality and they take the crops of cotton, jowar and tuwar. They also stated that their status has improved from the time they had come to Gujarat but they want that water should start flowing in the canals as soon as possible and in that case they will be able to take three crops in one year as their land is in the command area".

Whereas the conditions in the hamlets where the tribals lived, were not good enough the rehabilitation package ensured more basic facilities and civic amenities to the resettled oustees. Their children would have schools and

children's park, primary health centre would take care of their health and, of course, they would have electricity which was not a common feature in the tribal villages.

175. Dealing with the contention of the petitioners that there was no provision for grazing land and fuel wood for PAFs, it is rightly contended by the State of Gujarat

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that grazing land was not mandated or provided for in the Tribunal's award but nevertheless, the grazing land of six villages was available for the use of PAFs. It may be that the grazing land was inadequate but this problem will be faced by the entire State of Gujarat and not making such land available for them does not in any way violate any of the provisions of the award.

176. With regard to providing irrigation facilities, most of the resettled project-affected families were provided irrigation facilities in the Sardar Sarovar Project Command Area or in the command areas of other irrigation projects. In many of the out-of-command sites, irrigated lands were purchased. In cases where the irrigation facilities were not functioning, the Government of Gujarat had undertaken the work of digging tubewells in order to avoid any difficulty with regard to irrigation in respect of those oustees who did not have adequate irrigation facilities. It was contended that because of the delay in the construction of the project, the cut-off date of 1-1-1987 for extending R&R facilities to major sons were not provided. The Tribunal's award had provided for land for major sons as on 16-8-1978. The Government of Gujarat, however, extended this benefit and offered rehabilitation package by fixing the cut-off date of 1-1-1987 for granting benefits to major sons. According to the Tribunal's award, the sons who had become major one year prior to the issuance of the notification for land acquisition were entitled to be allotted land. The land acquisition notification had been issued in 1981-82 and as per the award, it was only those sons who had become major one year prior to that date who would have become eligible for allotment of land. But in order to benefit those major sons who had attained majority later, the Government of Gujarat made a relaxation so as to cover all those who became major up to 1-1-1987. The Government of Gujarat was under no obligation to do this and would have been quite within its right merely to comply with the provisions of the Tribunal's award. This being so, relaxation of cut-off date so as to give extra benefit to those sons who attained the age of majority at a later date, cannot be faulted or criticised.

177. Dealing with the contention of the petitioners that there is a need for a review of the project and that an independent agency should monitor the R&R of the oustees and that no construction should be permitted to be undertaken without the clearance of such an authority, the respondents are right in submitting that there is no warrant for such a contention. The Tribunal's award is final and binding on the States. The machinery of the Narmada Control Authority has been envisaged and constituted under the award itself. It is not possible to accept that Narmada Control Authority is not to be regarded as an independent authority. Of course some of the

members are government officials but apart from the Union of India, the other States are also represented in this Authority. The project is being undertaken by the Government and it is for the governmental authorities to execute the same. With the establishment of the R&R Subgroup and constitution of the grievances redressal authorities by the States of Gujarat, Maharashtra and Madhya Pradesh, there is a system in force which will ensure satisfactory resettlement and rehabilitation of the oustees. There is no basis for contending that some outside agency or National Human

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Rights Commission should see to the compliance with the Tribunal's award.

Monitoring of rehabilitation programme

178. The Ministry of Water Resources, Government of India is the nodal Ministry for the Sardar Sarovar Project and other Union Ministries involved are the Ministries of Environment and Forests and Social Justice and Empowerment. As a consequence of the Tribunal's award, the Narmada Control Authority was created to coordinate and oversee the overall work of the project and to monitor the R&R activities including environmental safeguard measures. The Review Committee of the Narmada Control Authority consists of the Union Minister of Water Resources as its Chairman, the Union Minister of Environment and Forests and the Chief Ministers of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan as its members. This Review Committee may suo motu or on the application of any party-State or the Secretary, Ministry of Environment and Forests review any decision of the Narmada Control Authority. In the Narmada Control Authority, Resettlement & Rehabilitation (R&R) Subgroup has been created for closely monitoring the R&R progress. This Subgroup is headed by the Secretary, Government of India, Ministry of Social Justice and Empowerment and is represented by members/invitees of participating States, academic institutions having expertise in R&R, independent socio-anthropological experts and non-governmental organisations. The functions of this Subgroup are as follows:

1. To monitor the progress of land acquisition in respect of submergence land of Sardar Sarovar Project and Indira (Narmada) Sagar Project (ISP).

2. To monitor the progress of implementation of the action plan of rehabilitation of project-affected families in the affected villages of SSP and ISP in States concerned.

3. To review the R&R action plan from time to time in the light of results of the implementation.

4. To review the reports of the agencies entrusted by each of the States in respect of monitoring and evaluation of the progress in the matter of resettlement and rehabilitation.

5. To monitor and review implementation of resettlement and rehabilitation programmes pari passu with the raising of the dam height, keeping in view the clearance granted to ISP and SSP from

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environmental angle by the Government of India and the Ministry of Environment and Forests.

6. To coordinate States/agencies involved in the R&R programmes of SSP and ISP.

7. To undertake any or all activities in the matter of resettlement and rehabilitation pertaining to SSP and ISP.

Rehabilitation Committee

179. This Court vide order dated 9-8-1991 in *B.D. Sharma* v. *Union of India*[14]

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directed the formation of a committee under the chairmanship of the Secretary, Ministry of Social Justice and Empowerment, Government of India to visit the submergence areas/resettlement sites and furnish the report of development and progress made in the matter of rehabilitation. The Rehabilitation Committee headed by the Secretary, Government of India, Ministry of Social Justice and Empowerment and having representatives of the three State Governments as its members had been constituted. It is the case of the Union of India that this Committee visited regularly the various R&R sites in submergence villages in the three States and submitted reports to this Court from time to time. By order dated 24-10-1994, this Court in the aforesaid case of *B.D. Sharma*[11] observed that all the directions issued by the Court from time to time have been complied with and nothing may be done in the petition and the petition was disposed of. Most of the recommendations/observations as made by this Committee are stated to have been complied with fairly by the States concerned.

180. In addition to the above, the officials of the Narmada Control Authority are also stated to be monitoring the progress of R&R regularly by making field visits. The individual complaints of PAFs are attended to and brought to the notice of the respective Governments.

Grievance redressal mechanism

181. The appeal mechanism has been established in the policy statements by all the three State Governments for the redressal of grievances of PAFs. According to this mechanism, if a displaced person is aggrieved by the decision of the rehabilitation officers in respect of any R&R process, he may appeal to the agency/officers concerned.

182. Vide resolution dated 17-2-1999 the Government of Gujarat set up a high-level authority called "Grievance Redressal Authority (GRA)" before whom the oustees already resettled and to be resettled in Gujarat could ventilate their grievances for redressal after their resettlement till the process of resettlement and rehabilitation is fully completed. The said Grievance Redressal Authority has Mr Justice P.D. Desai, retired Chief Justice as its Chairman. This machinery had been established to:

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(*A*) create an authority before whom oustees who have resettled in the State of Gujarat can ventilate their grievances relating to the R&R measures taken by the State of Gujarat;

(*B*) ensure that the oustees already settled and the oustees settled hereinafter in the R&R sites created for resettlement and rehabilitation of the oustees from the States of Madhya Pradesh and Maharashtra receive all the benefits and amenities in accordance with the award and the various government resolutions made from time to time;

(*C*) ensure that Gujarat oustees resettled in Gujarat have received all the benefits and amenities due to them.

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183. The Gujarat Rehabilitation Authority has installed a permanent in-house Grievance Redressal Cell (GRC) within Sardar Sarovar Punarvasavat Agency. The Grievance Redressal Cell deals with the grievances of PAFs and the grievances redressal is undertaken by it in the following three ways:

(*i*) Grievance Redressal Cell deals with grievances in the regular course on the basis of applications i.e. by holding inquiries and implementing decisions taken pursuant thereto.

(*ii*) Grievance redressal on the spot through mechanism of Tatkal Fariyad Nivaran Samiti.

(*iii*) Grievance redressal under the mechanism of Single Window Clearance System.

184. The Grievance Redressal Authority has surveyed sites in which PAFs have been resettled and has submitted reports to this Court from time to time which disclose substantial compliance with the terms of the award and the rehabilitation package.

185. In its fourth report dated 15-11-1999, the Grievance Redressal Authority observed

> "pursuant to the grievances redressal measures taken by GRC, whose approach is positive and grievance-redressal-oriented, a considerable number of grievances have been resolved by extensive land improvement work done on agricultural land at different sites within a period of six months i.e. April-September 1999".

186. The R&R Subgroup in its 20th field visit of the R&R sites in Gujarat on 12-1-2000/13-1-2000 has noted as follows:

> "The Committee after the visit and from interaction with PAFs, concluded that there is vast improvement in the conditions of PAFs at these R&R sites as compared to the grievances reported for the same sites during previous visits by the Committee/NCA officers. Assessing the perception of PAFs the Committee observed that the majority of PAFs are happy and joining mainstream of country's development".

187. The Grievance Redressal Cell has dealt with and decided a total of over 6500 grievances.

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188. At the instance of the Grievance Redressal Authority, an agricultural cell is set up in Sardar Sarovar Punarvasavat Agency with effect from 1-7-1999. This was done with an objective of enhancing the productivity of agricultural land allotted to PAFs by adopting suitable farm management practices and in assisting in resolving land-related grievances. Similarly, w.e.f. 1-5-1999, medical cells have been set up in Sardar Sarovar Punarvasavat Agency for ensuring effective functioning of medical infrastructure and providing organised system of supervising and monitoring and also for conducting health survey-cum-medical check-up activities. The Grievance Redressal Authority has become an effective monitoring and implementing agency with regard to relief and rehabilitation of PAFs in Gujarat. Apart from resolving

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independent grievances of PAFs and enforcing compliance with the provisions of the award through its exhaustive machinery and mechanism, it is also trying to guide in respect of various other issues not covered by the provisions of the award such as:

(*i*) vocational training of the oustees;

(*ii*) review of Narmada Oustees Employment Opportunity Rules;

(*iii*) issue relating to Kevadia Colony;

(*iv*) issue relating to tapu land;

(*v*) development of Kevadia as a tourist centre etc.

189. In Maharashtra, a local committee was constituted comprising of Additional Collector (SS), Divisional Forest Officer, Resettlement Officer and two representatives of the oustees nominated by the Local Panchayat Samitis from among the elected members of the Village Panchayats in the project-affected villages/taluka. This Committee is required to examine the claims of PAFs and give directions within a time -frame and an appeal from its decision lies to the Commissioner. In addition thereto, vide notification dated 17-4-2000 the Government of Maharashtra has set up a Grievance Redressal Authority in line with that established by the State of Gujarat and Mr Justice S.P. Kurdukar, retired Judge of this Court, has been appointed as its Chairman. This Authority is expected to be analogous to the Grievance Redressal Authority of Gujarat.

190. In Madhya Pradesh, the grievances of PAFs have first to be made by a claim which will be verified by the Patwari and then scrutinised by the Tahsildar. PAFs may file an appeal against the decision of R&R official before the District Collector who is required to dispose of the same within a period of three months. In the case of Madhya Pradesh also by notification dated 30-3-2000 the Government of Madhya Pradesh has constituted a Grievance Redressal Authority similar to the one in Gujarat with Mr Justice Sohni, retired Chief Justice of the Patna High Court as its Chairman.

Independent monitoring & evaluation agencies

191. The monitoring and evaluation of the rehabilitation programme is also being carried out by the independent socio-anthropological agencies appointed by the State Governments of Maharashtra, Madhya Pradesh and

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Gujarat as well as the Narmada Control Authority. These agencies, which are professional and academic institutes, conduct surveys and in-depth studies relating to PAFs in the submergence and rehabilitation villages. The main object of the monitoring is oriented towards enabling the management to assess the progress, identify the difficulties, ascertaining problem areas, provide early warning and thus call for corrections needed immediately.

192. The Centre for Social Studies, Surat is the monitoring agency for the Government of Gujarat. This institute has prepared 24 six-monthly progress reports in relation to the resettlement of PAFs of submergence villages of Gujarat. Similarly for the project-affected families of Madhya Pradesh/Maharashtra who have resettled in Gujarat, the Government of Gujarat has appointed the Gujarat Institute of

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Development Research, Ahmedabad as the independent monitoring and evaluation agency for monitoring R&R programmes.

193. In Madhya Pradesh the monitoring and evaluation had been carried out by Dr H.S. Gaur University, Sagar and the same has been disengaged now and a new agency is being appointed. The findings of Dr H.S. Gaur University, Sagar indicated that displaced families in Madhya Pradesh are, by and large, happy with the new resettlement in Gujarat and one of the main reasons behind their happiness was that the shifting from hamlets had changed their socio-economic status.

194. In Maharashtra the monitoring and evaluation was earlier being done by the Tata Institute of Social Sciences, Mumbai. This agency had reported that overall literacy rate among project-affected persons above six years of age is about 97%, while illiteracy in submergence villages was rampant. Furthermore the report showed that in the submergence villages, the tribals mostly relied on traditional healers for their ailments. Now the current scenario is that at R&R sites, health centres and sub-centres have been established.

195. It is thus seen that there is in place an elaborate network of authorities which have to see to the execution and implementation of the project in terms of the award. All aspects of the project are supervised and there is a Review Committee which can review any decision of the Narmada Control Authority and each of the three rehabilitating States have set up an independent Grievance Redressal Authority to take care that the relief and rehabilitation measures are properly implemented and the grievances, if any, of the oustees are redressed.

196. On 9-5-2000[15] this Court directed the State Governments of Gujarat, Madhya Pradesh and Maharashtra to file affidavits disclosing the latest status of resettlement and rehabilitation work for the existing as well as prospective oustees likely to be affected by raising the height of the dam.

197. Pursuant to the said direction affidavits on behalf of the three States have been filed and, in response thereto, the petitioners have also filed an affidavit.

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198. On behalf of the State of Gujarat the affidavit of Shri V.K. Babbar, Commissioner (Rehabilitation) and Chief Executive Officer, Sardar Sarovar Punarvasavat Agency (SSPA) has been filed, according to which at FRL 138.68 m the status with regard to PAFs to be resettled is stated to be as follows:

State	*Total number of PAFs resettled/allotted agri-cultural land in Gujarat*	*Balance PAFs to be resettled in Gujarat*
Gujarat	4575	25
Maharashtra	710	290
Madhya Pradesh	3280	10,450
Total	8565	10,765

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199. It is the case of the State of Gujarat that 8565 PAFs have been accommodated in 182 R&R sites fully equipped with the requisite civic amenities as provided by the Tribunal's award. The agricultural land allotted to these PAFs is 16,973 hectares.

200. Dealing specifically with the status of PAFs at RL 90 m, 95 m and 110 m it is averred in the said affidavit that all the PAFs of Gujarat at RL 90 m have been resettled and the balance PAFs of Madhya Pradesh and Maharashtra affected at RL 90 m have already been offered R&R package in Gujarat. The process of resettlement is continuing and reliance is placed on the observation of GRA which has stated in its fourth report dated 15-11-1999 that

> "there is substantial compliance with the resettlement and rehabilitation measures as mandated by the final report of NWDT, including provision of civic amenities, and also of all the interlinked provisions of the Government of Gujarat and that, therefore, PAFs from the States of Madhya Pradesh and Maharashtra affected up to the height of RL 90 m can be accommodated as per their choice at these selected 35 sites in Gujarat".

201. With respect to PAFs affected at RL 95 m the affidavit states that PAFs of Gujarat have already been settled and while the affected PAFs of Madhya Pradesh and Maharashtra have been offered R&R package in Gujarat in January 1999, September 1999 and January 2000, the RL 95 m action plan for these PAFs has also been prepared by the Government of Gujarat in consultation with the Governments of Madhya Pradesh and Maharashtra and has been sent to NCA. The case of the State of Gujarat, therefore, is that all PAFs wanting to be resettled in Gujarat have been offered the package but consent of all PAFs has not so far been received but the Government of Gujarat has sufficient land readily available which can be allotted to the said PAFs as soon as they come and select the same.

202. With regard to the status of PAFs at RL 110 m all PAFs of Gujarat have been resettled and 2761 PAFs (2642 of Madhya Pradesh and 119 of Maharashtra) remain to be resettled in Gujarat and R&R package will be

offered to them before November 2000. The land which is required to be allotted to them is stated to be around 6074 hectares and the State of Gujarat has in its possession 8146 hectares. The civic amenities in 40 new R&R sites are scheduled to be completed by December 2000 and these sites would serve to accommodate not only PAFs between RL 95 m and RL 110 m but would also serve to accommodate PAFs from submergence villages which would be getting affected at levels above RL 110 m. The action plan giving the villagewise details is said to have been sent to NCA in June 2000 for its approval.

203. According to the said affidavit the balance number of PAFs remaining to be resettled at Gujarat at FRL 138.68 m is 10,765. Taking into account that an additional area of 10% towards house plot and common civic amenities would be required in addition to the allotment of minimum 2 hectares of agricultural land, the total land requirement per PAF would be approximately 2.2 hectares. For planning purposes in respect of 10,765 PAFs the land requirement would be about 23,700 hectares. As

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against this requirement the status of land, as per the said affidavit, under different categories with the Government of Gujarat is stated to be as under:

Sl. No.	*Particulars*	*Land (in ha)*
1.	Land identified (offers received in respect of private land and government land).	15,716
2.	Land available (private land for which price is approved by Expert Committee and offer/counteroffer conveyed and acceptance of landholder obtained).	480
3.	Land in possession of SSPA/GoG in 12 districts.	8416
	Total	24612

204. It is averred that between March and 21-6-2000 the land in possession as well as the land identified has increased considerably.

205. It has also been explained in the said affidavit that the Government of Gujarat has a well-established practice of procuring land for R&R at realistic market prices from willing sellers. Officers hold discussions with prospective sellers, verify the suitability of land and after the prices are settled the same is procured through legal process of the Land Acquisition Act and consent awards are passed so that PAPs are assured of undisputed legal title free from all encumbrances. This process of negotiated purchase has been streamlined. At the instance of GRA, a retired Judge of the High Court is now appointed as Chairman of the Expert Committee with retired senior Government Secretaries as its members. This Expert Committee oversees the exercise of purchase of suitable land at the market price. At the instance of GRA, PAFs are being issued sanads for the land allotted to them which will ensure provision of a proper legal document in their favour.

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206. Dealing with the term of the award to the effect that Gujarat shall acquire and make available a year in advance of the submergence before each successive stage, land and house sites for rehabilitation of the oustees' families from Madhya Pradesh and Maharashtra who are willing to migrate to Gujarat, the affidavit states that the Gujarat Government has already identified sufficient land for accommodating the balance PAFs remaining to be resettled in Gujarat at FRL 138.68 m. In respect of PAFs up to RL 110 m Gujarat has sufficient land available to meet the R&R requirements but for PAFs above RL 110 m suitable land has already been identified and the same would be acquired and made available one year in advance of the submergence before each successive stage. The affidavit gives reason as to why it is not advisable for the State, at this stage, to acquire the total requirement of land for FRL in one go. What is stated in the affidavit is as follows:

(*i*) Since at present GoG has sufficient land to meet R&R requirement to accommodate PAFs up to RL 110 m, it would not be necessary to acquire further

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land immediately, especially when the additional land would be required only after the R&R Subgroup and Environment Subgroup give approval for RL 95 m to RL 110 m after examining the preparedness at different stages. This would ensure that public money is not unnecessarily blocked for a long period.

(*ii*) By acquiring land much before it would be required, problems of illegal trespass are likely to arise.

(*iii*) The excess land would, by and large, remain fallow and no agricultural production would take place.

(*iv*) If the land remains fallow for long the overall productivity of the land would be adversely affected.

(*v*) At the time of allotment, the State Government would again have to spend a sizeable amount to remove weeds, bushes, small trees, etc.

(*vi*) The State Government would have to incur a sizeable amount to prevent tampering with the boundary marks, prevent neighbouring farmers from removing the topsoil or from diverting natural drains passing through their fields towards the land purchased for R&R etc.

207. The affidavit also gives facts and figures showing that all requisite civic amenities have been developed and made available at the R&R sites. Some of the salient features which are highlighted in this behalf are as under:

— A three-room primary school is provided in all M.P./MH sites irrespective of the number of families resettled.

— A dispensary with examination room, medical equipment, medicines is provided in all M.P./MH sites irrespective of the number of resettled families.

— 3439 PAFs (86%) out of the total M.P./MH PAFs resettled in Gujarat have availed of the Rs 45,000 financial assistance and built pucca core houses.

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—Overhead tanks for drinking water are provided in large R&R sites.

— At the instance of GRA, toilets are being provided in the houses of PAFs with the help of NGOs.

208. The total cost incurred so far by the Government of Gujarat in providing the land and civic amenities up to May 2000 is stated to be 194 crores. The Grievance Redressal Cell is stated to have redressed a large number of grievances of PAFs whether they were related to land, grant of civic amenities or others. The salient features of working of the Grievance Redressal Cell is stated to be as follows:

— At present 2 senior IAS officers with supporting staff are working exclusively for redressal of grievances.

— A reasoned reply is given to the applicants. The applicant is also informed that if he is aggrieved with the decision he may prefer an appeal to GRA within thirty days.

— The Single Window Clearance System's main objective is to proactively resolve

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grievances and to avoid delays in inter-departmental coordination.

— Tatkal Fariyad Nivaran Samitis are held in the R&R sites to resolve grievance of PAFs in an open forum.

— PAFs are being involved at every stage of grievance redressal. The works have been carried out in most cases by PAFs.

— The Agriculture Officers of the Agricultural Cell are actively helping, guiding PAFs in their agricultural operations and upgrading their skills.

209. With a view to effectively rehabilitate and assimilate PAPs Vasahat Samitis have been constituted in 165 R&R sites, consisting of 5 PAPs, one of whom is a female. This ensures the participation of PAPs in the process of development and these Samitis are vested with the responsibility to sort out minor problems. With a view to ensure more effective participation in panchayat affairs and better integration of PAPs an Order under Section 98 of the Gujarat Panchayats Act, 1993 has been issued by the Government of Gujarat providing that there shall be up to two invitees from amongst PAPs depending upon the number of PAPs at the sites in the Village Panchayat within whose jurisdiction the R&R are situated. Pursuant to this 196 PAPs have been inducted as invitees to the Village Panchayats. The salient features of the rehabilitation programme of PAPs are as follows:

— PAFs are given productive assets in kind (Rs 7000/PAF) to purchase bullocks, bullock carts, oil engines etc.

— PAFs are given subsistence allowance (Rs 4500/PAF) in cash to meet contingency needs in the initial period.

— Vocational training is provided to PAFs for improving their income levels, priority being given to those dependants who are not entitled

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to be declared as PAFs in their own right. Tool kits are supplied either free or with 50% subsidy.

— NGOs are actively involved in all the rehabilitation activities such as conducting training classes.

— PAFs are being covered by the ongoing developmental schemes of the Government (DRDA, Tribal Sub-Plan etc.)

— In extension (Agriculture) officers have been appointed for approximately every 150 families to guide them in agriculture operation and assist them in day-to-day problems (getting ration cards, khedut khatavahis etc.)

— In recent years focus is on empowering PAFs and making them self-dependent.

210. Medical cell has been set up for providing services and treatment to PAPs free of cost. The cell is headed by Deputy Director (Medical) and is having a nucleus of medical experts consisting of a physician, a paediatrician, a gynaecologist, 21 MBBS doctors, pharmacists, etc. The salient features of the medical-help programme for the benefit of PAPs is stated to be as follows:

— The Medical Officers and paramedic staff are making house-to-house visits to

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motivate PAPs to come forward to avail of the medical services.

— In all dispensaries, a full-time multipurpose health worker (female) is available.

— Multi-specialisation diagnostic/treatment camps are organised fortnightly, where advance investigations and diagnostic facilities like ECG, X-ray, ultrasound, are available.

— Patients requiring further services are brought to government hospitals or any other speciality hospital and necessary treatment given free of cost.

— GoG has placed an order for a mobile medical hospital equipped with diagnostic and treatment equipments.

— A comprehensive health survey and medical check-up covering 29,423 PAPs has been completed. A special record system of family health folder and health profile of each PAP is prepared.

— Nutrition supplements are given to children (up to 6 years), expectant and lactating mothers through the Integrated Child Development Scheme (ICDS).

— Special food supplement in the form of "Hyderabad Mix" is given to malnourished children and vulnerable target groups.

— School-going children are covered under the Midday Meal Scheme.

— Under TB control, all chest-symptomatic persons are screened by special examinations like sputum microscopy, X-ray, blood-tests and persons found positive for TB are given domiciliary treatment

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under direct observation of doctors or paramedics. In 77 cases, treatment is completed and patients are cured.

— Under preventive health care, health education material is distributed and health and cleanliness shivirs are organised.

— A special survey covering physically-handicapped and mentally-retarded persons has been organised and social welfare benefits given.

— Other national health programmes (maternal/child health, immunisation, school health check-up, family welfare, etc.) are regularly conducted.

211. An Agricultural Cell has been set up in SSPA which assists the grievances redressal machinery in resolving the problem relating to the agricultural land. The salient features of this cell are as follows:

— The Agriculture Cell is involved in purchasing land, supervision of land improvement works and processing land-related grievances of PAFs.

— Agricultural training classes are organised for PAFs in the training institutes of the State Government.

— Assistance is given for availing crop-loan credit from banks and extension education is imparted in matters of marketing, cropping pattern, use of improved seeds, insecticides and latest equipments.

— Afforestation was carried out in 33 R&R sites during 1999-2000 by planting

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3500 saplings which are protected by bamboo tree-guards. Plantation is done along the roadside, common plots, school premises etc. In the remaining sites plantation work is undertaken by NGOs.

212. At the instance of GRA an Educational Cell has been set up in SSPA, the main function of which is to improve the quality of education imparted and to improve the school enrolment. The salient features of this cell are as under:

— School enrolment which was 4110 in 1998-99, increased to 4670 in 1999-2000. Out of the 4670 students enrolled, 2126 were girls (46.3%).

— The number of schools is 170 and the number of teachers is 384. In the last academic year, 66 schools were upgraded by increasing the number of classes.

— SSPA is regularly sending the teachers for in-service training. So far 120 teachers have been imparted training.

— Every year during the period of June to August, a special drive is taken to increase the school enrolment.

— In the current year 150 adult education classes have been started in the R&R sites with the help of NGOs.

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— An Advisory Committee has been created to make recommendations on how to improve the education being imparted. Members include faculty of MS University, officers of Education Department, Principal of Teacher Training Centre.

213. It is further averred in this affidavit that at the instance of GRA a large number of measures have been taken to improve the organisational structure of SSPA so as to effectively meet the challenge of R&R and make the R&R staff accountable. The salient features of this are stated to be as follows:

— A strategic policy decision has been taken to create three separate divisions in SSPA for rehabilitation, resettlement and planning. Each division is in the charge of a senior level officer of the rank of Additional/Joint Commissioner.

— Staff strength in SSPA has been considerably augmented especially at the field level.

— To review the structural and functional aspects of SSPA, services of a management consultancy agency (M/s TCS) has been engaged and draft report has been received and is being examined.

— A demographic survey is to be conducted to comprehensively document information regarding PAPs with special reference to their family composition, marriage, births, deaths, life expectancy, literacy, customs, culture, social integration etc.

— The staff is being trained to sensitise them especially with regard to rehabilitation and second-generation issues. Senior level officers have been sent for R&R training at Administrative Staff College of India, Hyderabad.

214. From the aforesaid affidavit it is more than clear that GRA, of which Mr Justice P.D. Desai, is the Chairman, has seen to the establishment of different cells and has

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taken innovative steps with a view to making R&R effective and meaningful. The steps which are being taken and the assistance given is much more than what is required under the Tribunal's award. There now seems to be a commitment on the part of the Government of Gujarat to see that there is no laxity in the R&R of PAPs. It appears that the State of Gujarat has realised that without effective R&R facilities no further construction of the dam would be permitted by NCA and under the guidance and directions of GRA meaningful steps are being undertaken in this behalf. In this connection we may take note of the fact that along with the said affidavit Shri V.K. Babbar, again under the directions of GRA, has given an undertaking to this Court, which reads as follows:

> *1*. As per this undertaking, inter alia, in respect of scattered pieces or parcels of lands in possession of SSPA for R&R which do not add up to a contiguous block of 7 hectares by themselves or in conjunction with other lands steps will be taken to purchase or acquire contiguous lands so that the said small pieces of land become a part of a continuous block of

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6 hectares or more. This exercise will be undertaken and completed on or before 31-12-2000. In case it is not possible to have a contiguous block of a minimum of 6 hectares further directions will be sought from GRA or such piece or parcel of land will be put to use for other public purposes relating to R&R but which may not have been provided for in NWDT award.

> *2*. Henceforth, the land which is acquired or purchased for R&R purposes shall be contiguous to each other so as to constitute a compact block of 6 hectares.
>
> *3*. Henceforth land to be purchased for R&R will be within a radius of 3 km from an existing or proposed new site and if there is a departure from this policy, prior approval of GRA will be obtained.
>
> *4*. Demarcation of boundary of 5211 hectares of land whose survey has been undertaken by GRA and carving out individual plots of 2 hectares for allotment to PAFs will be undertaken and completed on or before 31-12-2000.
>
> *5*. The other undertakings relate to soil testing and/or ensuring that suitable land is made available to PAFs after the quality of land is cleared by the agriculture experts of Gujarat Agriculture University. With regard to the lands in possession of SSPA which are low-lying and vulnerable to waterlogging during monsoon, an undertaking has been given that the land has been deleted from the inventory of lands available for R&R unless such lands are examined by the Agricultural Cell of SSPA and it is certified that the access to these lands is clear and unimpeded and that they are suitable for R&R. Compliance report in this regard is to be submitted to GRA on or before 31-12-2000.

215. In addition to the aforesaid undertaking of Shri V.K. Babbar, undertakings of the Collectors of Khedr, Vadodara, Ahmedabad, Narmada, Panchmahal and Bharuch Districts have also been filed. Apart from reiterating what is contained in the undertaking of Shri V.K. Babbar, in these undertakings of the Collectors it is stated that necessary mutation entries regarding entering the name of SSPA/SSNNL in the

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village records of right in respect of the land in possession for R&R or PAFs likely to be resettled in Gujarat have been made but the certification of these entries will be completed and the matter reported to GRA before 31-8-2000. If this is not done the land is to be deleted from the inventory of lands available for R&R. Necessary mutation entries in the village records of rights regarding removal of encumbrances of original landholders shall also be completed by that date.

216. From what is noticed hereinabove, this Court is satisfied that more than adequate steps are being taken by the State of Gujarat not only to implement the award of the Tribunal to the extent it grants relief to the oustees but the effort is to substantially improve thereon and, therefore, continued monitoring by this Court may not be necessary.

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217. On behalf of the State of Madhya Pradesh, in response to this Court's order dated 9-5-2000, an affidavit of Shri H.N. Tiwari, Director (TW), Narmada Valley Development Authority has been filed. It is stated therein that with a view to arrange resettlement of PAFs to be affected at different levels detailed instructions to the Field Officers of the submergence area were issued by Shri Tiwari vide letter dated 20-5-2000 in respect of all the aspects of resettlement of PAFs. This is related to identification of land, processing of land acquisition cases and passing of the award, taking of PAFs to Gujarat for selection of land, allotment of land to PAFs who decide to remain in Madhya Pradesh and development of sites. There are 92 sites for resettlement of PAFs which are required to be established and out of these, 18 are stated to be fully developed, development in 23 sites is in progress, 18 sites are such where location has been determined and land identified but development work has not started and 33 sites are such where location of land for the development is to be decided by the task force constituted for this purpose.

218. Dealing specifically with the status of PAFs to be affected at different levels this affidavit, inter alia, states that with regard to PAFs to be affected at EL 85 m, those of whom who have opted to go to Gujarat, land has been offered to them by the Government of Gujarat, those PAFs who have changed their mind and now want to remain in Madhya Pradesh, land is being shown to them in Madhya Pradesh.

219. It has not been categorically stated whether PAFs who are so affected have been properly resettled or not. On the contrary, it is stated that no awards in land acquisition cases have been passed in respect of six villages and it is only after the awards are passed that house plots will be allotted and compensation paid. The provision for financial assistance for purchase of productive assets will be released when PAFs shift and start construction of the houses. The reason for not making the payment in advance rightly is that if the grants are paid to the oustees before they shift they may possibly squander the grant and the State Government may be required to pay again to establish them on some self-employment venture. For the resettlement of PAFs in Madhya Pradesh out of ten relocation sites mentioned in the

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affidavit, only five have been fully developed. It is also stated that 163 PAFs are resisting from shifting to Gujarat under the influence of anti-dam activists, though they have been given notices containing offer of the land and house plots by the Government of Gujarat. In addition thereto, 323 PAFs who were earlier resisting have now been persuaded and arrangements for selection of land for them in Gujarat has been initiated.

220. With regard to the R&R status of PAFs to be affected at EL 95 m it is, inter alia, stated that those losing 25 per cent of their holdings are entitled to be allotted cultivable land and notices were given to them to identify the land which can be allotted. In the said notice it was stated that the

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development process will be undertaken with regard to the said land only after it is selected by PAFs. There is also a mention in the affidavit filed in the name of Narmada Bachao Andolan, the petitioner herein, not allowing the State Government to conduct survey for demarcation of the submergence area and identification of PAFs to be affected at EL 132.86 m (436 ft). Six out of twenty-five relocation sites required to be developed have been fully developed.

221. An affidavit on behalf of the State of Madhya Pradesh draws a picture of rehabilitation which is quite different from that of Gujarat. There seems to be no hurry in taking steps to effectively rehabilitate the Madhya Pradesh PAFs in their home State. It is indeed surprising that even awards in respect of six villages out of 33 villages likely to be affected at 90 m dam height have not been passed. The impression which one gets after reading the affidavit on behalf of the State of Madhya Pradesh clearly is that the main effort of the said State is to try and convince PAFs that they should go to Gujarat whose rehabilitation package and effort is far superior to that of the State of Madhya Pradesh. It is, therefore, not surprising that a vast majority of PAFs of Madhya Pradesh have opted to be resettled in Gujarat but that does not by itself absolve the State of Madhya Pradesh of its responsibility to take prompt steps so as to comply at least with the provisions of the Tribunal's award relating to relief and rehabilitation. The State of Madhya Pradesh has been contending that the height of the dam should be lowered to 436 ft so that lesser number of people are dislocated but we find that even with regard to the rehabilitation of the oustees at 436 ft the R&R programme of the State is nowhere implemented. The State is under an obligation to effectively resettle those oustees whose choice is not to go to Gujarat. Appropriate directions may, therefore, have to be given to ensure that the speed in implementing R&R picks up. Even the interim report of Mr Justice Soni, GRA for the State of Madhya Pradesh, indicates lack of commitment on the State's part in looking to the welfare of its own people who are going to be under the threat of ouster and who have to be rehabilitated. Perhaps the lack of urgency could be because of lack of resources, but then the rehabilitation even in Madhya Pradesh is to be at the expense of Gujarat. A more likely reason could be that, apart from electricity, the main benefit of the construction of the dam is to be of Gujarat and to a lesser extent to Maharashtra and Rajasthan. In a federal set-up like India, whenever any such inter-State project is

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approved and work undertaken the States involved have a responsibility to cooperate with each other. There is a method of settling the differences which may arise amongst there like, for example, in the case of inter-State water dispute the reference of the same to a Tribunal. The award of the Tribunal being binding, the States concerned are duty-bound to comply with the terms thereof.

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222. On behalf of the State of Maharashtra in the affidavit in response to this Court's order dated 9-5-2000, the position regarding the availability of land for distribution to PAFs was stated to be as follows:

(*i*) Total land made available by the Forest Department	4191.86 hectares
(*ii*) Land which could not be allotted at present to PAF	
(*a*) Gaothan land (used for residential purposes)	209.60 hectares
(*b*) Land occupied by river/nallah/hills	795.62 hectares
(*c*) Land under encroachment by third parties	434.13 hectares
Therefore, the net land available at present for allotment was 4191.86 - 1439.35	2752.51 hectares
Total area of land allotted to 1600 PAFs	2434.01 hectares
Remaining cultivable land available with the State 2752-2434.01	318.50 hectares

It is further stated in this affidavit that out of 795.62 hectares of forest land which was reported to be uncultivable the State has undertaken a survey for ascertaining whether any of these lands can be made available for cultivation and distribution by resorting to measures like bunding, terracing and levelling. It is estimated that 30 to 40 hectares of land would become available. In addition, thereto, the affidavit states that the Government of Maharashtra has decided to purchase private land in nearby villages for resettlement of PAFs and further that GRA has been established and Justice S.P. Kurdukar, a retired Judge of this Court has been appointed as its Chairman. It is categorically stated in this affidavit that the State Government would be in a position to make these lands available to all the project-affected families concerned.

Conclusion

223. Water is one element without which life cannot sustain. Therefore, it is to be regarded as one of the primary duties of the Government to ensure availability of water to the people.

224. There are only three sources of water. They are rainfall, groundwater or from

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the river. A river itself gets water either by the melting of snow or from the rainfall while the groundwater is again dependent on the rainfall or from the river. In most parts of India, rainfall takes place during a period of about 3 to 4 months known as the monsoon season. Even at the time when the monsoon is regarded as normal, the amount of rainfall varies from region to region. For example, North-Eastern States of India receive

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much more rainfall than some of the other States like Punjab, Haryana or Rajasthan. Dams are constructed not only to provide water whenever required but they also help in flood control by storing extra water. Excess of rainfall causes floods while deficiency thereof results in drought. Studies show that 75% of the monsoon water drains into the sea after flooding a large land area due to absence of the storage capacity. According to a study conducted by the Central Water Commission in 1998, surface water resources were estimated at 1869 cu km and rechargeable groundwater resources at 432 cu km. It is believed that only 690 cu km of surface water resources (out of 1869 cu km) can be utilised by storage. At present the storage capacity of all dams in India is 174 cu km which is incidentally less than the capacity of Kariba Dam in Zambia/Zimbabwe (180.6 cu km) and only 12 cu km more than Aswan High Dam of Egypt.

225. While the reservoir of a dam stores water and is usually situated at a place where it can receive a lot of rainfall, the canals take water from this reservoir to distant places where water is a scarce commodity. It was, of course, contended on behalf of the petitioner that if the practice of water harvesting is resorted to and some check dams are constructed, there would really be no need for a high dam like Sardar Sarovar. The answer to this given by the respondent is that water harvesting serves a useful purpose but it cannot ensure adequate supply to meet all the requirements of the people. Water harvesting means to collect, preserve and use the rain water. The problem of the area in question is that there is deficient rainfall and small-scale water-harvesting projects may not be adequate. During the non-rainy days, one of the essential ingredients of water harvesting is the storing of water. It will not be wrong to say that the biggest dams to the smallest percolating tanks meant to tap the rain water are nothing but water-harvesting structures to function by receiving water from the common rainfall.

226. Dam serves a number of purposes. It stores water, generates electricity and releases water throughout the year and at times of scarcity. Its storage capacity is meant to control floods and the canal system which emanates therefrom is meant to *convey* and provide water for drinking, agriculture and industry. In addition thereto, it can also be a source of generating hydropower. Dam has, therefore, necessarily to be regarded as an infrastructural project.

227. There are three stages with regard to the undertaking of an infrastructural project. One is conception or planning, second is decision to undertake the project and the third is the execution of the project. The conception and the decision to undertake a project is to be regarded as a policy decision. While there is always a need for such

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projects not being unduly delayed, it is at the same time expected that a thorough possible study will be undertaken before a decision is taken to start a project. Once such a considered decision is taken, the proper execution of the same should be undertaken expeditiously. It is for the Government to decide how to do its job. When it has put a system in place for the execution of a project and such

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a system cannot be said to be arbitrary, then the only role which a court may have to play is to see that the system works in the manner it was envisaged.

228. A project may be executed departmentally or by an outside agency. The choice has to be of the Government. When it undertakes the execution itself, with or without the help of another organisation, it will be expected to undertake the exercise according to some procedure or set manner. NCA was constituted to give effect to the award, various subgroups have been established under NCA and to look after the grievances of the resettled oustees, each State has set up a grievance redressal machinery. Over and above NCA is the Review Committee. There is no reason now to assume that these authorities will not function properly. In our opinion the Court should have no role to play.

229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

230. Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to degenerate to becoming publicity interest litigation or private inquisitiveness litigation.

231. While exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the court has stepped in. No directions

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are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.

235. What the petitioner wants the Court to do in this case is precisely that. The facts enumerated hereinabove clearly indicate that the Central Government had taken a decision to construct the dam as that was the only solution available to it for providing water to the water-scarce areas. It was known at that time that people will be displaced and will have to be rehabilitated. There is no material to enable this Court to come to the conclusion that the decision was mala fide. A hard decision need not

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necessarily be a bad decision.

236. Furthermore, environmental concern has not only to be of the area which is going to be submerged but also its surrounding area. The impact on

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environment should be seen in relation to the project as a whole. While an area of land will submerge but the construction of the dam will result in multifold improvement in the environment of the areas where the canal waters will reach. Apart from bringing drinking water within easy reach the supply of water to Rajasthan will also help in checking the advancement of the Thar Desert. Human habitation will increase there which, in turn, will help in protecting the so far porous border with Pakistan.

237. While considering Gujarat's demand for water, the Government had reports that with the construction of a high dam on River Narmada, water could not only be taken to the scarcity areas of northern Gujarat, Saurashtra and parts of Kutch but some water could also be supplied to Rajasthan.

238. Conflicting rights had to be considered. If for one set of people namely those of Gujarat, there was only one solution, namely, construction of a dam, the same would have an adverse effect on another set of people whose houses and agricultural land would be submerged in water. It is because of this conflicting interest that considerable time was taken before the project was finally cleared in 1987. Perhaps the need for giving the green signal was that while for the people of Gujarat, there was no other solution but to provide them with water from the Narmada, the hardships of the oustees from Madhya Pradesh could be mitigated by providing them with alternative lands, sites and compensation. In governance of the State, such decisions have to be taken where there are conflicting interests. When a decision is taken by the Government after due consideration and full application of mind, the court is not to sit in appeal over such decision.

239. Since long the people of India have been deriving the benefits of the river valley projects. At the time of independence, foodgrain was being imported into India but with the passage of time and the construction of more dams, the position has been reversed. The large-scale river valley projects per se all over the country have made India more than self-sufficient in food. Famines which used to occur have now become a thing of the past. Considering the benefits which have been reaped by the people all over India with the construction of the dams, the Government cannot be faulted with deciding to construct the high dam on River Narmada with a view to provide water not only to the scarcity areas of Gujarat but also to the small areas of the State of Rajasthan where shortage of water has been there since time immemorial.

240. In the case of projects of national importance where the Union of India and/or more than one State(s) are involved and the project would benefit a large section of the society and there is evidence to show that the said project had been contemplated and considered over a period of time at the highest level of the States and the Union of India and more so when the project is evaluated and approval granted by the Planning Commission, then there should be no occasion for any court carrying out any review of the same or directing its review by any outside or "independent" agency or body. In a

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democratic set-up, it is for the elected Government to decide what

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project should be undertaken for the benefit of the people. Once such a decision had been taken then unless and until it can be proved or shown that there is a blatant illegality in the undertaking of the project or in its execution, the court ought not to interfere with the execution of the project.

241. Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. Most of the hydrology projects are located in remote and inaccessible areas, where local population is, like in the present case, either illiterate or having marginal means of employment and the per capita income of the families is low. It is a fact that people are displaced by projects from their ancestral homes. Displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for the larger good. A natural river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or near by. Realising the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for takeover for dam or any other developmental activity, the project-implementing authorities have to implement R&R programmes. The R&R plans are required to be specially drafted and implemented to mitigate problems whatsoever relating to all, whether rich or poor, landowner or encroacher, farmer or tenant, employee or employer, tribal or non-tribal. A properly drafted R&R plan would improve the living standards of displaced persons after displacement. For example residents of villages around Bhakra Nangal Dam, Nagarjuna Sagar Dam, Tehri, Bhilai Steel Plant, Bokaro and Bala Iron and Steel Plant and numerous other developmental sites are better off than people living in villages in whose vicinity no development project came in. It is not fair that tribals and the people in undeveloped villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and have a higher quality of lifestyle. Should they not be encouraged to seek greener pastures elsewhere, if they can have access to it, either through their own efforts due to information exchange or due to outside compulsions. It is with this object in view that the R&R plans which are developed are meant to ensure that those who move must be better off in the new locations at government cost. In the present case, the R&R packages of the States, specially of Gujarat, are such that the living conditions of the oustees will be much better than what they had in their tribal hamlets.

242. The loss of forest because of any activity is undoubtedly harmful. Without going into the question as to whether the loss of forest due to river valley project because of submergence is negligible, compared to deforestation due to other reasons like cutting of trees for fuel, it is true that large dams cause submergence leading to loss of forest areas. But it cannot be ignored and it is important to note that these large dams also cause conversion of wasteland into agricultural land and make the area greener. Large dams can also become instruments in improving the environment,

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as has been the case in western Rajasthan, which transformed into a green area

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because of Indira Gandhi Canal which draws water from Bhakra Nangal Dam. This project not only allows the farmers to grow crops in deserts but also checks the spread of Thar Desert in the adjoining areas of Punjab and Haryana.

243. The environmental and ecological consideration must, of course, be given due consideration but with proper channelisation of developmental activities ecology and environment can be enhanced. For example, Periyar Dam Reservoir has become an elephant sanctuary with thick green forests all around while at the same time it wiped out famines that used to haunt the district of Madurai in Tamil Nadu before its construction. Similarly Krishnaraja Sagar Dam which has turned Mandya District which was once covered with shrub forests with wild beasts into a prosperous one with green paddy and sugarcane fields all around.

244. So far a number of such river valley projects have been undertaken in all parts of India. The petitioner has not been able to point out a single instance where the construction of a dam has, on the whole, had an adverse environmental impact. On the contrary the environment has improved. That being so, there is no reason to suspect, with all the experience gained so far, that the position here will be any different and there will not be overall improvement and prosperity. It should not be forgotten that poverty is regarded as one of the causes of degradation of environment. With improved irrigation system the people will prosper. The construction of Bhakra Dam is a shining example for all to see how the backward area of erstwhile undivided Punjab has now become the granary of India with improved environment than what was there before the completion of the Bhakra Nangal Project.

245. The award of the Tribunal is binding on the States concerned. The said award also envisages the relief and rehabilitation measures which are to be undertaken. If for any reason, any of the State Governments involved lag behind in providing adequate relief and rehabilitation then the proper course, for a court to take, would be to direct the award's implementation and not to stop the execution of the project. This Court, as a Federal Court of the country specially in a case of inter-State river dispute where an award had been made has to ensure that the binding award is implemented. In this regard, the Court would have the jurisdiction to issue necessary directions to the State which, though bound, chooses not to carry out its obligations under the award. Just as an ordinary litigant is bound by the decree, similarly a State is bound by the award. Just as the execution of a decree can be ordered, similarly, the implementation of the award can be directed. If there is a shortfall in carrying out the R&R measures, a time-bound direction can and should be given in order to ensure the implementation of the award. Putting the project on hold is no solution. It only encourages the recalcitrant State to flout and not implement the award with impunity. This certainly cannot be permitted. Nor is it desirable in the national interest that where fundamental right to life of the people who continue to suffer due to shortage of water to

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such an extent that even the drinking water becomes scarce, non-cooperation of a State results in the stagnation of the project.

246. The clamour for the early completion of the project and for the water to flow in the canal is not only by Gujarat but is also raised by Rajasthan.

247. As per clause 3 of the final decision of the Tribunal published in the Gazette notification of India dated 12-12-1979 the State of Rajasthan has been allocated 0.5 MAF of Narmada water in national interest from Sardar Sarovar Dam. This was allocated to the State of Rajasthan to utilise the same for irrigation and drinking purposes in the arid and drought-prone areas of Jalore and Barmer Districts of Rajasthan situated on the international border with Pakistan, which have no other available source of water.

248. Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none. The resolution of UNO in 1977 to which India is a signatory, during the United Nations Water Conference resolved unanimously inter alia as under:

> "All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs."

249. Water is being made available by the State of Rajasthan through tankers to the civilians of these areas once in four days during summer season in a quantity, which is just sufficient for their survival. The districts of Barmer and Jalore are part of "Thar Desert" and on account of scarcity of water the desert area is increasing every year. It is a matter of great concern that even after half a century of freedom, water is not available to all citizens even for their basic drinking necessity, violating the human rights resolution of UNO and Article 21 of the Constitution of India. Water in the rivers of India has great potentiality to change the miserable condition of the arid, drought-prone and border areas of India.

250. The availability of drinking water will benefit about 1.91 lakh people residing in 124 villages in arid and drought-prone border areas of Jalore and Barmer Districts of Rajasthan who have no other source of water and are suffering grave hardship.

251. As already seen, the State of Madhya Pradesh is keen for the reduction of the dam's height to 436 ft. Apart from Gujarat and Rajasthan the State of Maharashtra also is not agreeable to this. The only benefit from the project which Maharashtra would get is its share of hydel power from the project. The lowering of the height from 455 ft to 436 ft will take away this benefit even though 9399 hectares of its land will be submerged. With the reduction of height to 436 ft not only will there be loss of power generation but it would also render the generation of power seasonal and not throughout the year.

252. One of the indicators of the living standard of people is the per capita consumption of electricity. There is, however, perennial shortage of

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power in India and, therefore, it is necessary that the generation increases. The world over countries having rich water and river systems have effectively exploited these for hydel-power generation. In India, the share of hydel power in the total power generated was as high as 50% in the year 1962-63 but the share of hydel power started declining rapidly after 1980. There is more reliance now on thermal-power projects. But these thermal-power projects use fossil fuels, which are not only depleting fast but also contribute towards environmental pollution. Global warming due to the greenhouse effect has become a major cause of concern. One of the various factors responsible for this is the burning of fossil fuel in thermal-power plants. There is, therefore, international concern for reduction of greenhouse gases which is shared by World Bank resulting in the restriction of sanction of funds for thermal-power projects. On the other hand, the hydel power's contribution to the greenhouse effect is negligible and it can be termed ecology-friendly. Not only this but the cost of generation of electricity in hydel projects is significantly less. The award of the Tribunal has taken all these factors into consideration while determining the height of the dam at 455 ft. Giving the option of generating eco-friendly electricity and substituting it by thermal power may not, therefore, be the best option. Perhaps the setting up of a thermal plant may not displace as many families as a hydel project may but at the same time the pollution caused by the thermal plant and the adverse effect on the neighbourhood could be far greater than the inconvenience caused in shifting and rehabilitating the oustees of a reservoir.

253. There is and has been in the recent past protests and agitations not only against hydel projects but also against the setting up of nuclear or thermal-power plants. In each case reasons are put forth against the execution of the proposed project either as being dangerous (in case of nuclear) or causing pollution and ecological degradation (in the case of thermal) or rendering people homeless and posing adverse environment impacts as has been argued in the present case. But then electricity has to be generated and one or more of these options exercised. What option to exercise, in our constitutional framework, is for the Government to decide keeping various factors in mind. In the present case, a considered decision has been taken and an award made, whereby a high dam having an FRL of 455 ft with capability of developing hydel power is to be constructed. In the facts and circumstances enumerated hereinabove, even if this Court could go into the question, the decision so taken cannot be faulted.

Directions

254. While issuing directions and disposing of this case, two conditions have to be kept in mind, (*i*) the completion of the project at the earliest, and (*ii*) ensuring compliance with the conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby

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protecting the rights under Article 21 of the Constitution. Keeping these principles in view, we issue the following directions:

(*1*) Construction of the dam will continue as per the award of the Tribunal.

(*2*) As the Relief and Rehabilitation Subgroup has cleared the construction up to 90 metres, the same can be undertaken immediately. Further raising of the height will be only pari passu with the implementation of the relief and rehabilitation measures and on the clearance by the Relief and Rehabilitation Subgroup. The Relief and Rehabilitation Subgroup will give clearance for further construction after consulting the three Grievance Redressal Authorities.

(*3*) The Environment Subgroup under the Secretary, Ministry of Environment and Forests, Government of India will consider and give, at each stage of the construction of the dam, environment clearance before further construction beyond 90 metres can be undertaken.

(*4*) The permission to raise the dam height beyond 90 metres will be given by the Narmada Control Authority, from time to time, after it obtains the above-mentioned clearances from the Relief and Rehabilitation Subgroup and the Environment Subgroup.

(*5*) The reports of the Grievance Redressal Authorities, and of Madhya Pradesh in particular, show that there is a considerable slackness in the work of identification of land, acquisition of suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the States of Madhya Pradesh, Maharashtra and Gujarat to implement the award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these States shall comply with any direction in this regard which is given either by NCA or the Review Committee or the Grievance Redressal Authorities.

(*6*) Even though there has been substantial compliance with the conditions imposed under the environment clearance NCA and the Environment Subgroup will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.

(*7*) NCA will within four weeks from today draw up an action plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an action plan will fix a time-frame so as to ensure relief and rehabilitation pari passu with the increase in the height of the dam. Each State shall abide by the terms of the action plan so prepared by NCA and in the event of any dispute or difficulty arising, representation may be made to the Review Committee. However, each State shall be bound to comply with the directions of NCA with regard to the acquisition of land for the purpose of relief and rehabilitation to the extent and within the period specified by NCA.

(*8*) The Review Committee shall meet whenever required to do so in the event of there being any unresolved dispute on an issue which is before NCA. In any event, the Review Committee shall meet at least

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once in three months so as to oversee the progress of construction of the dam and implementation of the R&R programmes.

If for any reason serious differences in implementation of the award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned.

(*9*) The Grievance Redressal Authorities will be at liberty, in case the need arises, to issue appropriate directions to the respective States for due implementation of the R&R programmes and in case of non-implementation of its directions, GRAs will be at liberty to approach the Review Committee for appropriate orders.

(*10*) Every endeavour shall be made to see that the project is completed as expeditiously as possible.

This and connected petitions are disposed of in the aforesaid terms.

S.P. BHARUCHA, J. (*dissenting*)— I have read the judgment proposed to be delivered by my learned brother, the Hon'ble Mr Justice B.N. Kirpal. Respectfully, I regret my inability to agree therewith.

256. I do not set out the facts here: they are detailed in brother Kirpal's judgment.

257. I take the view that the Sardar Sarovar Project does not require to be re-examined, having regard to its cost-effectiveness or otherwise, and that the seismicity aspect of the project has been sufficiently examined and no further consideration thereof is called for. I do not accept the submission on behalf of the petitioner that those ousted by reason of the canals emanating from the reservoir in the project must have the same relief and rehabilitation benefits as those ousted on account of the reservoir itself; this is for the reason that the two fall in different classes.

258. Having said this, I turn to the aspect of the environmental clearance of the project. The Planning Commission accorded provisional sanction to the project subject to the environment clearance thereof being obtained. At the relevant time, the responsibility for giving environmental clearance lay with the Department of Environment in the Ministry of Environment and Forests of the Union Government. The Department had in January 1985 issued Guidelines for Environmental Impact Assessment of River Valley Projects. The preface thereof stated that environmental appraisal was an important responsibility assigned to the Department. It involved the evaluation of the environmental implications of, and the incorporation of necessary safeguards in the activities having a bearing on environmental quality. While river valley projects were a basic necessity to a country whose economy was largely based on agriculture, over the years the realisation had dawned that river valley projects had their due quota of positive and adverse impacts which had to be carefully assessed and balanced for achieving sustained benefits. Therefore, it had been decided in the late 70s that all river valley projects should be subjected to a rigorous assessment of their environmental impact so that necessary mitigative measures could be duly

incorporated therein at the inception stage. The Guidelines set out the procedure to be

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adopted for carrying out environmental impact assessments. In the chapter headed Relevance of Environmental Aspects for River Valley Development Projects, the Guidelines stated

> "Concern for environmental pollution is rather a recent phenomenon which has been triggered mainly by the backlash effect of accelerated industrial growth in the developed countries. The two major criteria — the project should maximise economic returns and it should be technically feasible, are no longer considered adequate to decide the desirability or even the viability of the project. It is now widely recognised that the development effort may frequently produce not only sought-for benefits, but other, often unanticipated, undesirable consequences as well which may nullify the socio-economic benefits for which the project is designed."

After reference to the strong feelings that were often expressed in favour of measures that would provide the provision of adequate food and shelter to the millions, the Guidelines stated:

> "Such strong feelings are easy to understand in the context of the prevailing economic stagnation. It does not, however, follow that the arguments advanced are valid. The basic flaw in these arguments is that they presume incompatibility between environmental conservation and the development effort."

Apart from some selected cases where the uniqueness of the natural resources, like wildlife, flora and genetic pool, which demanded exclusive earmarking of a given region for their specific use, the majority of cases did not call for a choice between development projects and preservation of the natural environment; but in all cases there was great need to consider the environmental aspects along with the other feasibility considerations. It was imperative to analyse whether the adoption of environmental measures was going to result in any short- or long-term social or economic benefits. A careful study of the direct costs involved, which would be caused by the absence of environmental mitigative measures on river valley projects, was an eye-opener. These included effects on health, plant genetic resources, aquatic resources, waterlogging and salinity of irrigated soils, deforestation and soil conservation. During the planning and feasibility assessment stages, several factors had to be taken into account, including short- and long-term impact on population and human settlements in the inundated and watershed areas, impact on flora and fauna (wildlife) in the vicinity, impact on wildlife, including birds, impact on national parks and sanctuaries, on sites and monuments of historical, cultural and religious significance and on forests, agriculture, fisheries and recreation and tourism. Requisite data for impact assessment was not readily available, this being relatively a new discipline, and it had to be generated through such field surveys as:

> "— pre-impoundment census of flora and fauna, particularly the rare and endangered species, in submergence areas;

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— census of animal population and available grazing areas;
— land-use pattern in the area with details of extent and type of forest;
— pre-impoundment survey of fish habitat and nutrient levels;
— groundwater level, its quality, and existing water-use pattern;
— mineral resources, including injurious minerals, in the impoundment; and
— living conditions of affected tribals/aboriginals etc."

The cost of proposed remedial and mitigative measures to protect the environment had to be included in the project cost. Mitigative measures included, among other things, compensatory afforestation. Only when the incorporation of environmental aspects in the project planning was made a part and parcel of all river valley projects would there be hope to protect and preserve

> "our natural environment and fulfil objective of rapid economic development on the sustained basis while safeguarding the natural resources including the air, water, land, flora and fauna for the benefit of present and future generations".

The necessary data that was required to be collected for impact assessment was set out in the Guidelines. A chart of the impact assessment procedure was also contained in the Guidelines.

259. It appears that, though it ought rightly to have been taken by the Ministry of Environment and Forests, the decision whether or not to accord the environmental clearance to the project was left to the Prime Minister.

260. A note was prepared by the Ministry of Water Resources in or about October 1986 on the environmental aspects of the Sardar Sarovar and the Narmada Sagar Multipurpose Projects. It stated that a decision on the clearance of these projects from the environmental angle and under the Forest Conservation Act, 1980 had become a matter of urgency. Delays had occurred which had necessitated a recasting of the schedule. The Ministry of Environment and Forests had been doing its best to expedite the process of examination and clearance "but have been finding the material submitted inadequate and unsatisfactory…". While the State Governments had done their best to meet the requirements, "some of the information and action will necessarily take time and will have to proceed pari passu with the implementation of the project, which in any case will take a decade or more to complete". The note stated that the Ministry of Water Resources shared the concerns and anxieties of the Ministry of Environment and Forests, as also the sense of urgency of the Governments of Gujarat and Madhya Pradesh, who felt that it was urgently necessary to take a decision in regard to the clearance. Under the sub-heading, "Should the projects be taken up at all?", the note stated that the abandonment of the projects would mean the abandonment of the generation of 2450 MW of power and of the possibilities of economic development which that quantum of power would bring, as also increased agricultural production resulting from the creation of an irrigation

potential of 2.041 million hectares. No effective alternatives to the two projects were available. Reference to the adverse environmental impact of the projects carried the implicit assumption that if the projects were not sanctioned the status quo would

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remain and there would be no deterioration of the environment. Such an assumption was not warranted. Despite the submergence of land and displacement of people and livestock, there was no case for the abandonment of the projects. What needed to be done was to take appropriate and adequate countermeasures to offset the environmental impact of the projects. The note then gave a broad picture of the likely environment impact of the two projects. In respect of the flora and fauna, it said, "Quantified data not yet available." In respect of the possibility of soil erosion from the catchment leading to excessive siltation of the reservoirs, it said, "Extent of critically-degraded area needing treatment to be identified." Specifically in respect of the Sardar Sarovar Project, the note said that for the area to be submerged in Maharashtra, the Maharashtra Government had proposed compensatory afforestation over an area of 6490 hectares and the Madhya Pradesh Government was preparing an action plan to reforest about 5500 hectares of the denuded forest in the impact area. In respect of the fauna the note said that the Narmada Sagar Project authorities had commissioned a wildlife census of the areas by Zoological Survey of India and were negotiating terms with the Indian Institute of Wildlife Management, Dehradun, for carrying out detailed wildlife studies for relocation purposes. They proposed to undertake all necessary steps to minimise the adverse impact of the project on wildlife. Gujarat and Maharashtra were also taking similar action with the help of specialised agencies. In respect of the projects' flora, the note said that the first preliminary survey in the area by Botanical Survey of India was started in December 1985 and it was estimated that the survey would take two to three years to be completed. In respect of catchment area treatment, the note said that field surveys were likely to be started shortly. The project authorities had identified three representative pilot-project areas. The biological and engineering measures to be adopted in the treatment of the balance of the catchment area would be designed on the basis of the experience to be gained from these pilot projects. Under the sub-heading, "What still remains to be done", the note stated:

> "*While some plans have been made, studies undertaken and action initiated, it will be clear from the preceding paragraphs that much still remains to be done. Indeed, it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much, and that many matters are as yet in the early and preliminary stages.*"
>
> (emphasis supplied)

What was then set out was an enumeration of what remained to be done. *The survey of flora*, to assess if there were any rare or threatened plant species, had been assigned to Botanical Survey of India, which *is expected to be completed in a period of two years. The wildlife survey* undertaken by Zoological Survey of India *was also likely to take two years*. The Indian

Institute of Wildlife Management, Dehradun was to consider and assess the impact on wildlife on the destruction of their habitat, and to prepare a project report for their relocation. *After all these reports became available, a master plan had to be prepared*.

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Field surveys for the *identification of the critically-eroding areas* was necessary and *would take three years. The results from pilot studies would be available only after three years*. Then, under the sub-heading, "Options in regard to clearance of the projects", the note stated:

> "*There are two options*:
>
> (*i*) As a number of studies, censuses, field surveys, mapping of areas, etc., are likely to take between 2 and 3 years, one possibility is that all these should be completed; detailed operational plans for catchment treatment compensatory afforestation, rehabilitation and resettlement of affected population, and remedial or relocation measures for planned species, wildlife, etc., formulated; the responsibility for their implementation clearly identified; and then the projects should be given a clearance from the environmental and forest angles. This will mean a postponement of the clearance of projects by about 3 years.
>
> (*ii*) The other option is that the projects should be given the necessary clearance now, with clear conditions and stipulations in regard to the actions to be taken on the various environmental aspects and appropriate monitoring arrangements to ensure that the actions are taken in a time-bound manner.
>
> *13.2*. The arguments against a postponement of clearance by three years are very strong."

(emphasis supplied)

The postponement of the decision at this stage seemed, to the writers of the note, "scarcely conceivable". A postponement would lead to substantial increases in project costs and the benefits expected from the projects would be delayed. Also the work that had already been done would be rendered infructuous. The deferment of clearance by three years would put the organisational set-up that had been built up into a state of uncertainty, retard the momentum that had been gathered, and sap the organisational morale and motivation. The note added:

> "Finally, the numerous studies, surveys, data-collection exercises, plans for remedial measures, etc., which have been enumerated earlier would involve time, money and organisational commitment. With the project decision postponed for three years, and with no assurance that at the end of that period, the decision will be positive, it is difficult to believe that all these studies, surveys and plans relating to the environmental aspects will be pursued with energy and enthusiasm, and the necessary resources devoted to them. In other words, the postponement of the decision in the interest of collecting the information relating to the environmental aspects and completing the formulation of the necessary operational plans may in fact prove to be a self-defeating exercise. On the other hand, if the project decisions are taken now, subject to firm conditions and stipulations regarding the environmental

aspects, there is greater likelihood of these conditions being met. … A possible argument against the immediate clearance of the projects could be that once the

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projects are cleared, the management would concentrate on the engineering and construction aspects and would not pay adequate attention to the environmental and human aspects. There seems to be no need for such apprehensions. It should be entirely possible to give a conditional clearance and ensure that the conditions are properly met through a process of clear assignment of responsibility and frequent monitoring. … Moreover, even assuming that the postponement of a decision by three years will improve the availability of detailed information and the stage of preparedness on environmental matters, there can be no greater assurance at that stage than there is now regarding the wholehearted and effective implementation of the remedial and ameliorative measures. We would still have to depend on proper monitoring….”

In conclusion, the note urged that clearance from the environmental angle and under the Forest Conservation Act, 1980 be given immediately, subject to conditions and stipulations relating to the various environmental and related aspects outlined in the note.

261. Another note was prepared by the Ministry of Water Resources and forwarded to the Additional Secretary to the Prime Minister on 20-11-1986. Insofar as the catchment area treatment was concerned, it concluded that it was certain that the catchment area treatment programme could not be realistically formulated and assessed for at least another three years. Therefore, it was premature to comment on the efficacy or otherwise of the catchment area treatment programme which was still to be formulated. The action programme for command area development was yet to be made available. The lining of the canal network and the digging of tubewells in the command area could not be considered to be adequate. A lot of fieldwork and planning was needed to be done to arrive at a workable and effective command area development programme. As to compensatory afforestation, the land for the same was yet to be identified and procured before it could be evaluated for the purpose. In regard to the loss of flora and fauna, the following studies were considered absolutely essential to determine the adequacy or otherwise of the leftover habitat to sustain the wildlife:

> “‘A wildlife census of the area’ (ZSI will take at least 2-3 years to complete the survey):
>
> (*i*) Preparation of a master plan showing all protected areas, national parks, wildlife reserves, reserve and protected forests, etc. on which should be superimposed the area to be taken up for various reservoirs, roads, canals, settlement colonies, etc.
>
> (*ii*) Study of the carrying capacity of the surrounding areas where the wildlife from the submergence area will disperse.”

In the circumstances, it was not considered possible to assess the impact of the loss of habitat on the wildlife and the overall loss of biological diversity.

The absence and inadequacy of data on the following environmental aspects persisted:

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"(*i*) rehabilitation;

(*ii*) catchment area treatment;

(*iii*) command area development;

(*iv*) compensatory afforestation; and

(*v*) flora and fauna."

Considering the magnitude of rehabilitation, involving a large percentage of tribals, loss of extensive forest area rich in biological diversity, enormous environmental cost of the project and *considering the fact that the basic data on vital aspects was still not available "there could be but one conclusion, that the project(s) are not ready for approval".*

(emphasis supplied)

"There were two options in regard to the clearance. As a number of studies, censuses, field surveys, mapping of areas etc. was likely to take between two and three years, one possibility was that all these should be completed; detailed operational plans for catchment area treatment, compensatory afforestation, rehabilitation and resettlement of affected population and remedial or relocation measures for plant species, wildlife, etc. formulated; the responsibility for their implementation clearly identified; and then the projects should be given a clearance from the environmental and forest angles. This would mean a postponement of the clearance of projects by about three years."

The other option was that the project should be given the necessary clearance with conditions and stipulations in regard to the actions to be taken on the various environmental aspects with appropriate monetary arrangements. The note recommended the latter option.

262. On 19-12-1986 the Ministry of Environment and Forests sent to the Secretary to the Prime Minister a note on the environment aspects of the Narmada Sagar and the Sardar Sarovar Projects. The note stated that it covered the major environmental issues which included the rehabilitation of the affected population, catchment area treatment, command area development, compensatory afforestation and the loss of flora and fauna. It explained the then status of each of these aspects in terms of availability of data and plans and the readiness to execute them. It said that other components of the environmental aspect like the higher incidence of water-borne diseases and loss of mineral reserves were important but were not dealt with in detail in the note. It stated that in respect of catchment area treatment, the requirement was of demarcation of critically-degraded areas on the basis of aerial photographs, satellite imagery and ground checks; creation of a chain of nurseries of suitable species for biological treatment of the catchment area; and preparation of phased action programme for biological and engineering treatment of the degraded catchment area. Considering that catchment area treatment on an intensive scale was imperative, both to reduce silt load and to maintain ecological balance, and keeping in view the

fact that the interpretation of the aerial photographs and satellite imagery would take at least one year for completion, to be followed by ground truth checks; the detailed land and soil surveys would take three years to be completed; the geomorphological

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studies to suggest the engineering and biological treatment for the eroded areas were still to be taken up and the chain of nurseries needed to provide the necessary saplings in adequate quantity along with manpower and other infrastructure requirements were still to be mobilised, *it was "reasonable to conclude that the catchment area treatment programme can be realistically formulated only after three years when these data become available"*. The command area development was to achieve the prevention of waterlogging and salinity, the optimisation of water utilisation and the maintenance of water quality. A detailed survey of the command area was required on priority to prepare a package of the nature and quantity of development and drainage and on-farm works to fully utilise the irrigation potential. An action programme was yet to be detailed. The Ministry of Water Resources was preparing an evaluation report covering the extent of likely waterlogging and salinity problems and the effectiveness of measures proposed or likely to be proposed to combat these problems "as per the action programme to be formulated". Insofar as compensatory afforestation was concerned, the project authorities had not been able to identify non-forest land for compensatory afforestation and had proposed to undertake afforestation on double the extent for degraded forest land, which proposal was fairly detailed and seemed satisfactory. In the matter of the loss of flora and fauna the note stated

> "that the forest area, specially affected by the Narmada Sagar Project, represents areas harbouring rich heritage of genetic resources as well as wildlife. The preliminary study carried out by the Environmental Planning and Coordination Organisation, Bhopal as well as the observations made by World Bank clearly underlined the need for preparing a master plan showing not just the present status but also the likely scenarios after the project was implemented. The prime concern was to ascertain the loss of biological diversity and whether the wildlife would be able to sustain itself after the destruction of its habitat. The following studies were considered absolutely essential both to determine the loss of flora and the adequacy or otherwise of the leftover habitat to sustain the wildlife:
>
> — A wildlife census of the area (ZSI will take at least 2-3 years to complete the survey).
>
> — Preparation of a master plan showing all protected areas i.e. national parks, wildlife reserves, reserve and protected forests, etc. on which should be superimposed the areas which cannot be taken up for various reservoirs, roads, canals, settlement colonies, etc.
>
> — Study of the carrying capacity of the surrounding areas where the wildlife from the submergence area will disperse.

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These studies are considered specially important in the case of NSP. The work initiated by BSI and ZSI at the request of the project authorities will be completed only by 1989. The other studies have not yet been initiated. *Under the circumstances, it is not possible to assess the impact of the loss of habitat on the*

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wildlife and the overall loss of biological diversity and genetic reserves.

Even if one were to assume that the forests to be destroyed do not contain genetic resources, which in any case cannot be valued, *the simple loss of these forests would have an environmental cost estimated at several thousand crores of rupees as per norms developed by FRL. The environmental costs is thus colossal*".

(emphasis supplied)

The note concluded:

"(*1*) Taking note of the fact that the project formulation has been in progress for more than three decades and the active interaction of the project authorities with the Department of Environment has been going on for almost three years, *the absence and inadequacy of data on some important environmental aspects still persists.*

(*2*) In an objective sense NSP is not ready for clearance from environmental angle. *Even though SSP is in a fairly advanced stage of preparedness, it is neither desirable nor recommended that SSP should be given approval in isolation on technical and other grounds.*

(*3*) The state of readiness in the case of NSP is such that it gives just an outline of the intention plan. The fact that this intention plan will be converted to an action plan and thereby effectively implemented has to be taken on trust. In case of the Sardar Sarovar Project (SSP), readiness to execute is reasonably good except on the issue of rehabilitation of oustees specially from M.P. and Maharashtra.

(*4*) Holding up of the projects even for the next few months is not likely to improve the level of preparedness on most of the environmental aspects, specially in the case of NSP. In the meanwhile, further studies will not perhaps pick up speed and thus at no time will the requisite information be fully available.

(*5*) A large amount of money has already been invested in SSP which is critically linked on technical and operational aspects to NSP. However, *it may not be too late even now to modify some of the parameters of NSP and SSP to minimise environmental damage while at the same time ensuring optimal utilisation of water resources.*

* * *

The choice is difficult but a choice has to be made."

(emphasis supplied)

263. A note was prepared on 15-1-1987 in the Prime Minister's Office. It noted that the main issues on environmental concerns were the rehabilitation of the affected population, compensatory afforestation, treatment of the catchment area and command area development, pertaining, particularly, to drainage, waterlogging and salinity. The Department of Environment and

Forests had raised the point that the rehabilitation plan was not ready, land had not been surveyed, areas of land-use capability and water availability had not been identified and the land being suggested for rehabilitation, prima facie, appeared to be

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infertile. Detailed meetings with the State Governments revealed that they were seriously undertaking surveys, land identification and preparation of a rehabilitation plan, of which the first phase was more or less ready. The catchment area treatment preparation would take time. A compensatory afforestation programme could be chalked out without difficulty. The issue was whether detailed plans should be made fully ready before giving environmental clearance or whether there could be a conditional clearance so that the project could start. The Secretary to the Prime Minister had discussed the matter with the Secretary, Water Resources and the Secretary, Environment and Forests and it had been agreed that clearance might be given on the following conditions:

> "Preparation in due time of detailed and satisfactory plans for rehabilitation, catchment area treatment, compensatory afforestation and command area development.
>
> Setting up of Narmada Management Authority with adequate powers and teeth to ensure that environmental management plans are implemented pari passu with engineering and other works."

Below the aforesaid note, the Secretary to the Prime Minister sought his approval to conditional clearance of the project from the environmental angle. The project, she said, had been pending clearance for seven years and the Chief Ministers of Gujarat and Madhya Pradesh were keenly awaiting it. The Chief Minister of Gujarat had requested a "green signal" before 20-1-1987.

264. On 19-1-1987 the Prime Minister made a handwritten endorsement on the aforesaid note, "Perhaps this is a good time to try for a river valley authority. Discuss." But it appears that a river valley authority was not found feasible and the sanction to the project from the environmental angle was issued by the Ministry of Environment and Forests on 24-6-1987.

265. The environmental sanction to the project reads thus:

"OFFICE MEMORANDUM

Subject: Approval of Narmada Sagar Project, Madhya Pradesh and Sarovar Project, Gujarat from environmental angle.

1. The Narmada Sagar Project, Madhya Pradesh and Sardar Sarovar Project, Gujarat have been referred to this Department for environmental clearance.

2. On the basis of examination of details of these projects by the Environmental Appraisal Committee for River Valley Projects and discussions with the Central and State authorities, the following details were sought from the project authorities:

(*i*) Rehabilitation master plan.

(*ii*) Phased catchment area treatment scheme.

(*iii*) Compensatory afforestation plan.

(*iv*) Command area development.

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(*v*) Survey of flora and fauna.

(*vi*) Carrying capacity of surrounding area.

(*vii*) Seismicity.

(*viii*) Health aspects.

3. Field surveys are yet to be completed. The first set of information has been made available and complete details have been assured to be furnished by 1989.

4. NCA has been expanded and its terms of reference have been amplified to ensure that environmental safeguard measures are planned and implemented in depth and in its pace of implementation pari passu with the progress of work on the project.

5. After taking into account all relevant facts of Narmada Sagar Project, Madhya Pradesh and the Sardar Sarovar Project, Gujarat they are hereby accorded environmental clearance subject to the following conditions:

(*i*) The Narmada Control Authority (NCA) will ensure that environmental safeguard measures are planned and implemented pari passu with progress of work on projects.

(*ii*) The detailed surveys/studies assured will be carried out as per the schedule proposed and details made available to the department for assessment.

(*iii*) The catchment area treatment programme and the rehabilitation plans be so drawn as to be completed ahead of reservoir filling.

(*iv*) The department should be kept informed of progress on various works periodically.

6. Approval under the Forest (Conservation) Act, 1980 for diversion of forest land will be obtained separately. No work should be initiated on forest area prior to this approval.

7. Approval from environmental and forestry angles for any other irrigation, power or development projects in the Narmada basin should be obtained separately."

266. Even in 1987, when the environmental clearance to the project was given, it had been found necessary by the Union of India to rigorously assess the environmental impact of river valley projects. This was to determine whether the uniqueness of the natural resources, like wildlife, flora and the genetic pool in the region, demanded its exclusive earmarking for that purpose, in which event the river valley project would not be accorded clearance. Even otherwise, it was imperative to consider the project's environmental aspects, such as its effect on health, plant genetic resources, aquatic resources, waterlogging and salinity of irrigated soils, deforestation and soil conservation. Its short- and long-term impact on population, on flora and fauna, on wildlife, on national parks and sanctuaries, on historical,

cultural and religious monuments, on forests, agriculture, fisheries and recreation and tourism had to be taken into account. Field surveys were necessary for generating the requisite data for the impact assessment. The cost of the proposed remedial and

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mitigated measures had to be included in the project cost. The necessary data that was required to be collected for the purposes of the assessment of a project's environmental impact was set out in the Guidelines for the purpose issued by the Ministry of Environment and Forests of the Union Government (which have been referred to above).

267. The contemporaneous notes prepared by the Ministry of Water Resources and the Ministry of Environment and Forests, also referred to above, leave no manner of doubt that the requisite data for assessment of the environmental impact of the project was not available when the environmental clearance thereof was granted. In the words of one of the notes:

> "While some plans have been made, studies undertaken and action initiated, it will be clear from the preceding paragraphs that much still remains to be done. Indeed it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much and that many matters are yet in the early and preliminary stages."

The notes make clear that the studies, censuses, mapping of areas and field surveys for the collection of data for assessment of the environmental impact of the project were likely to take a further 2 to 3 years. An environmental clearance based on next to no data in regard to the environmental impact of the project was contrary to the terms of the then policy of the Union of India in regard to environmental clearances and, therefore, no clearance at all.

268. The environmental clearance of 24-6-1987 stated that details had been sought from the project authorities in respect of the rehabilitation master plan, phased catchment area treatment scheme, compensatory afforestation plan, command area development, survey of flora and fauna, carrying capacity of surrounding area, seismicity and health aspects; field surveys had yet to be completed and complete details had been assured by 1989. Clearly, therefore, the necessary particulars in regard to the environmental impact of the project, as required by the Guidelines, were not available when the environmental clearance was given, and it, therefore, could not have been given.

269. The conditions upon which the environmental clearance was given were that detailed surveys and studies would be carried out and the Narmada Control Authority, whose terms of reference had been amplified, would ensure that "environmental safeguard measures" were planned and implemented pari passu with the progress of work on the project. No further assessment of the environmental impact of the project was contemplated by the environmental clearance, nor, indeed, was it ever carried out.

270. What environmental safeguard measures the Narmada Control Authority was to ensure were, and what their cost would be, was not known when the environmental clearance was given. There was, therefore, no way

in which this cost could be included in the cost of the project, which was a requirement of the Guidelines.

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271. While the environmental safeguard measures were to be planned and implemented pari passu with the progress of the work on the project, the catchment area treatment programme and the rehabilitation plans were required to be "so drawn as to be completed ahead of reservoir filling". This condition clearly required that before any water was impounded in the reservoir the catchment area treatment programme was not only to be drawn but also to be completed; so also the rehabilitation plans. If, as the project authorities interpreted this clause, only the drawing of the catchment area treatment programme and the rehabilitation plans were to be completed ahead of reservoir filling, the clause would have read: "The catchment area treatment programme and the rehabilitation plans shall be drawn ahead of reservoir filling." What the clause as drawn required was that the catchment area treatment programme and the rehabilitation plans should be drawn in such a manner that the catchment area treatment and the rehabilitation works would be completed ahead of impoundment in the reservoir. This, plainly, was intended to offset, so far as was possible in the circumstances, the adverse effect of the impoundment of water in the reservoir upon the catchment and those who were required to be settled elsewhere. In fact, the impoundment began much before.

272. Learned counsel for the Union of India submitted that most of the necessary surveys and studies had been carried out in regard to the environmental impact of the project before the environmental clearance was given, and he invited our attention to what had been done. The short answer to the submission on behalf of the Union of India is that the two Ministries of the Union of India concerned thought otherwise at the relevant time. To quote the note of one Ministry again:

> "While some plans have been made, studies undertaken and action initiated, it would be clear from the preceding paragraph that much still remains to be done. Indeed it is the view of the Ministry of Environment, Forests and Wildlife that what has been done so far whether by way of action or by way of studies does not amount to much and that many matters are yet in the early and preliminary stages."

273. The fact that the environmental clearance was given by the Prime Minister and not by the Ministry of Environment and Forests, as it would ordinarily have been done, makes no difference at all. Under its own policy, as indicated by the Guidelines, the Union of India was bound to give environmental clearance only after (*a*) all the necessary data in respect of the environmental impact of the project had been collected and assessed; (*b*) the assessment showed that the project could proceed; and (*c*) the environmental safeguard measures, and their cost, had been worked out.

274. An adverse impact on the environment can have disastrous consequences for this generation and generations to come. This Court has in its judgments on Article 21 of the Constitution recognised this. This Court cannot place its seal of approval on so vast an undertaking as the project

without first ensuring that those best fitted to do so have had the opportunity of gathering all necessary data on the environmental impact of the project and of

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assessing it. They must then decide if environmental clearance to the project can be given, and, if it can, what environmental safeguard measures have to be adopted, and their cost. While surveys and studies on the environmental aspects of the project have been carried out subsequent to the environmental clearance, they are not, due to what are euphemistically called "slippages", complete. Those who now examine whether environmental clearance to the project should be given must be free to commission or carry out such surveys and studies and the like as they deem necessary. They must also, of course, consider such surveys and studies as have already been carried out. Given that the construction of the dam and other work on the project has already commenced, this factor must play a part in their deciding whether or not environmental clearance should be accorded. Until environmental clearance to the project is accorded by them, further construction work on the dam shall cease.

275. The Union of India has issued a notification on 27-1-1994 called the "Environmental Impact Assessment Notification, 1994" (and amended it on 4-5-1994). Its terms are not applicable to the present proceedings, but its provisions are helpful insofar as they prescribe who is to assess the environmental impact assessment reports and environment management plans that are submitted by applicants for new projects, including hydroelectric projects. The Notification says:

> "The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a Committee of Experts, having a composition as specified in Schedule III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by IAA or such other body under the Central Government authorised by IAA in this regard."

Schedule III of the Notification reads thus:

> "COMPOSITION OF THE EXPERT COMMITTEES FOR ENVIRONMENTAL IMPACT ASSESSMENT
>
> 1. The Committees will consist of experts in the following disciplines—
>
> (*i*) Ecosystem management
>
> (*ii*) Air/water pollution control
>
> (*iii*) Water resource management
>
> (*iv*) Flora/fauna conservation and management
>
> (*v*) Land-use planning
>
> (*vi*) Social sciences/rehabilitation
>
> (*vii*) Project appraisal
>
> (*viii*) Ecology

> (*ix*) Environmental health
>
> (*x*) Subject area specialists
>
> (*xi*) Representatives of NGOs/persons concerned with environmental issues.

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2. The Chairman will be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector.

3. The representative of IAA will act as a Member-Secretary.

4. Chairman and members will serve in their individual capacities except those specifically nominated as representatives.

5. The membership of a Committee shall not exceed 15."

The Environmental Impact Agency of the Union Ministry of Environment and Forests shall now appoint a Committee of Experts composed of experts in the fields mentioned in Schedule III of the Notification and that Committee of Experts shall assess the environmental impact of the project as stated above.

276. When the writ petition was heard at the admission stage, this Court was most concerned about the distressing state of the relief to and rehabilitation of those ousted on account of the project. The proper implementation of relief and rehabilitation measures was the aim of the Court at that time; but it was not contemplated that the other issues in the writ petition would not be considered at the stage of its final hearing.

277. The many interim orders that this Court made in the years in which this writ petition was pending show how very little had been done in regard to the relief and rehabilitation of those ousted. It is by reason of the interim orders, and, in fairness, the cooperation and assistance of learned counsel who appeared for the States, that much that was wrong has now been redressed. The States have also been persuaded to set up Grievance Redressal Authorities and it will be the responsibility of these authorities to ensure that those ousted by reason of the project are given relief and rehabilitation in due measure.

278. The States are lagging behind in the matter of the identification and acquisition of land upon which the oustees are to be resettled. Having regard to the experience of the past, only the Grievance Redressal Authorities can be trusted by this Court to ensure that the States are in possession of vacant lands suitable for the rehabilitation of the oustees. During the time that it takes to assess the environmental impact of the project, the States must take steps to obtain, by acquisition or otherwise, vacant possession of suitable lands upon which the oustees can be rehabilitated. When the project obtains environmental clearance, assuming that it does, each of the Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra must certify, after inspection, before work on the further construction of the dam can begin; that all those ousted by reason of the increase in the height of the dam by 5 metres from its present level have already been satisfactorily rehabilitated and also that suitable vacant land for

rehabilitating all those who will be ousted by the increase in the height of the dam by another 5 metres is already in the possession of the respective States; and this process must be repeated for every successive proposed 5 metre increase in the dam height.

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279. Only by ensuring that relief and rehabilitation is so supervised by the Grievance Redressal Authorities can this Court be assured that the oustees will get their due.

280. It is necessary to provide for the contingency that, for one or the other reason, the work on the project, now or at any time in the future, does not proceed and the project is not completed. Should that happen, all oustees who have been rehabilitated must have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they must not be made at all liable in monetary or other terms on this account.

281. When the writ petition was filed the process of relief and rehabilitation, such as it was, was going on. The writ petitioners were not guilty of any laches in that regard. In the writ petition they raised other issues, one among them being related to the environmental clearance of the project. Given what has been held in respect of the environmental clearance, when the public interest is so demonstrably involved, it would be against public interest to decline relief only on the ground that the Court was approached belatedly.

282. I should not be deemed to have agreed to anything stated in brother Kirpal's judgment for the reason that I have not traversed it in the course of what I have stated.

283. In the premises,

(*1*) The Environmental Impact Agency of the Ministry of Environment and Forests of the Union of India shall forthwith appoint a Committee of Experts in the fields mentioned in Schedule III of the Notification dated 27-1-1994, called the Environmental Impact Assessment Notification, 1994.

(*2*) The Committee of Experts shall gather all necessary data on the environmental impact of the project. They shall be free to commission or carry out such surveys and studies and the like as they deem necessary. They shall also consider such surveys and studies as have already been carried out.

(*3*) Upon such data, the Committee of Experts shall assess the environmental impact of the project and decide if the environmental clearance to the project can be given and, if it can, what environmental safeguard measures must be adopted, and their cost.

(*4*) In so doing, the Committee of Experts shall take into consideration the fact that the construction of the dam and other work on the project has already commenced.

(*5*) Until environmental clearance to the project is accorded by the Committee of Experts as aforestated, further construction work on the dam shall cease.

(*6*) The Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall ensure that those ousted by reason of the project are given

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relief and rehabilitation in due measure.

(*7*) When the project obtains environmental clearance, assuming that it does, each of the Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall, after inspection, certify, before work on the further construction of the dam can begin, that all those ousted by reason of the increase in the height of the dam by 5 metres from its present level have already been satisfactorily rehabilitated and also that suitable vacant land for rehabilitating all those who will be ousted by the increase in the height of the dam by another 5 metres is already in the possession of the respective States.

(*8*) This process shall be repeated for every successive proposed 5- metre increase in the dam height.

(*9*) If for any reason the work on the project, now or at any time in the future, cannot proceed and the project is not completed, all oustees who have been rehabilitated shall have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they shall not be made at all liable in monetary or other terms on this account.

284. The writ petition is allowed in the aforesaid terms. The connected matters are disposed of in the same terms.

285. No order as to costs.

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[1] Under Article 32 of the Constitution of India

[2] (2000) 9 SCC 572 : (2000) 3 Scale 505

[3] (1984) 2 SCC 534 : 1984 SCC (Cri) 313

[4] (1997) 3 SCC 433 : 1997 SCC (Cri) 434

[5] (1995) 3 SCC 42 : 1995 SCC (L&S) 604

[6] (1999) 2 SCC 718

[7] (1996) 5 SCC 647

[8] (1999) 2 SCC 718

[9] 350 b F Supp 1280 (1973)

[10] 437 US 153 : 57 L Ed 2d 117 : 98 S Ct 2279

[11] 458 F 2d 1323 (1972)

[12] 325 F Supp 749 (1971)

[13] *B.D. Sharma* v. *Union of India*, 1992 Supp (3) SCC 93

[14] 1992 Supp (3) SCC 93

[15] *Narmada Bachao Andolan* v. *Union of India*, see at p. 786

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EXHIBIT - G

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 479/2015
(M. A. No. 1097/2015 & M.A. NO. 1137/2015)

Manoj Kumar Mishra Vs. NCT of Delhi & Ors.

CORAM: HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER

Present:	**Applicant/Appellant(s)**	**: Mr. Rahul Choudhary & Ms. Meera Gopal, Advs.**
	Respondent No.1 & 7	**: Mr. Tarunvir Singh, and Ms. Guneet Khehar, Advs.**
	Respondent No.2	**: Mr. Abhishek Yadav, Adv.**
	Respondent No.3	**: Mr. Rajiv Bansal, Mr. Kush Sharma, and Ms. Arpita, Advs.**
	Respondent No. 4	**: Mr. Krishna Kumar Singh, Adv. for MoEF**
	Respondent No. 6	**: Ms. Brija Mahapatra, Adv. for DPCC**

	Date and Remarks	**Orders of the Tribunal**
	Item No. 09 **August 05, 2016**	Learned Counsel appearing on behalf of the Respondent No. 7, PWD, Govt. of NCT submits that Application for grant of Environmental Clearance for the construction in question has been moved on 25th July, 2016 and the same is pending decision. This may perhaps bring to an end the controversy over the prayer clause (1) seeking directions to obtain Environmental Clearance for the construction in question. Further case would survive as regards the other reliefs unless withdrawn. List this case on 7th September, 2016. .....,JM (U.D. Salvi) .....,EM (Ranjan Chatterjee)

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2021 SCC OnLine NGT 2059

In the National Green Tribunal[†]

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON, SUDHIR AGARWAL, MEMBER (JUDICIAL), M. SATHYANARAYANAN, MEMBER (JUDICIAL), BRIJESH SETHI, MEMBER (JUDICIAL) AND NAGIN NANDA, MEMBER (EXPERT))

Mahagunpuram Apartment Owners Association … Applicant;

Versus

Ghaziabad Development Authority and others … Respondent(s).

Original Application No. 139/2019 (Earlier O.A. No. 06/2018)

Decided on July 8, 2021

Advocates who appeared in this case:

Mr. Raghavendra Pratap Singh, Advocate for the Applicant;

Mr. Pradeep Misra, Advocate for UPPCB for the Respondent.

ORDER

1. This application has been registered to consider the compliance report filed by the Ghaziabad Development Authority (GDA) in pursuance of order of this Tribunal dated 20.08.2018 in O.A. No. 06/2018 as follows:—

"The primary grievance raised by the Applicant is that Respondents should strictly comply with the conditions of Environment Clearance Certificate dated 22nd March, 2017, which is placed on record as Annexure A/4. A bare perusal of the same in the description chart, reveals that plot area is 54630 sq. metres. There are specific conditions laid down in the said environmental clearance, wherein condition no. 10 mentions that 15 % of the total plot area shall be compulsorily made available for green belt development, including the periphery of green belt.

In the instant case, the submission of the Learned Counsel for the Applicant is that the said condition no. 10 has not been complied with as 15 % of the total plot area of 54630 sq. metres has not been kept for green belt.

Consequently, Ghaziabad Development Authority is directed to comply with the specific condition no. 10 of the Environmental Clearance. In other words, the Respondent Nos. 2, 3 and 4 are required to keep 15 % of the area as green belt out of the total plot area of 54630 sq. metres. The Development Authority shall ensure that the said requisites area is left out for the green belt. In case of noncompliance, the Development Authority would be free to take action against the Respondents, within a period of two months.

The compliance report shall be sent by Ghaziabad Development Authority to the Tribunal, which shall be listed before the Court, sooner it is received, after being registered separately."

2. A report has been filed by the GDA about the status of compliance of condition No. 10 of the EC dated 22.03.2017, granted by the SEIAA, UP requiring 15% of the plot area to be left for green belt development. Since the plot area is 54630 sq.m., 15% had to be calculated on that basis. According to the report dated 24.01.2019 filed by the GDA, 15% has been calculated on net plot area after excluding land under the road etc. and on that basis it is stated that there is a compliance. This stand is challenged by the applicant by submitting that 15% is to be taken as per the total plot area and not after making exclusion for road or other areas.

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3. We find the stand of the applicant to be as per EC conditions and the stand taken by the GDA against the same. It is difficult to understand why the GDA is taking stand against clear stipulation in the EC conditions and direction of this Tribunal in the order quoted earlier.

4. Accordingly, we direct the Vice Chairman, GDA to ensure compliance and remain present in person by video conferencing with the compliance report. We also direct that State PCB to initiate coercive measures against the project for the patent violations, in accordance with law and file a compliance report before this Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

A copy of this order be forwarded to the Vice Chairman, GDA and State PCB by e-mail for compliance.

———

† Principal Bench, New Delhi (By Video Conferencing)

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EXHIBIT - I

Item Nos.01 -04 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE
KOLKATA

(By Hybrid Mode)

Appeal Nos. 29 to 31/2022/EZ

Conservation Action Trust & Anr. Appellants

Versus

The Ministry of Environment Forest
& Climate Change & Ors. Respondent(s)

WITH

Appeal No. 32/2022/EZ

Ashis Kothari Appellant

Versus

The Ministry of Environment Forest
& Climate Change & Ors. Respondent(s)

Date of hearing: 03.04.2023

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Appellant(s): Mr. Kaustav Dhar, Advocate a/w Ms. Ajeeya Choudhury, Advocate for the Appellant (in Appeal Nos. 29 to 31/2022/EZ)

Mr. A. Yogeshwaran, Advocate a/w Ms. Poongkhulali B., Advocate, Mr. Santanu Chakraborty, Advocate for the Appellant (in Appeal No. 32/2022/EZ)

Respondent(s): Ms. Aishwarya Bhati, ASG a/w Ms. Suhasini Sen, Advocate, Mr. Aman Jha, Advocate (in Virtual Mode), Mr. Apurba Ghosh, Advocate and Ms. Manisha Chava, Advocate for R-1

Mr. Vikramjit Banerjee, ASG a/w Mr. Shatadru Chakraborty, Advocate, Mr. Ramendu Agarwal, Advocate (in Virtual Mode), Mr. Dibesh Dwivedi, Advocate for R-2 & 3

Ms. Dhriti Banerjee, Director, ZSI (in Virtual Mode)

ORDER

Preliminary – subject matter of appeals

1. This order will deal with Appeal Nos. 29 to 32/2022/EZ as all the four Appeals pertain to Forest/Environmental Clearance (FC/EC) in respect of integrated **project (the project) by Andaman and Nicobar Islands Integrated Development Corporation (ANIDCO) in Great Nicobar Island**, the project proponent (PP), involving the following:-

a. International Container Transshipment Terminal (ICTT)-14.2 Million TEU

b. Greenfield International Airport (4000 Peak Hour Passengers-PHP)

c. Township & Area development

d. 450 MVA Gas and Solar based power plant over an extent of 16610 hectares (Ha) in the Great Nicobar Islands.

2. (a) is the main project of which (b) to (d) are integral parts.

3. Appeal No. 29/2022 is against Stage-I Clearance dated 27.10.2022 under the Forest (Conservation) Act, 1980 by MoEF&CC for diversion of 130.75 Sq. Km of forest land in the Great Nicobar Island. Appeal Nos. 30 to 32/2022, are against EC dated 04.11.2022 for the project by the MoEF&CC. **Appeal No. 29 to 31/2022 have been filed by Conservation Action Trust trust located at Bombay while Appeal No. 32/2022/EZ has been filed by one Mr. Ashis Kothari of Pune**. All the appeals came up for hearing on 11.01.2023 when notice was issued to the respondents including the MoEF&CC and the PP.

4. Challenge to the FC is inter-alia on the ground that impact of diversion of 130.75 Sq Km of pristine tropical rainforests on biodiversity, wildlife habitats and Tribals has not been considered. Crucial information

was withheld from Form-A. Forest land cannot be diverted for township and non-site specific projects. Mandatory process under the Forest Rights Rules has not been followed. PP being part of Andaman Administration could not have been associated with the impugned clearance. Forest dwelling community - Shompen (PVTG) and Coastal dwelling community Nicobarese (ST) have settlements in the area to be diverted and de-notified.

5. Challenge to the EC is inter-alia on the ground that appraisal conducted by the EAC is not in accordance with the EAC Notification dated 14.09.2006, EIA report has not been prepared as per ToRs, public hearing is vitiated, impact of the project on tribal population has not been considered, cumulative impact assessment has not been conducted. and ICRZ Notifications, 2019 have been violated. The project will result in destruction of forests, turtle nesting grounds, habitat of endangered endemic species, violation of the rights of indigenous communities in the Great Nicobar Island.

Details of the project and conditions for the Impugned EC

6. Perusal of impugned EC dated 04.11.2022 shows that the proposal for the project was considered in the 293rd meeting of EAC held on 24th – 25th March, 2022 and again in the 297th meeting of EAC held on 24th – 25th May, 2022. Based on the reply submitted to the queries raised by the EAC, the proposal is again placed in the 306th meeting of EAC held on 22nd – 23rd August, 2022. Some details of the project are mentioned as follows:

> *"6. The proposed project fall under 7(e) Ports, harbours; 1 (d) Power Plant; and 8 (b) Township & Area Development project, Category A, Scheduled to the EIA Notification, 2006.*
>
> *7. The total area required for the proposed project is 16610 ha. The proposed Project site is in not connected through any road. Currently, the access is through sea and air route only. Approach roads shall be developed within the Islands.*

8. No development is proposed on the western side of Galathea Bay in Phase I development apart from Defence area development, power plant and basic infrastructure to sustain defence and power plant site. Suggestion/ opinion from MoD will be sought to finalise the buffer zones around Defence parcels. Buffer area of 500 mts from high tide line around Pemayya to be declared as Costal Protection Area with stringent controls on any development within the area. Further, Alexandria Bay and Casuarina Bay are located far away and fall outside the project area on the western coast. All these areas including Pemayya Bay have been made part of the leatherback conservation plan. Adequate measures have been proposed for protection of nesting beaches and turtles.

9. A separate land use category "Special Use" has been included in the land use plan. The subcategories under "Special Use" are:

a. National Memorial (Western tip of Galathea Bay),
b. Defence Purpose (Western tip of Galathea Bay),
c. Pemayya Buffer Area (Buffer area of 500m from HTL for safe nesting of Leatherback turtles).

10. xxx……xxx……xxx

11. The North South road of 55m ROW is the main arterial road connecting different pockets of development across the master plan area. It also serves as the key connector between the development on the eastern and western side of the master plan area and serves the overall function of distributing traffic and enabling access. The 55m RoW has been envisaged as an urban arterial road and the proposed design for this road is in compliance with guidelines for Urban Roads. The 55 m arterial road serves multiple functions enabling movements through different modes of transport including non-motorised transport i.e. cycles as well as pedestrians. Development within CRZ area will be in compliance with ICRZ Notification 2019.

12. The arterial road will be developed in a phased matter. In the first phase, 30 m ROW will be utilized and developed and the balance 25 m ROW will be reserved for future expansion for Bus Rapid Transit (BRT) or Light Rail Transit (LRT). Need for development of remaining 25 m RoW will be reviewed by the project monitoring committee on biodiversity before its construction and after full capacity utilization of 30m RoW and evaluation by CSIR-Central Road Research Institute (CRRI).

13 to 22…xxx……xxx……xxx

23. ***WII has prepared the plan for conservation and long term monitoring of sea turtles of the Nicobar Islands along with the leatherback sea turtles for a period of 10 years primarily. The conservation plan will be implemented in two phases. Phase1 involves monitoring and nesting the population tracking the movements, identification of high use areas in the breeding sites and non-breeding regions, determining foraging areas***

using stable isotopes, population genetic structure of leatherback turtles, assessing vulnerability of turtle nesting beaches and adoption of appropriate management strategies and multi stakeholders' involvement in the long-term conservation of sea turtles. Phase 2 of the conservation plan will develop effective site-specific actions for conservation of sea turtles.

24. WII has been identified as a scientific agency to prepare and implement conservation plans for leatherback turtles and saltwater crocodiles. In the case of Nicobar Megapod, coordinated and collaborative research will have better outcome and in the larger interest of the endemic species of Nicobar megapode.

25. ***For facilitating movement of wildlife between forest and the sea shore and for crossing the arboreal animals as well as for passage of snakes, crabs, crocodiles etc, safe wildlife corridors at 8 locations along the eastern side of the island connecting forest and seashore through via-ducts in the north south arterial road have been proposed and incorporated in the master plan. The locations of the proposed wildlife corridors i.e. via ducts have been selected based on the ground situation and inputs provided by ZSI and Department of Environment & Forest. The width of the corridor ranges from 250 meters to 1100 meters and the eastern side of the corridors via ducts towards the seashore would be maintained as green area and no development is proposed in the said areas.***

26. The port may place series of Ecological Marker Buoys for every 200 m along the proposed extended breakwater line. Also, Marker Booms may be connected in between the buoys. ***Such arrangement will clearly mark the 'AREA TO BE AVOIDED TO AID TURTLES', warn restriction of the navigational route, thereby neither ships nor boats can enter the 'TURTLE NESTING AREA'. It would protect the turtles from the port operation.***

27. Shoreline change: The observed trend of the shoreline at the proposed project location reveals that the shoreline remains with not noticeable change over a period of 5 years from 2015 to 2020. The shoreline analysis shows that the project site at port is surrounded with elevated hill promontories and rocky shores.

28. Dredging and Reclamation: The total quantity of capital dredging for the development of port is about 17.7 million cu.m. MIKE 21-PA (Particle Analysis) module was used to identify a suitable location for dumping the dredge spoil and to understand the dispersion pattern of disposed material after dumping. The maximum increase in seabed level over the disposal area is about 0.03 m at the proposed dumping location. Due to availability of deeper water depth of 600m the change in bed level at the proposed disposal location due to dumping is

insignificant. The plume of suspended sediment after dumping tends to spread towards northeast to an extent of 1 km with an increase in seabed level of <0.008 m. Therefore, the proposed disposal location is found to be more ideal and it will not cause any adverse impact on the proposed port development facilities and the marine environment.

29. xxx……xxx……xxx

30. Cargo handling with dust control measures: Since the proposed port is International Container Transshipment Terminal (ICTT), there will be no dusty cargo, dry bulk cargo such as coal, iron ore or hazardous cargo, etc. will be handled at port. All the vehicles engaged for construction should have valid pollution check certificate as per the motor vehicle act. Further, any regulations related to vehicle emission issued by local government should also be adhered to. Generators and machineries are to be serviced and maintained regularly to avoid generation of dust and other air pollutants. Oil Spill Contingent Management Plan includes Boom containment, Spray of dispersant and Skimmers. No hazardous industries are envisaged at GNI however the containers may contain hazardous cargo, ***Hazardous cargo shall be handled in accordance with 'The Manufacture, Storage and Import of Hazardous Chemicals Rules, ACT 1989'. Containers carrying hazardous cargo are labelled as Hazardous Cargos and stored at separate locations in the yard designated for the storage of hazardous cargo and a dedicated Nodal Officer will be appointed who will be responsible to check the compliance of the regulations from time to time. Hazardous waste like used oil, insecticide/ herbicides, paints, solvents, lubricants etc. would be generated from the project, the same hazardous substances will be securely stored at site before transportation, Double chamber Incinerator has been proposed to treat the possible hazardous waste generated from Port, Power plant and the Township.***

31 to 32 xxx……xxx……xxx

33. Land acquisition and R&R issues: Total land acquisition required for project is approximately 421.57 ha. Total families affected is 379 and total affected population is 1761.

34. Revised ICRZ recommendations have been received via letter 'No.PCCF/EPA/1/Vol-XVI/154, Andaman &Nicobar administration, Department of Environment and Forests, PCCF (CRZ&FC) / nodal officer, FCA&MS, A&NCZMA/ Van Sadan, Haddo, Port Blair, Dated 8th July, 2022.

35 xxx……xxx……xxx

36. Mangroves: ***The Mangrove Conservation and Management Plan for Great Nicobar Island has been prepared by the Department of Environment and Forests, A&N Administration.***

The mangrove conservation plan is aimed at restoration and restocking of the tsunami impacted mangrove areas besides enhancement/enrichment through plantations. The plan also aims at improving the diversity of mangroves, its richness and stand density through proper assessment of distribution and status of mangrove species found in Great Nicobar Island along with the locations. The conservation plan addresses the strategies to restore and revive the mangrove areas through ecological restoration and enrichment planting.

37. ***The Coral Conservation Plan prepared by ZSI addresses both, the conservation strategies for coral colonies around GNI as well as translocation strategies for ten (10) hectares of impacted corals. A total of 245 species of scleractinian corals under 53 genera and 15 families are recorded from seven sites including the Great Nicobar Island. No major coral reef exists within the work area of the project. However, scattered coral reefs are available at the peninsular part of the Galathea Bay. As part of the assessment for conservation and management of Coral reefs, the Coral cover required to be translocated from the proposed site is around 10 ha which includes around 20668 Coral colonies out of which approximately 16150 colonies will be translocated. The plan addresses the probable sites for translocation, the methodology, the coral colonies for transplantation, conservation and management of coral reefs both at the translocated sites, donor sites and other sites in Great Nicobar Islands.***

38. xxx……xxx……xxx

39. Employment Potential: The project around 6,939 persons directly and 10,408 persons would be employed by 2025, around 24,734 persons directly, 37,101 persons indirectly would be employed by 2040 and 51,423 persons directly and 77,135 persons indirectly would be employed by 2052. Generally, locals are employed by the contractor.

40. Public Hearing: Public Hearing was conducted on 27.01.2022 at Community Hall, Gram Panchayat, Campbell Bay, Great Nicobar.

41. ***Benefits of the Project: Strategic benefits:- Strong presence in Indian Ocean Region to counter the pressure being built by foreign powers growing presence. Capturing the Strategic location to develop a new Economic hub in India Ocean region. Improving connectivity with Indian mainland and other global cities. Socio-economic benefits: Promoting sustainable tourism. The proposed ICTT will allow India to participate in the regional and global maritime economy by becoming a major player in cargo transshipment. A Mixed-use***

urban development in the vicinity of these major infrastructure works will also be necessary to support quality of life for the residents that will generate and enable growth in the various economic sectors over time. This will require the development of simultaneous primary and secondary urban infrastructure networks such as roads, public transport, energy and electrical power, as well as water, wastewater, and storm water facilities and services, which will form the skeleton of the proposed township master plan. It is estimated that after the project is fully implemented, it has the potential to generate around 1,28,558 jobs opportunity. Socio-economic growth of local population. Development of social infrastructure supporting existing population and proposed population.

42. WII suggested that the project can be undertaken however more intensive assessment/ research is required on Leatherback Sea turtle and its movements to craft site-specific mitigation strategy and suggested 10-year road map to systematically implement mitigation measures. SACON and WII has provided 10-year plan to mitigate impacts on Nicobar Megapod.

43. EAC also noted that there are several other endemic flora and fauna and impact of the project on these species is mostly unknown. The EAC noted the scale of impacts the proposed project may have both on flora and fauna of GNI and native populations, however, considering the strategic nature of the integrated project as presented by the PP and taking into account the submission made by the project proponent had a detailed deliberation in its 306thmeeting during 22nd – 23rd August, 2022 and recommended the proposal for grant of Environmental and CRZ clearance with the specific conditions, as mentioned below, in addition to all standard conditions applicable for such projects:

44. The Ministry of Environment, Forest and Climate Change has considered the proposal based on the recommendations of the Expert Appraisal Committee (Infrastructure, CRZ and other Miscellaneous projects and other co-opted members of Infra-2 EAC, members of Thermal EAC and NDS Committee) and hereby decided to grant Environmental Clearance and CRZ Clearance for the "Integrated development of International Container Transhipment Terminal (ICTT)-14.2 Million TEU, Township & Area development and 450 MVA Gas and Solar based power plant in 16610 ha. Great Nicobar Islands, Nicobar District by M/s Andaman and Nicobar Islands Integrated Development Corporation Ltd" under the EIA Notification, 2006 and ICRZ Notification, 2019 as amended, subject to strict compliance of the following specific conditions, in addition to all standard conditions applicable for such projects.

SPECIFIC CONDITIONS

I. ***All the recommendations mentioned in the wildlife conservation plans and Tribal welfare plans below shall be implemented in time bound manner. The compliance to the recommendations as per schedule shall be submitted along with 6 monthly compliance reports to the regional office of MoEF&CC.***

A. ***Leatherback Sea Turtle:*** *Proposal submitted by Wildlife Institute of India (WII) was considered by the EAC and following recommendations are provided to ensure conservation of Leatherback along with other species of sea turtles such as Hawksbill, Green, Loggerhead and Olive Ridley in Andaman and Nicobar Islands with focus of Nicobar group of Islands. EAC has following specific recommendations-*

a. The budget estimated by WII needs to be revised as the project life-
cycle is for 30 years till year 2052, however, the proposal of WII is only for 10 years. Therefore, WII need to revise proposal for 30 years along with budgetary provisions and implementation timeline and submitted to PP within 15 days of the grant of EC. Based on the revised proposal sent by WII corresponding amount for first 10 years will be released by PP within 3 months of submission of proposal which would enable WII to undertake uninterrupted research and conservation interventions on Leatherback and other species of sea turtles such as Hawksbill, Green, Loggerhead and Olive Ridley. Accordingly, the Committee informed PP to revise the EMP provisions. The provision for WII would be over and above the cost required by forest department. The costing should include costs of additional resources such as human resource, vehicles, mechanized boats, 200 additional satellite tags and monitoring costs over entire lifecycle of the proposed project etc as stated below. Project tenure of WII should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not limited to 10 years. The financial allocation in the proposal of WII should be such that the satellite tagging studies can be started immediately and have adequate and uninterrupted financial resources to continue the conservation work on Leatherback Sea Turtles. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to WII. Project monitoring committee as stated in 3.10.3(VI) will review the project progress through biannual meetings and additional financial requirements in due course.

b. 20% of nesting population of Leatherback Sea Turtle or minimum 150 satellite tags (Argos-linked FastGPS Platform Terminal Transmitter with DIVE sensors), whichever is higher, to be deployed to Leatherback Sea Turtle in GNI and Nicobar Islands and Little Andaman in the first 5 years phase by WII. Of these 150 tags, minimum 50 tags to be deployed in the first year so that the sea turtle movement data will be available for the PP to monitor construction activity. For rest of the nesting individuals, flipper tags to be deployed.

c. *20 satellite tags each for Green Sea Turtle, Hawksbill Sea Turtle and Olive Ridley Sea Turtle to be deployed in the first 5 years phase.*
d. *Provision for 10 satellite tags for Loggerhead Sea Turtle should be made in case if nesting females are noticed in A&N*
e. *Considering the vast research area, additional manpower especially research associate and field assistants needs to be incorporated in the proposal of WII including dedicated units for Great Nicobar, Little Nicobar and Little Andaman*
f. *One additional mechanized engine Dingy for the inter-island movement including boatman, boat running and maintenance cost be included in the WII proposal. All three mechanized dingy (2 for forest dept and one for WII) to be exclusively dedicated to sea turtle research and monitoring*
g. *Holistic development will include data and recommendation from WII, ZSI, SACON and BSI studies in the deliberations and directions of the monitoring committee as stated in 3.10.3(VI) and plans maybe modified accordingly if found necessary in the interest of all species of sea turtles with focus of Leatherback Sea Turtle and other flora and fauna of GNI. Additional measures may be considered by the Committee if found essential.*
h. *Zero nest predation approach must be ensured by the state forest department to achieve highest possible survival of Leatherback, Hawksbill, Olive Ridley and Green Sea Turtle. Community based nest monitoring and protection programme should be initiated from year 2022 nesting season. The budget for the same will be submitted by state forest department to PP. This will be over and above the budget for WII proposal.*
i. *Domestic dog population control through sterilization to be explored with priority.*
j. *Accordingly, WII is advised to revise the proposal and implementation plan within 15 days and send the same to EAC and MoEFCC for record and to PP for release of first 10 years installment within three months.*
k. *A&NFD will ensure implementation of conservation measures as recommended by WII.*

B. ***Nicobar Megapod:*** *The endemic Nicobar Megapod is a keystone species of Nicobar group of islands. From the enclosure no 17 provided by PP it is clear that about 51 active nests of Nicobar Megapod are present within the proposed project areas of which appx 30 will be permanently destroyed. In this context, the PP has submitted two proposals towards understanding of habitat utilization and microhabitat and conservation of remaining population of this endemic species in the Nicobar region. The approach and methodology for both is similar in nature. However, WII alongside the population monitoring also suggested disease prevalence study. After careful consideration, EAC suggested SACON and WII in close collaboration will undertake comprehensive studies and conservation measures for endemic Nicobar Megapod. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not limited to 10 years. Accordingly, SACON and WII shall submit two full proposals to PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The SACON will undertake*

studies for population ecology, meta populations, disease surveillance and translocation of endemic Nicobar Megapod and WII will study population genetics and Satellite tagging studies. SACON and WII is advised to develop full proposals with sufficient budgetary provisions and timeline. Based on the revised proposal sent by SACON and WII corresponding amount for first 5 years will be released by PP within 3 months of submission of proposal which would enable SACON and WII to undertake uninterrupted research and conservation interventions on endemic Nicobar Megapod. A&NFD will ensure implementation of conservation measures as recommended by SACON and WII. This cost is over and above the cost required by A&NFD. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to SACON. Accordingly, the Committee informed PP to revise the EMP provisions.

C. ***Saltwater Crocodile:*** *PP submitted the proposal by WII and A&N State Forest Department towards addressing issue of saltwater water crocodile conservation and conflict mitigation. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052. Accordingly, WII and A&N Forest Department should revise the proposal with budget allocation and timeline and submit it to the PP with a copy to MoEFCC and EAC within 15 days from the grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to WII and A&N Forest Department for the study and conservation measures for Saltwater Crocodiles within 3 months from the grant of EC & CRZ Clearance. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to WII. Accordingly, the Committee informed PP to revise the EMP provisions*

D. ***Impact of invasive species on native flora:*** *To understand the impact and to develop prevention of invasives in to the wild, a specific action plan is required. Accordingly, the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by Botanical Survey of India (BSI) and submitted to the PP with a copy to MoEFCC and EAC within three months of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to BSI within three months from the grant of EC and CRZ clearance to undertake immediate work on this very important subject, develop robust guidelines in the first year and monitor the impact of invasives on native endemic and endangered flora as the project development progress. If any additional funds are required at a later stage or for post project development monitoring work, those will be made available by PP to BSI. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by BSI.*

E. ***Impact on inter-tidal flora and fauna:*** *The ZSI report emphasize rich biodiversity of the inter-tidal region of GNI.*

Several parts of this region will be either directly reclaimed or used for other infrastructure such as road on stilts, and other permissible activities within CRZ. Accordingly, the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by Zoological Survey of India (ZSI) and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to ZSI within three months from the grant of EC and CRZ clearance to undertake immediate work to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. ZSI should also document shift in the inter-tidal community with each phase of the project is being implemented so as to understand the impact and develop mitigation strategies. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by ZSI.

F. ***Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar:*** *For conservation of Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar the Committee suggested that a detailed proposal consistent with the holistic development plan for GNI i.e. till the completion of the final phase of the same in the year 2052 along with budgetary provisions shall be developed by SACON and submitted to the PP with a copy to MoEFCC and EAC within 15 days of grant of EC and CRZ clearance. The Committee direct PP for the release the first five years budget payment to SACON within three months from the grant of EC and CRZ clearance to undertake detailed baseline documentation, conservation intervention and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions. A&NFD will ensure implementation of conservation measures as recommended by SACON.*

G. Mangrove Restoration: *PP provided the Committee a proposal submitted by A&N forest department for the conservation and restoration of mangroves. EAC agreed to the proposal and directed PP to release the amount mentioned in the proposal to A&N state forest department within 3 months of grant of EC and CRZ.*

H. Coral translocation: Zoological Survey of India provided detailed plan for coral translocation with a budget of 55 Crore. EAC noted that the budget is only for 10 years while the project lifecycle is for 30 years. *It also does not include several components that will be necessary for this complex work. Accordingly, the Committee advised ZSI to submit revised proposal with budget provisions to PP with copy to Ministry and EAC. Committee also direct ZSI to include translocation of endangered Giant Clams (Tridacnasp) in the same proposal with necessary budget provisions. Project tenure should be consistent with the holistic development plan for GNI and thus will be till the completion of the final phase of the same in the year 2052 and not for 10 years. The Committee direct PP for the release the first five*

years budget payment to ZSI within three months from the grant of EC and CRZ clearance to undertake the uninterrupted work of preparation of new translocation sites and actual translocation of coral heads and giant clams (Tridacnasp) from 10 ha project impact areas as stated in the proposal before project work begins on ground. ZSI will maintain systematic data on translocated coral colonies with GPS tags to each colony to monitor its survival. The proposal may be finalized based on the EMP and consultation with PP. A&NFD will ensure implementation of conservation measures as recommended by ZSI.

I. Welfare of local tribal population of Shompen and Nicobaris: *The project activities shall not disturb Shompen tribe and their habitations. Clear demarcation of the land shall be done for specific purpose of land use in the vicinity of project area such that habitations of the tribal shall not be intervene. Budgetary provisions for the same shall be made in the EMP report and expenditure in this regard shall be maintained on records. For the protection and safety purpose of community, security & surveillance mechanism shall be in place with geo-fencing cum surveillance towers nearby Tribal settlements.*

*A**ll the considerations will be undertaken by Department of Tribal Welfare (DTW) as per the Andaman and Nicobar Islands (Protection of aboriginal Tribes) Regulation, 1956. (Commonly known as PAT Regulation), Policy on Shompen Tribes. Accordingly, the Committee suggested that a detailed proposal for 50 years along with budgetary provisions shall be developed by Department of Tribal Welfare (DTW) and submitted to the PP. The Committee direct PP for the release the first 10 years budget payment to DTW within three months from the grant of EC and CRZ clearance to undertake immediate work and to undertake the detailed baseline documentation and further monitoring of the same during entire implementation phase of the holistic development plan. Accordingly, the Committee informed PP to revise the EMP provisions.***

Other Specific Conditions

II. PP should construct all weather good quality two research stations within one year from the grant of EC and CRZ clearance (one each in Campbell Bay and Kamorta) with office space and accommodation facilities. Campbell station should have accommodation facility for 40 research team members (ten double occupancy rooms, and four dormitories) while Kamorta accommodation facility will be for 10 research team members (two double occupancy rooms, and two dormitories). PP will maintain at its own cost both the research stations for the entire project duration. The research station will be exclusively used and shared by WII, BSI, SACON and ZSI teams and other invited scientists. In the meantime, PP will make arrangements of accommodation of researchers at their own cost through the provisions provided in the respective budgets.

III. WII will be overall in-charge of the station and will appoint a focal person (through the funds allocated to them under various components) to oversee the smooth running of the above centers. WII

should make adequate financial provision for the same in their proposals under overall administrative costs.

IV. *After the completion of the project i.e. after 2052, the research station will be handed over to the A&N Forest Department and maintained by them and will be provided exclusively to the researchers involved with the biodiversity studies of the region and forest department staff for on ground conservation work.*

V. *PP will also separately provide funds to A&N forest department for complete oversee of the conservation and mitigation work, infrastructure and operation costs towards implementation of Leatherback Sea Turtle, Nicobar Megapod, Saltwater Crocodile management and other endemic flora and fauna conservation. Proposal for the same will be developed by A&N Forest Department. This amount will be over and above the cost recommended for WII (Leatherback Sea Turtle, Salt-water Crocodile related work and Nicobar Megapod); SACON (Nicobar Megapod, Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar); Zoological Survey of India (for coral and Giant Clam translocation and restoration work, inter-tidal flora and fauna work); Botanical Survey of India (for invasive species related work); A&N Forest department (for mangrove restoration and supervision of work of WII, SACON, BSI and ZSI); and A&N Tribal Welfare Department (for welfare, protection and other measure for Shompen and Nicobarese). All these funds will be provided by the PP as stated in the specific conditions and within stated time stipulated from sr. no A to I upon receiving the EC and CRZ so that respective agencies can initiate uninterrupted conservation action, research and monitoring while the project is being implemented.*

Monitoring Committee

VI. *PP will establish three independent Monitoring Committees to oversee the implementation of Environmental Management Plan. Each committee must meet twice a year and undertake one site visit each year. The committees will take review of progress of work of respective areas and implementation of mitigation measures and advise further on its implementation. Minutes of the meetings, site visit reports by these committees and recommendation of the same will be included in the implementation plans of each institute and PP. Proceedings of each Committee will be uploaded on the A&N state forest department website under a specific link provide to the project at GNI. One committee will be to oversee the pollution related matters and measures and its implementation. Second committee is to oversee the implementation of biodiversity related conditions. Third committee will oversee welfare and issues related to Shompen and Nicobarese. Following specific composition of the committees are stipulated. The tenure of the committee will be till the completion of final phase of Holistic Development Plan. However, tenure of every individual expert in each of the Committee shall not exceed three years, and accordingly committees should be reconstituted every three years. The budget allocation of 10 Crore is provided to meet the expanses of the committee meetings. For the first three years following:*

i. ***Committee to oversee pollution related matters*** *– The Committee will be chaired by Member Secretary of State Pollution Control Board. The other members of the committee should include representative from CPCB, one national reputed expert each in the field of air, noise, water, solid waste and soil pollution. The committee will also include representative of Chief Wildlife Warden not below the rank of CF, representative of PP, representative of Niti Aayog, representative of collector, representative of disaster management unit, representative from Central/State-UT Ground Water Authority and one member of EAC-CRZ and Infra 1 Committee.*

ii. ***Committee to oversee biodiversity related matters*** *– The Committee will be chaired by PCCF (WL) A & N Forest Department. The other members of the committee must include directors of WII, SACON, ZSI, and Botanical Survey of India, representative of PP, representative of Niti Aayog, representative of collector, Director, CSIR-National Botanical Research Institute, two independent and nationally recognized scientists in the field of terrestrial and marine biodiversity, Director-Deep Sea Mission of GoI and one member of EAC-CRZ and Infra 1 Committee with biodiversity expertise.*

iii. ***Committee to oversee welfare and issues related to Shompen and Nicobarese****- The Committee will be chaired by the Collector. The other members of the committee should include Director - A & N Tribal Welfare Department, PCCF and HoFF-A&N, Director of department of health, two independent and nationally reputed individual experts on Shompen and Nicobarese, representative of PP, representative of Niti Aayog, representative of A&N Administration and one member of EAC-CRZ and Infra 1 Committee.*

VII. ***Western Flank of the Galathea Bay****: Along the western flank of Galathea Bay no development will be allowed in Phase 1 and 2 of the projects except defence related infrastructure (pocket 10 in the master plan) or any activity that is strategic and national defence point of view important in nature. A buffer of 500 meters from HTL on both the sides of the flank shall be maintained in any case. Infrastructure related to Gas-based power plant as shown in the development plan (pocket 9) will be allowed. Institutional areas marked in pocket 9 and 10 will not be allowed at this location. It needs to be shifted within pocket 1 to 7. Tourism will not be permitted along the western flank of Galathea Bay in any phases. Pemayya Bay and all other Leatherback nesting sites on the western parts of GNI must remain no development zones as these sites are likely to be used by Leatherback Sea Turtles as alternate sites due to impact of ICTT at Galathea Bay. All major nesting beaches in Great Nicobar Islands including Alexandria Bay, Casuarina Bay, Pemayya Bay, Dogmar will be protected by establishing protection camp, sea turtle hatcheries and kept under 24X7 surveillance and monitoring from nesting till hatching season each year. No development and tourism will be allowed on these shores. Besides, in GNI nesting of Leatherback turtles also have been reported in East of Indira point, West of Indira Point, Koshindon, Laxmi Nagar, North of Alexandria, South of Alexandria, North of Dogmar, South of Dogmar, Pulo Bed, PuloKunji, re Pinsuot, Renhong, Safed Balu, Patatiyo and South of Galathea. These sites will be kept disturbance free with no tourism activity or infrastructure*

development. WII studies will provide further insight in to it and can be further incorporated in the management plan of Leatherback and other sea turtles at GNI.

VIII. *No withdrawal of water from Galathea River is permitted. Galathea River must remain free of any recreational activity. No ground withdrawal of freshwater will be permitted. Drinking water will be exclusively augmented through two reservoirs proposed along with capacity augmentation of existing freshwater storage facilities at GNI.*

IX. *Construction activity shall be carried out strictly according to the provisions of the ICRZ Notification, 2019. No construction works other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.*

X. *All the recommendations and conditions specified by the Andaman Nicobar Coastal Zone Management Authority (ANCZMA) vide letter dated 8th July, 2022 shall be complied with.*

XI. *Consent to Establish/Operate for the project shall be obtained from the State Pollution Control Board as required under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.The project proponent shall comply with the air pollution mitigation measures as submitted.*

XII. *The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.*

XIII. *Necessary approvals to be taken during implementation and commissioning from statutory bodies concerned.*

XIV. *Shoreline should not be disturbed due to dumping. Periodical study on shore line changes and coastal geomorphology shall be conducted and mitigation measures like living shoreline carried out in line with conservation plan. The details shall be submitted along with the six monthly monitoring report to the regional office of MoEFCC.*

XV. *No trees will be cut at one go. These will be done in phased manner and depending on the progress of the work on an annual basis. Plan for cutting of trees should be developed by PP and got approved from state forest department. All trees which are exceptionally tall and old in age shall be safeguarded, as far as possible. A&NFD will mark all such trees and submit the species wise list to the Ministry and EAC and the regional office of MoEFCC before the infrastructure activities take place.*

XVI. *Trees with nesting holes of endemic owls to be identified and geo-tagged with the help from SACON. Such trees shall be safeguarded, as far as possible.*

XVII. *Some of the township clusters seems to have several defence installations abutted by commercial and tourism infrastructure thus PP shall obtain the recommendations from the Ministry of Defence and as suggested by them buffer zone will be maintained in between the defence installation and township cluster, commercial and tourism infrastructure.*

XVIII. *The arterial road shall be developed in a phased matter. In the first phase, 30 m ROW shall be utilized and developed and the balance 25 m ROW shall be reserved for future expansion for Bus Rapid Transit (BRT) or Light Rail Transit (LRT). Need for development of remaining 25 m RoW will be reviewed by the project monitoring committee on biodiversity before its construction and after full capacity utilization of 30m RoW and evaluation by CSIR-Central Road Research Institute (CRRI). During that period the 25 m RoW shall be maintained in "as it is" condition.*

XIX. *In the western coast of Galathea Bay excluding the defence installation and power plant, a buffer area of 500 mts from high tide line around Pemayya may be declared as Coastal Protection Area with no development within the area.*

XX. *Safe wildlife corridors at eight (8) locations along the eastern side of the island connecting forest and seashore through via-ducts (elevated crossings) on the north south arterial road shall be provided. In addition to wildlife corridors, culverts and canopy crossings will be provided at appropriate locations for movement of wildlife. The chainage wise locations of the wildlife corridors has been identified by ZSI and Department of Environment & Forest. The width of the corridor ranges from 250 m to 1100 m and the eastern side of the corridors towards the seashore would be maintained as green area. SACON and WII may further suggest additional corridors and canopy crossings based on the data available with them and proposed studies. Representative of A&FFD will physically monitor that the same are implemented as stipulated in the EIA-EMP.*

XXI. *The Mangrove Conservation and Management Plan for Great Nicobar Island has been prepared by the Department of Environment and Forests, A&N Administration with the budget of Rs.7.5 crores for mangrove conservation and management as part of EMP. PP shall strictly implement the same. The conservation plan shall adhere the strategies to restore and revive the mangrove areas through ecological restoration and redensification.*

XXII. *No dredging activity should be taken in Rocky areas to avoid any type of Disaster. Dredge management plan with automatic monitoring sensors in port area, reclamation area to contain the impact of dredge spoil on marine ecosystem to be developed and to be overseen by nationally reputed institution such as NIOT or NIO.*

XXIII. *All illumination for ICTT, Gas-based power plant and other infrastructure adjacent to sea turtle nesting areas must be in conformity with international standards and sea turtle friendly. No other type of illumination would be permitted. WII will develop illumination policy for the entire infrastructure and PP will ensure its implementation.*

XXIV. *Dredging, sea reclamation activity for ICTT should take into account nesting and hatching time of sea turtles. Also it should be strictly following Dredging protocol and operational protocol as prepared by IUCN experts and Species Survival Commission's Marine Turtle Specialist Group and revision, scrutiny, and follow-up of the processing time to time as per the expert opinion.*

XXV. Movement of the ships within Galathea Bay once the ICTT is operational should take into account the movement of Leatherback Turtles. WII satellite data will aid ICTT operators to monitor movement and accordingly plan operations to avoid sea turtle collision risks. One scientist from WII and representative of A&NFD will be on boarded by ICTT operators for the environment monitoring cell as a part of their standard operating procedures. Adequate financial provisions be made by ICTT to meet the costs of both environmental cell and requirements of WII scientists including long term satellite tagging of Leatherback Sea Turtles.

XXVI. Installation of deflectors to be done to clear turtles from the path of the suctioning equipment. Underwater silt/sediment dispersal preventing curtains to be deployed to avoid deposition of silt on sandy shores.

XXVII. PP must explore and use non-conventional sources of energy in the form of solar, wind or tidal energy to bridge the deficit, if needed.

XXVIII. A & N administration should establish within six month a Special Medical Unit along with state of art infrastructure, medicines and qualified medical staff at GNI to monitor human induced diseases due to expected influx of large population both domestic and international. All mechanism must be in place to ensure that Shompen and Nicobarese are not exposed to the risks related to introduced diseases. SOP and Guidelines will be developed by the Special Medical Unit for the same within 6 months from the grant of EC&CRZ. A provision of 100 Crore is recommended and PP is advised to accordingly revise EMP and submit the same to the Ministry and EAC within 30 days from the grant of EC and CRZ. PP is also directed to make these funds available for A&N Administration within 3 months from grant of EC and CRZ. Any additional funds required will be provided through special provisions by A&N Administration.

XXIX. Forest department will establish hatcheries to ensure minimum 90% survival of hatchlings with onset of coming nesting season for Leatherback and other sea turtles, as presented during the EAC. Systematic data will be maintained for the same and reported to the regional office of the Ministry on annual basis.

XXX. The existing island human population should be protected and if needed, ensure to provide the compensation instead of their agricultural/ residential Lands. The census of local as well as population from mainland should be documented.

XXXI. Optimum number (minimum 2) of road side monitors (CAAQMS) at appropriate distance from the kerb of the road shall be fixed following the CPCB criteria to monitor biogenic VOCs, NOx and PM2.5.

XXXII. Disposal of hazardous waste material would not be allowed in GNI including batteries, pesticides, organochlorines etc.

XXXIII. The waste generated during construction and operation period of the project shall be managed as per the prevailing regulations on management of solid waste, plastic waste, e-waste, bio-medical waste, C&D waste and hazardous wastes issued in 2016 by the Ministry. The waste shall be segregated and should be

recycled/reused as per the regulatory provisions. No Municipal Landfills will be allowed in GNI. All rejects after the recycle/reuse of waste must be transported to mainland for its safe disposal. A separate application for TSDF shall be made to the Ministry in case of establishment of TSDF at GNI.

XXXIV. For the first 5 years (Phase-I) of the project, power demand shall be met through Diesel Generators (DG). Phase I of project shall include construction and commissioning of 50MVA gas based power plant and floating solar power plant in water reservoirs. The combined installed capacity to 90 MVA through diesel and gas based power will further augmented by 20 MVA through first phase of solar power from 6th year. During 10-15 years (Phase-II), the power generation shall be augmented to 220 MVA by increasing the installed capacity of Gas based power plant to 150 MVA and increasing the Solar power generation by additional 50 MVA taking total Solar power generation to 70 MVA. During 15 – 30 years (Phase III) the Gas based power plant capacity shall be increased to 300 MVA and Solar power plant shall be augmented to 100 MVA.

XXXV. Additional storage facility for 7000 kl fuel, 4 ha of additional land at GNI has been provided considering the existing fuel storage capacity is inadequate to cater to increased fuel demand during construction. The area for the storage and hazard mitigation measures as stated in the revised EIA-EMP be followed strictly.

XXXVI. All the facilities such as port, powerplant and township etc., to be designed to withstand seismic and Tsunami hazard and detailed plan should be submitted to monitoring committee.

XXXVII. As stated by PP, a total number of 102 active mounds of Nicobar Megapode and their locations in GNI have been mapped by ZSI. Out of the 102 mounds, only 19 mounds are falling in the project area. Further, it is seen that several mounds are falling in the green area of the development and the same will be protected. SACON will thoroughly map exact locations of all such mounds falling in the green areas of development and A&N forest department will ensure that these are not disturbed during project development and accordingly advised to define safe buffer areas as advised by SACON for each mount and to be designated as NDZs.

XXXVIII. A&N Administration should develop tourism policy for GNI considering ecological sensitivities of the island. The tourism development will be guided by the GNI Tourism Policy. PP has to ensure that tourism development is consistent to this policy.

XXXIX. PP will establish a modern nature and science information center at GNI in consultation with National Council of Science Museum, Kolkatta (NCSM) an autonomous society under the Ministry of Culture, Government of India. PP is advised to write to NCSM seeking further assistance and develop a full proposal within 3 months from grant of EC&CRZ. All costs necessary for developing the center will be made available by PP. The center can also act as capacity building for operators of various infrastructure components of GNI holistic development. Accordingly, the Committee informed PP to revise the EMP provisions.

XL. Use of vehicles or any recreational means on Sea Turtle nesting beaches will be strictly prohibited. Such beaches will be clearly marked as no-use zones by A&NFD. These will also be included in the Tourism Policy of GNI.

XLI. ***Three new sanctuaries are notified by A&N administration as follows towards mitigation measures. It will be ensured that these remains as sanctuaries with no further scope of denotification for any purposes.***

- ***a. Leatherback turtle sanctuary of 13.75 sq.km at Little Nicobar Island***
- ***b. The entire Menchal Island of 1.29 sq.km as a Megapode Sanctuary.***
- ***c. The entire Meroe Island of 2.73 sq.km as a Coral Sanctuary.***

XLII. ***The recommendation from Standing Committee of NBWL under the Wildlife (Protection) Act, 1972 should be obtained, if applicable.***

STANDARD CONDITIONS:

A. International Container Transhipment Terminal (ICTT)

I. Statutory compliance

(i) Construction activity shall be carried out strictly according to the provisions of ICRZ Notification, 2019 and the Coastal Zone Management Plan as drawn up by the State/UT Government. No construction work other than those permitted in Coastal Regulation Zone Notification shall be carried out in Coastal Regulation Zone area.

(ii) All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Coast Guard, Civil Aviation Department shall be obtained, as applicable by project proponents from the respective competent authorities.

II. Air quality monitoring and preservation:

(i) *The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g. PM10 and PM2.5 in reference to PM emission, and SO2 and NOx in reference to SO2 and NOx emissions) within and outside the project area at least at four locations, covering upwind and downwind directions.*

(ii) *Appropriate Air Pollution Control (APC) system shall be provided for all the dust generating points including fugitive dust from all vulnerable sources, so as to comply prescribed emission standards.*

(iii) *Shrouding shall be carried out in the work site enclosing the dock/proposed facility area. This will act as dust curtain as well achieving zero dust discharge from the site. These curtain or shroud will be immensely effective in restricting disturbance from wind in affecting the dry dock operations, preventing waste dispersion, improving working conditions through provision of shade for the workers.*

(iv) *Dust collectors shall be deployed in all areas where blasting (surface cleaning) and painting operations are to be carried out, supplemented by stacks for effective dispersion.*

(v) *The Vessels shall comply the emission norms prescribed from time to time.*

(vi) *Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.*

III. Water quality monitoring and preservation:

(i) The Project proponent shall ensure that no creeks or rivers are blocked due to any activities at the project site and free flow of water is maintained.

(ii) Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality. Silt curtains shall be used to contain the spreading of suspended sediment during dredging within the dredging area.

(iii) No ships docking at the proposed project site will discharge its on-board waste water untreated in to the estuary/ channel. All such wastewater load will be diverted to the proposed Effluent Treatment Plant of the project site.

(iv) Measures should be taken to contain, control and recover the accidental spills of fuel and cargo handle.

(v) Total fresh water use shall not exceed the proposed requirement as provided in the project details. Prior permission from competent authority shall be obtained for use of fresh water.

(vi) A certificate from the competent authority for discharging treated effluent/ untreated effluents into the Public sewer/ disposal/drainage systems along with the final disposal point should be obtained.

(vii) No diversion of the natural course of the river shall be made without prior permission from the Ministry of Water resources.

(viii) All the erosion control measures shall be taken at water front facilities. Earth protection work shall be carried out

to avoid erosion of soil from the shoreline/boundary line from the land area into the marine water body.

IV. Noise monitoring and prevention:

(i) Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.

(ii) Noise from vehicles, power machinery and equipment on-site should not exceed the prescribed limit. Equipment should be regularly serviced. Attention should also be given to muffler maintenance and enclosure of noisy equipments.

(iii) Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.

(iv) The ambient noise levels should conform to the standards prescribed under E(P)A Rules, 1986 viz. 75 dB(A) during day time and 70 dB(A) during night time.

V. Energy Conservation measures:

(i) Provide solar power generation on roof tops of buildings, for solar light system for all common areas, street lights, parking around project area and maintain the same regularly;

(ii) Provide LED lights in offices and project areas.

VI. Waste management:

(i) Shoreline should not be disturbed due to dumping. Periodical study on shore line changes shall be conducted and mitigation carried out, if necessary. The details shall be submitted along with the six monthly monitoring reports.

(ii) Necessary arrangements for the treatment of the effluents and solid wastes must be made and it must be ensured that they conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and under the Environment (Protection) Act, 1986.

(iii) The solid wastes shall be managed and disposed as per the norms of the Solid Waste Management Rules, 2016.

(iv) Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.

(v) A certificate from the competent authority handling municipal solid wastes should be obtained, indicating the

existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project.

(vi) Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.

(vii) Oil spill contingency plan shall be prepared and part of DMP to tackle emergencies. The equipment and recovery of oil from a spill would be assessed. Guidelines given in MARPOL and Shipping Acts for oil spill management would be followed. Mechanism for integration of terminals oil contingency plan with the overall area contingency plan under the co-ordination of Coast should be covered.

VII. Green Belt:

(i) Green belt shall be developed in area as provided in project details with a native tree species in accordance with CPCB guidelines.

(ii) Top soil shall be separately stored and used in the development of green belt.

VIII. Marine Ecology:

(i) Dredging shall not be carried out during the fish breeding and spawning seasons.

(ii) Dredging, etc shall be carried out in the confined manner to reduce the impacts on marine environment.

(iii) The dredging schedule shall be so planned that the turbidity developed is dispersed soon enough to prevent any stress on the fish population.

(iv) A detailed marine biodiversity management plan shall be prepared through the NIO or any other institute of repute on marine, brackish water and fresh water ecology and biodiversity and submitted to and implemented to the satisfaction of the State Biodiversity Board and the CRZ authority. The report shall be based on a study of the impact of the project activities on the intertidal biotopes, corals and coral communities, molluscs, sea grasses, sea weeds, sub-tidal habitats, fishes, other marine and aquatic micro, macro and mega flora and fauna including benthos, plankton, turtles, birds etc. as also the productivity. The data collection and impact assessment shall be as per standards survey methods and include underwater photography.

(v) Marine ecology shall be monitored regularly also in terms of sea weeds, sea grasses, mudflats, sand dunes, fisheries, echinoderms, shrimps, turtles, corals, coastal vegetation, mangroves and other marine biodiversity components including all micro, macro and mega floral and faunal components of marine biodiversity.

(vi) *The project proponent shall ensure that water traffic does not impact the aquatic wildlife sanctuaries that fall along the stretch of the river.*

B. Township & Area development

I. Statutory compliance:

(i) *The project proponent shall obtain all necessary clearance/ permission from all relevant agencies including town planning authority before commencement of work. All the construction shall be done in accordance with the local building byelaws.*

(ii) *The approval of the Competent Authority shall be obtained for structural safety of buildings due to earthquakes, adequacy of firefighting equipment etc. as per National Building Code including protection measures from lightening etc.*

(iii) *The project proponent shall obtain forest clearance under the provisions of Forest (Conservation) Act, 1980, in case of the diversion of forest land for non-forest purpose involved in the project.*

(iv) *The project proponent shall obtain Consent to Establish/Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/Committee.*

(v) *The project proponent shall obtain the necessary permission for drawl of ground water/surface water required for the project from the competent authority.*

(vi) *All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department shall be obtained, as applicable, by project proponents from the respective competent authorities.*

(vii) *The provisions of the Solid Waste Management Rules, 2016, e-Waste (Management) Rules, 2016, and the Plastics Waste Management Rules, 2016, shall be followed.*

(viii) *The project proponent shall follow the ECBC/ECBC-R prescribed by Bureau of Energy Efficiency, Ministry of Power strictly.*

II. Air quality monitoring and preservation:

(i) *Notification GSR 94(E) dated 25.01.2018 of MoEF&CC regarding Mandatory Implementation of Dust Mitigation Measures for Construction and Demolition Activities for projects requiring Environmental Clearance shall be complied with.*

(ii) *A management plan shall be drawn up and implemented to contain the current exceedance in ambient air quality at the site.*

(iii) *The project proponent shall install system to carryout Ambient Air Quality monitoring for common/criterion parameters relevant to the main pollutants released (e.g.*

PM10 and PM2.5) covering upwind and downwind directions during the construction period.

(iv) Diesel power generating sets proposed as source of backup power should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel. The location of the DG sets may be decided with in consultation with State Pollution Control Board.

(v) Construction site shall be adequately barricaded before the construction begins. Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3-meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murram and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site.

(vi) Sand, murram, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.

(vii) Wet jet shall be provided for grinding and stone cutting.

(viii) Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.

(ix) All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Management Rules 2016.

(x) The diesel generator sets to be used during construction phase shall be low sulphur diesel type and shall conform to Environmental (Protection) prescribed for air and noise emission standards.

(xi) The gaseous emissions from DG set shall be dispersed through adequate stack height as per CPCB standards. Acoustic enclosure shall be provided to the DG sets to mitigate the noise pollution. Low sulphur diesel shall be used. The location of the DG set and exhaust pipe height shall be as per the provisions of the Central Pollution Control Board (CPCB) norms.

(xii) For indoor air quality the ventilation provisions as per National Building Code of India.

III. Water quality monitoring and preservation:

(i) The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site, on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water.

(ii) Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.

(iii) *Total fresh water use shall not exceed the proposed requirement as provided in the project details.*

(iv) *The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.*

(v) *A certificate shall be obtained from the local body supplying water, specifying the total annual water availability with the local authority, the quantity of water already committed, the quantity of water allotted to the project under consideration and the balance water available. This should be specified separately for ground water and surface water sources, ensuring that there is no impact on other users.*

(vi) *At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.*

(vii) *Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc and other for supply of recycled water for flushing, landscape irrigation, car washing, thermal cooling, conditioning etc. shall be done.*

(viii) *Use of water saving devices/fixtures (viz. low flow flushing systems; use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan.*

(ix) *Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.*

(x) *Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.*

(xi) *The local bye-law provisions on rain water harvesting should be followed. If local bye-law provision is not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Byelaws, 2016. Rain water harvesting recharge pits/storage tanks shall be provided for ground water recharging as per the CGWB norms.*

(xii) *A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority.*

(xiii) *All recharge should be limited to shallow aquifer.*

(xiv) *No ground water shall be used during construction phase of the project.*

(xv) *Any ground water dewatering should be properly managed and shall conform to the approvals and the guidelines of the CGWA in the matter. Formal approval shall be taken from the CGWA for any ground water abstraction or dewatering.*

(xvi) *The quantity of fresh water usage, water recycling and rainwater harvesting shall be measured and recorded to monitor the water balance as projected by the project*

proponent. The record shall be submitted to the Regional Office, MoEF&CC along with six monthly Monitoring reports.

(xvii) Sewage shall be treated in the STP with tertiary treatment. The treated effluent from STP shall be recycled/re-used for flushing, AC make up water and gardening. As proposed, no treated water shall be disposed in to municipal drain.

(xviii) No sewage or untreated effluent water would be discharged through storm water drains.

(xix) Onsite sewage treatment of capacity of treating 100% waste water to be installed. The installation of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the Ministry before the project is commissioned for operation. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per statutory norms notified by Ministry of Environment, Forest and Climate Change. Natural treatment systems shall be promoted.

(xx) Periodical monitoring of water quality of treated sewage shall be conducted. Necessary measures should be made to mitigate the odour problem from STP.

(xxi) Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organization (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.

IV. Noise monitoring and prevention:

i. Ambient noise levels shall conform to residential area/commercial area/industrial area/silence zone both during day and night as per Noise Pollution (Control and Regulation) Rules, 2000. Incremental pollution loads on the ambient air and noise quality shall be closely monitored during construction phase. Adequate measures shall be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB / SPCB.

ii. Noise level survey shall be carried as per the prescribed guidelines and report in this regard shall be submitted to Regional Officer of the Ministry as a part of six-monthly compliance report.

iii. Acoustic enclosures for DG sets, noise barriers for ground-run bays, ear plugs for operating personnel shall be implemented as mitigation measures for noise impact due to ground sources.

V. Energy Conservation measures:

i. Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC.

ii. Outdoor and common area lighting shall be LED.

iii. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.

iv. *Energy conservation measures like installation of CFLs/ LED for the lighting the area outside the building should be integral part of the project design and should be in place before project commissioning.*
v. *Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.*
vi. *Solar power shall be used for lighting in the apartment to reduce the power load on grid. Separate electric meter shall be installed for solar power. Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.*

VI. Waste Management:

i. *A certificate from the competent authority handling municipal solid wastes, indicating the existing civic capacities of handling and their adequacy to cater to the M.S.W. generated from project shall be obtained.*
ii. *Disposal of muck during construction phase shall not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.*
iii. *Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. Solid waste shall be segregated into wet garbage and inert materials.*
iv. *Organic waste compost/ Vermiculture pit/ Organic Waste Converter within the premises with a minimum capacity of 0.3 kg /person/ day must be installed.*
v. *All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.*
vi. *Any hazardous waste generated during construction phase, shall be disposed off as per applicable rules and norms with necessary approvals of the State Pollution Control Board.*
vii. *Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include Fly Ash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.*
viii. *Fly ash should be used as building material in the construction as per the provision of Fly Ash Notification of September, 1999 and amended as on 27th August, 2003 and 25th January, 2016. Ready mixed concrete must be used in building construction.*
ix. *Any wastes from construction and demolition activities related thereto shall be managed so as to strictly conform to the Construction and Demolition Waste Management Rules, 2016.*

x. *Used CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/ rules of the regulatory authority to avoid mercury contamination.*

VII. Green Cover:

i. *A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide canopy cover are desirable. Water intensive and/or invasive species should not be used for landscaping.*

ii. *Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.*

VIII. Transport

i. *A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.*

a. *Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.*
b. *Traffic calming measures.*
c. *Proper design of entry and exit points.*
d. *Parking norms as per local regulation.*

ii. *Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to applicable air and noise emission standards be operated only during non-peak hours.*

iii. *A detailed traffic management and traffic decongestion plan shall be drawn up to ensure that the current level of service of the roads within a 05 kms radius of the project is maintained and improved upon after the implementation of the project. This plan should be based on cumulative impact of all development and increased habitation being carried out or proposed to be carried out by the project or other agencies in this 05 Kms radius of the site in different scenarios of space and time and the traffic management plan shall be duly validated and certified by the State Urban Development department and the P.W.D./competent authority for road augmentation and shall also have their consent to the implementation of components of the plan which involve the participation of these departments.*

C. 450 MVA Gas and Solar based power plant.

I. Statutory Compliance

i. Part C of Schedule II of Municipal Solid Wastes Rules, 2016 dated 08.04.2016 as amended from time to time shall be complied for power plants based on Municipal Solid Waste.
ii. The recommendation from Standing Committee of NBWL under the Wildlife (Protection) Act, 1972 should be obtained, if applicable.
iii. No Objection Certificate from Ministry of Civil Aviation be obtained for installation of requisite chimney height and its siting criteria for height clearance.
iv. Groundwater shall not be drawn during construction of the project. In case, groundwater is drawn during construction, necessary permission be obtained from CGWA.

II. Air quality monitoring and Management:

i. Stacks of prescribed height shall be provided with continuous online monitoring instruments for SOX, NOx and Particulate Matter as per extant rules.
ii. Exit velocity of flue gases shall not be less than 20-25 m/s. Mercury emissions from stack shall also be monitored periodically.
iii. Continuous Ambient Air Quality monitoring system shall be set up to monitor common/criteria pollutants from the flue gases such as PM10, PM2.5, SO2, NOXwithin the plant area at least at one location. The monitoring of other locations (at least three locations outside the plant area covering upwind and downwind directions at an angle of 120° each) shall be carried out manually.
iv. Appropriate Air Pollution Control measures (DEs/DSs) be provided at all the dust generating sources including sufficient water sprinkling arrangements at various locations viz., roads, excavation sites, crusher plants, transfer points, loading and unloading areas, etc.

III. Noise pollution and its control measures:

i. The Ambient Noise levels shall meet the standards prescribed as per the Noise Pollution (Regulation and Control) Rules, 2000.
ii. Persons exposed to high noise generating equipment shall use Personal Protective Equipment (PPE) like earplugs/ear muffs, etc.
iii. Periodical medical examination on hearing loss shall be carried out for all the workers and maintain audiometric record and for treatment of any hearing loss including rotating to non-noisy/less noisy areas.

IV Human Health Environment:

i. Bi-annual Health check-up of all the workers is to be conducted. The study shall take into account of chronic exposure to noise which may lead to adverse effects like increase in heart rate and blood pressure, hypertension and peripheral vasoconstriction and thus increased peripheral vascular resistance. Similarly, the

study shall also assess the health impacts due to air polluting agents.

ii. *Baseline health status within study area shall be assessed and report be prepared. Mitigation measures should be taken to address the endemic diseases.*

iii. *Impact of operation of power plant on agricultural crops, large water bodies (as applicable) once in two years by engaging an institute of repute. The study shall also include impact due to heavy metals associated with emission from power plant.*

iv. *Sewage Treatment Plant shall be provided for domestic wastewater.*

V. Risk Mitigation and Disaster Management:

i. *Storage facilities for auxiliary liquid fuel such as LDO and HFO/LSHS shall be made as per the extant rules in the plant area in accordance with the directives of Petroleum & Explosives Safety Organisation (PESO). Sulphur Content in the liquid fuel should not exceed 0.5%.*

ii. *Ergonomic working conditions with First Aid and sanitation arrangements shall be made for the drivers and other contract workers during construction phase.*

iii. *Safety management plan based on Risk Assessment shall be prepared to limit the risk exposure to the workers within the plant boundary.*

iv. *Regular mock drills for on-site emergency management plan and Integrated Emergency Response System shall be developed for all kind of possible disaster situations.*

D Public hearing and human health issues:

(i) The work space shall be maintained as per international standards for occupational health and safety with provision of fresh air respirators, blowers, and fans to prevent any accumulation and inhalation of undesirable levels of pollutants including VOCs.

(ii) Workers shall be strictly enforced to wear personal protective equipments like dust mask, ear muffs or ear plugs, whenever and wherever necessary/ required. Special visco-elastic gloves will be used by labour exposed to hazards from vibration.

(iii) In case of repair of any old vessels, excessive care shall be taken while handling Asbestos & Freon gas. Besides, fully enclosed covering should be provided for the temporary storage of asbestos materials at site before disposal to CTSDF.

(iv) Safety training shall be given to all workers specific to their work area and every worker and employee will be engaged in fire hazard awareness training and mock drills which will be conducted regularly. All standard safety and occupational hazard measures shall be implemented and monitored by the concerned officials to prevent the

(v) occurrence of untoward incidents/ accidents.

(vi) Emergency preparedness plan based on the Hazard identification and Risk Assessment (HIRA) and Disaster Management Plan shall be implemented.

(vii) *Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project.*

(viii) *Occupational health surveillance of the workers shall be done on a regular basis.*

E. Environment Responsibility:

(i) *The company shall have a well laid down environmental policy duly approved by the Board of Directors. The environmental policy should prescribe for standard operating procedures to have proper checks and balances and to bring into focus any infringements/deviation/violation of the environmental / forest /wildlife norms/ conditions. The company shall have defined system of reporting infringements / deviation / violation of the environmental / forest / wildlife norms / conditions and / or shareholders / stake holders. The copy of the board resolution in this regard shall be submitted to the MoEF&CC as a part of six-monthly report.*

(ii) *Action plan for implementing EMP and environmental conditions along with responsibility matrix of the company shall be prepared and shall be duly approved by competent authority. The year wise funds earmarked for environmental protection measures shall be kept in separate account and not to be diverted for any other purpose. Year wise progress of implementation of action plan shall be reported to the Ministry/Regional Office along with the Six Monthly Compliance Report.*

(iii) *Self-environmental audit shall be conducted annually. Every three years third party environmental audit shall be carried out.*

F. Miscellaneous:

(i) *The project proponent shall make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the District or State, of which one shall be in the vernacular language within seven days and in addition this shall also be displayed in the project proponent's website permanently.*

(ii) *The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.*

(iii) *The project proponent shall upload the status of compliance of the stipulated environment clearance conditions, including results of monitored data on their website and update the same on half-yearly basis.*

(iv) *The project proponent shall submit six-monthly reports on the status of the compliance of the stipulated environmental conditions on the website of the ministry of Environment, Forest and Climate Change at environment clearance portal.*

(v) *The project proponent shall submit the environmental statement for each financial year in Form-V to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently and put on the website of the company.*

(vi) *The criteria pollutant levels namely; PM2.5, PM10, SO2, NOx (ambient levels) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.*

(vii) *The project proponent shall inform the Regional Office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities, commencing the land development work and start of production operation by the project.*

(viii) *The project authorities must strictly adhere to the stipulations made by the State Pollution Control Board and the State Government.*

(ix) *The project proponent shall abide by all the commitments and recommendations made in the EIA/EMP report, commitment made during Public Hearing and also that during their presentation to the Expert Appraisal Committee.*

(x) *No further expansion or modifications in the project shall be carried out without prior approval of the Ministry of Environment, Forests and Climate Change (MoEF&CC).*

(xi) *Concealing factual data or submission of false/fabricated data may result in revocation of this environmental clearance and attract action under the provisions of Environment (Protection) Act, 1986.*

(xii) *The Ministry may revoke or suspend the clearance, if implementation of any of the above conditions is not satisfactory under the provisions of the Environmental (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.*

(xiii) *The Ministry reserves the right to stipulate additional conditions if found necessary. The Company in a time bound manner shall implement these conditions.*

(xiv) *The Regional Office of this Ministry shall monitor compliance of the stipulated conditions. The project authorities should extend full cooperation to the officer (s) of the Regional Office by furnishing the requisite data / information/ monitoring reports.*

(xv) *The above conditions shall be enforced, inter-alia under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and the Public Liability Insurance Act, 1991 along with their amendments and Rules and any other orders passed by the Hon'ble Supreme Court of India / High Courts and any other Court of Law relating to the subject matter."*

Appellants' contentions

7. Main contentions in the appeal are that the project will have adverse impact on rich bio-diversity of the area and damage the habitats of the

endangered species. Galathea bay is nesting ground for birds and the area is also part of CRZ-IA & IB. Location of port is expressly prohibited in CRZ-IA area, having presence of huge number of coral colonies. It will also lead to erosion of the coast. **Only one season data has been taken as against requirement of taking data for three seasons for comprehensive impact assessment**, studies have not been conducted as per ToR, turtle nesting sites will be disturbed, harm will be caused to dolphins and other species by dredging, consideration of sea level rise has also not been kept in mind. In power plant, apart from generation of power by solar and gas sources, 15% generation of power will be by diesel. Impact of combustion of diesel has not been considered. The area is a part of seismic zone-V having potential for disasters which aspect has not been considered. As per government policy, Shompen tribes and Nicobari communities have to be kept isolated which aspect has not been considered, ignoring Forest Rights Act, 2006 and Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulation, 1956. EIA is not by accredited consultancy. There are two national parks - Campbell Bay National Park (in the North) and Galathea National Park (in the South) which will be adversely impacted.

Stand of the respondents

8. Stand of the MoEF&CC is that the proper appraisal has been conducted by the EAC in its meetings. EAC comprised not only members of Infra-I sector but also Member Secretaries of the Infra- II sector, Thermal sector and Nuclear, Defence and Strategic (NDS) sector, Coastal Regulation Zone (CRZ) sector for comprehensive appraisal of the various components of the Project both before grant of the ToR and thereafter at the time of appraisal for grant of the EC/CRZ Clearance. The project proponent was awarded detailed Terms of Reference with

18 specific ToRs for the ICTT, 23 specific ToRs for the Airport, 12 specific ToRs for the Township and Area Development Project and 52 specific ToRs for the Gas and Solar Based Power Plant, in addition to Special Conditions and all standard ToR conditions as applicable to such projects. A public hearing was held involving 138 participants on 27.01.2022. EIA Report was received on 7.03.2022. Thereafter, the project was again deliberated upon at the 293rd, 297th and 306th meetings of the EAC, before the Environmental Clearance was finally accorded on 4.11.2022. The Environmental Clearance accorded contains as many as 42 specific conditions dealing with each component of the project, in addition to all standard conditions applicable to each component dealing with statutory compliances, air quality monitoring and preservation, water quality monitoring and preservation, noise monitoring and preservation, energy conservation measures, waste management, green belt, marine ecology, transport, human health environment and mitigation and disaster management. Out of these specific conditions, the first condition itself comprises of 9 further sub-conditions dealing with (i) Leatherback Turtles (ii) Nicobar Megapode (iii) Saltwater Crocodile (iv) Impact of invasive species on native flora (v) Impact on inter-tidal flora and fauna (vi) Nicobar Macaque, Robber Crab and other endemic bird species of Greater Nicobar (vii) Mangrove Restoration (viii) Coral translocation and (ix) Welfare of local tribal population of Shompen and Nicobarese. PP has been asked to undertake studies as follows:-

"

(i) *Independent evaluation of impact of proposed port site at Galathea Bay by engaging a nationally recognized institute such as Zoological Survey of India ("ZSI") or Salim Ali Centre for Ornithology and Natural History ("SACON") or the Wildlife Institute of India ("WIT") or a consortium of these institutes.*

(ii) *Independent study for the assessment of biodiversity and Wildlife value of all alternative port sites by engaging nationally reputed institutes like WII, ZSI, SACON or the Indian Institute for Science ("IISc").*

(iii) *Comprehensive study of the impact of dredging and reclamation and port operations by ZSI, SACON or WII or a consortium of these institutes*

(iv) *A specific study on the impact of the proposed development on migratory birds by ZSI, SACON or WII covering both inward and return migration period.*

(v) *Involvement of an independent organization with specialized skill such as IIT, NIOT, NCCR, NIO, etc. for technical aspects of site selection of the port as well reputed research institutes such as WII, ZSI, SACON for ecological assessment.*

(vi) *In addition to the above, the Project Proponent also undertook multiple studies through reputed agencies during the preparation of an environmentally sound Environmental Management Plan ("EMP") such as: Marine Ecological Conservation of Island Fauna Diversity and Marine Ecological Studies, Comprehensive conservation plan for Nicobar Megapode, an assessment of the Environmental sensitiveness of sea turtle nesting beaches of the Great Nicobar island, Environmental Baseline Data Monitoring, Socio-Economic Survey, Environmental Impact Assessment Study, Topographic survey through helicopter mounted LIDAR and OLS Survey, Mathematical Modelling Study, Oceanographic Study, Hydrographic Survey and Bathymetric & Geophysical Survey, Soil Investigation Study, Traffic & Market Analysis for Port."*

9. It is further stated that there are stringent conservation and mitigation measures keeping in mind the need to balance the defence and strategic requirements of the Nation along with the seminal importance that is owed to the biodiversity and natural habitat of the region. Some of such measures are:-

(i) *WII would establish a long-term field research unit in the Andaman & Nicobar specifically for undertaking uninterrupted turtle research and carrying out necessary conservation interventions if required*

(ii) *WII and SACON would undertake comprehensive conservation measures for the endemic Nicobar Megapod, and two fail proposal for the same are to be submitted to the Project Proponent with a copy to the Answering Respondent.*

(iii) The Project Proponent would release funds within three months to the WII and A&N Forest Department for conservation measures for saltwater crocodiles

(iv) SACON would develop a detailed proposal for the conservation of the Nicobar Macaque, Robber Crab and other endemic bird species of Great Nicobar, which would then be implemented by the Project Proponent.

(v) Over and above all other conservation proposals, the Project Proponent is to separately provide funds to the A&N Forest Department for the complete oversee of the conservation and mitigation work, infrastructure and operation costs towards implementation of Leatherback Sea Turtle, Nicobar Megapod, Saltwater Crocodile management and other endemeic flora and fauna conservation.

(vi) Three independent monitoring committees are to be established by the Project Proponent for implementation of the Environment Management Plan, i.e. - one committee would oversee all pollution related matters, one committee would oversee the implementation of biodiversity related conditions and the third committee would oversee welfare and issues related to the Shompen and Nicobarese tribal populations.

(vii) Safe wildlife corridors at 8 locations along the eastern side of the island would be created.

(viii) The Mangrove Conservation and Management Plan for Greater Nicobar Island prepared by the A&N Administration would be adhered to.

(ix) The Coral Conservation Plan prepared by Zoological Survey of India (ZSI) addresses both the conservation strategies for coral colonies around Great Nicobar Island (GNI) as well as translocation strategies for ten hectares of impacted corals.

(x) Various restrictions on dredging, construction activity, waste management, disease control etc. have all be provided for within the Environmental Clearance."

10. The Tribals were duly represented at the public hearing and they will not be displaced. **The EAC has inter alia noted that - (i) the project will not disturb or displace any Shompen/Nicobari tribal or their habitation (ii) there will be a clear demarcation of land so that there is no scope of conflict arising in future, and (iii) the habitat rights of the tribal persons will be duly taken care of as per the provisions of Forest Rights Act in the unlikely event that any issue in this regard should arise. Further, the Environmental Clearance mandates that**

Project Proponent constitutes a specific committee to oversee all issues related to welfare of the Tribal population.

11. Further, **the project area does not fall within the boundary of any National Park or Wildlife Sanctuary or their Eco-Sensitive Zones and therefore, the project is not proposed to be established in any Eco Sensitive Zone of any Protected Area contrary to what has been claimed in the present appeal**. The Project Proponent further submitted that the project site is outside the Ecologically Sensitivity Zone (ESZ) notified around the two National Parks. The EAC, therefore directed the Project Proponent that **parts of the proposed master plan for Ports which are falling within CRZ IA and IB areas shall be excluded from the revised layout of master plan in order to safeguard the ecological sensitive areas of the coastal areas.** Inland Coastal Regulation Zone plans of Great Nicobar island as per ICRZ Notification, 2019 has been approved by the answering Respondent vide letter dated 1st June, 2021 i.e. before the grant of EC/CRZ clearance.

12. The diversion of forest for the instant project is as per the provisions of the National Forest Policy, 1988, which says that in hills and in mountain regions, the aim should be to maintain two-third of the area under forest cover. **Despite the diversion of proposed forest land for this project in Great Nicobar Island, the remaining forest cover still be more than two-third of the geographical area of island**. Moreover, if the proposed area with respect to the entire forest area of the A&N island is considered, it amounts to only 1.82%. It is also respectfully submitted that the area proposed for development is approximately 18% of the total area in Great Nicobar island. Remaining area of 82% covered under Protected Forests, National Parks, Eco Sensitive Zones and Biosphere Reserve and managed for conservation

of biodiversity at ecosystem, species and genetic levels. Thus, 82% of Great Nicobar Island will be protected and conserved to take care of ecosystem structure, functions and services. The Answering Respondent is also monitoring the steps being taken towards Compensatory Afforestation in this regard. Stage- 1 Clearance under the Forest Conservation Act, 1980 has been correctly accorded. In this regard, the answering Respondent respectfully submits that the proposal received from the UT administration was placed before the Forest Advisory Committee (FAC) in its meeting held on 21.09.2022. Keeping in view the strategic nature of the project, the meeting of the FAC was held separately and the minutes of the said meeting are therefore not available in public domain.

13. **Stand of the PP** is that the **project is for holistic development of Great Nicobar Island in view of its strategic, security and socio economic benefits.** It will transform the Island into a hub of port led development. NITI Aayog has studied and planned the holistic development of identified Islands. A&N Administration vide order dated 28.07.2020 appointed Andaman Nicobar Island Integrated Development Corporation Ltd. (ANIIDCO) as Project Proponent for development of various projects in question. On 18.12.2020, the NITI Aayog appointed a qualified Technical Consultant for preparation of Master Plan for Holistic of Great Nicobar Island who carried out land suitability assessment, eco sensitivity analysis, and carrying capacity assessment to delineate all environmentally sensitive areas and to provide a development suitability map of the Island. Accordingly, **EIA study has been undertaken to identify and analyse impact of the project on the environment and suggest various mitigation measures to ensure that the development takes place with minimal environmental and social impact**. Further, in compliance of the

Terms of Reference (ToR) issued by MoEF&CC vide letter dated 25.05.2021, assistance of technical organizations/institutions with expertise in ecological and biodiversity studies such as ZSI, WII, SACON etc. was taken for ecological assessment and their studies/ reports are part of the EIA report. As per the terms & conditions of grant of EC & CRZ Clearance vide letter dated 4.11.2022, wildlife conservation plans have been prepared for leatherback sea turtle, nicobar megapode, salt water crocodile, inter tidal flora 86 fauna, mangroves, nicobar macaque, robber crab, other endemic bird species and corals in consultation with Wildlife Institute of India (WII), Zoological Survey of India (ZSI), Salim Ali Centre for Ornithology and Natural History (SACON), Botanical Survey of India (BSI) and Institute of Forest Management (IIFM). Fund for the wildlife conservation plans shall be released to the institutes by the Respondent No. 2. Further, as per the terms & conditions of grant of EC & CRZ Clearance, three independent committees have been set upto oversee pollution related matters, biodiversity and welfare & issues related to Shopmen and Nicobarese tribes. The Government of India (GOI) has adopted a proactive policy aimed at transforming the Andaman and Nicobar Islands (A&N Islands), as an economic hub. Strategically located, the A&N Islands, larger than several island countries in themselves, are an asset in India's cultural, economic and strategic calculus. **The project will strengthen India's presence in the Andaman Sea and in Southeast Asia; and will create an economic hub with a major cargo transshipment terminal and a global tourism destination. The location of the project, besides being of strategic importance, presents immense opportunities to further strengthen India's trading position in the world by developing an International Transshipment terminal. A new transshipment port at GNI can be competitive because of the cost savings that shippers can realize using feeder ships to service ports around the rim of the Bay of Bengal.**

A new port at GNI highlights its locational advantages over competing ports in the region for accessing ports in Bay of Bengal region. The importance of the said project would further be evident from the following facts:

a) The Andaman and Nicobar Islands constitute just 0.2 per cent of India's landmass but account for 30 per cent of the country's 200-nautical-mile Exclusive Economic Zone (EEZ).

b) Great Nicobar Island is the largest of the Nicobar group of Islands which represents a huge, strategically located land mass in the Bay of Bengal, whose economic potential and strategic importance is enormous.

14. It is further stated that the project plan ensures that both development and environment go hand in hand. It is stated that the appeals are focusing only on environment without considering development. Both are to be considered. Reference has been made to judgement in Citizens For Green Doon and Others Versus Union of India and Others (2021 SCC OnLine SC 1243) pertaining to the Char Dham project. It is further stated that only 166.1 sq. km of area is proposed for development which is approximately 2% of the total area of A & N Islands. Further, 130.75 sq. km of forest area is proposed to be diverted for the project which is only approximately 1.82% of the total forest area of A & N Islands. A&N Administration is allowed to accept and process the Forest Clearance applications through offline mode as per Ministry's letter dated 12.06.2015. The PP filed online Terms of Reference (ToR) application to MoEF&CC on 03.03.2021 which was considered in the meeting of the Expert Appraisal Committee (EAC) and ToR was issued on 25.05.2021. The draft Environmental Impact Assessment (EIA) report was uploaded on the MoEF&CC portal on 24.12.2021. The public hearing on the draft EIA report

was held on 27.01.2022. Final EIA report, after incorporating the written suggestions/ objections and public hearing, was uploaded on the MoEF&CC portal on 07.03.2022. The EAC in its meeting held on 24.03.2022, considered the proposal and MoEF&CC on 4.11.2022 granted EC & CRZ clearance. A comprehensive EIA study was undertaken by QCI-NABET accredited consultants to evaluate environmental impact and identifying mitigation measures for the project. The following studies were undertaken as part of the EIA study by various technical organizations:

- Marine Ecological Conservation of Island Fauna Diversity and Marine Ecological Studies.
- An assessment of the Environmental sensitiveness of sea turtle nesting beaches of the Great Nicobar Island.
- Environmental Baseline Data Monitoring, Socio-Economic Survey, Environmental Impact Assessment Study.
- Topographic survey through helicopter mounted LIDAR and OLS Survey.
- Mathematical Modelling Study.
- Oceanographic Study, Hydrographic Survey and Bathymetric & Geophysical Survey.
- Soil Investigation Study.
- Traffic & Market Analysis for Port.

As part of the EIA study, alternate site analysis for Port, Airport and Power Plant were undertaken and requirement for power, water and solid waste management were worked out. Thereafter, baseline environmental studies for air, water, noise & ecological attributes were undertaken. **Mathematical modelling was undertaken for the Port project for shoreline changes, transportation study was undertaken for working out details of road network, impact assessment**

&mitigation measures for land environment, reclamation, change in coastline/shoreline, air emissions, noise pollution, waste water, solid waste, social ecology, coral reef, etc. were worked out; risk assessment study was undertaken for Port, Airport, Power Plant considering earthquake, tsunami, cyclone for preparation of management plan. Information and data obtained during the course of these studies were part of the comprehensive EIA report submitted to MoEF&CC. The Pollution Control Committee (PCC) uploaded the draft EIA report on the website of A&N Administration and after due publicity in local and mainland newspapers, broadcasting the information regarding public hearing in All India Radio (AIR) and Doordarshan, conducted public hearing on the draft EIA report on 27.01.2022 at 11.00 am in the community hall, Gram Panchayat, Campbell Bay, Nicobar District under the chairmanship of Deputy Commissioner (Nicobar). 138 participants including tribals, settlers, representatives of Tribal Council and Andaman Adim Janjati Vikas Samiti attended the public hearing alongwith the officials of A & N Administration. Written comments were received from 12 organizations/persons and 14 persons gave their comments during public hearing. All the written comments and verbal comments received during the public hearing were responded and the reply is part of the EIA report. The final EIA report after incorporating the written suggestions/objections and public hearing was uploaded on the MoEF&CC portal on 07.03.2022. Detailed site alternative analysis has been undertaken as part of EIA to identify the best location for Port, Airport and Power Plant. **Alternate site analysis has been carried out as part of EIA wherein multi criteria analysis of alternate site have been undertaken considering factors like land development, cost risk, dredging requirement, environmental issues, tribal, breakwater, etc. which is mentioned under Analysis of Alternatives under**

Chapter 5 of the EIA report. As per the alternate site analysis, Galathea Bay appears to be the most feasible in terms of technical, environmental and financial parameters, and was thus selected for further detailed evaluation.

15. The proposed development is integrated in nature and includes port, airport, power plant and all supporting infrastructure within the township. The township development provides all social and infrastructure amenities required to support the proposed development. The trunk infrastructure thus proposed spreads from North of Campbell Bay to Galathea Bay including seven revenue villages within project boundary. **As the availability of non-forest land is very limited in Great Nicobar Island and to have the integrated and strategic development of the island, forest land is required for which the diversion of forest land was proposed.** Residential township is required to cater to the requirement of personnel engaged in defence and Port development and therefore cannot be considered as standalone development. For the integrated development of GNI, only 130.75 sq. km of forest land is proposed for diversion which is around 1.82% of the existing forest area of A & N Islands. **Effectively only 7.11 sq. km Tribal Reserve area will be required for de-notification for the project which is only 0.21% of the total tribal reserve area of A 86 N Islands and thus 743.96 sq. km of the Great Nicobar Island will remain protected as Tribal Reserve**. Section 3 of A&N (Protection of Aboriginal Tribes) Regulation, 1956 empowers A&N Administration to declare reserve Tribal area specifying the limits of such area. Accordingly, the Empowered Committee of UT Administration has recommended de-notification of Tribal Reserve and Ministry of Tribal Affairs vide letter dated 18.11.2020 has given no objection for the proposal for de-notification of tribal reserve area in Great Nicobar Island subject to compliance under

Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Andaman & Nicobar Coastal Zone Management Authority (ANCZMA) meeting convened for recommending CRZ Clearance for various projects in A&N Islands held on 17.03.2022, the Principal Secretary (Environment & Forests) has attended the meeting and on 27.06.2022, the Commissioner-cum-Secretary (E&F) has attended member of the ANCZMA. Both the officers were not holding the charge of Managing Director of ANIIDCO (2nd Respondent). With regard to Forest Clearance, it is submitted that the A & N Administration had vide Order No. 639 dated 28.07.2020 designated the 2nd Respondent as the project proponent of various projects in GNI. As part of the recommendation of the State Govt. for diversion of forest land, the then Commissioner-cum-Secretary (E&F) had recommended the Holistic Development proposal of GNI on 07.10.2020. During that period **the then Commissioner-cum-Secretary (E & F) was not holding any charge in the office of the 2nd Respondent. Thus, there is no conflict of interest contrary to what has been alleged by the applicant in the present appeals.**

16. The MoEF&CC vide letter dated 01.06.2021 has conveyed its approval of the ICRZ Plans for the Great Nicobar Island as per ICRZ 2019. Para 5 (III)(A) of the ICRZ 2019 mandated that the draft ICRZ plans shall be prepared in 1:25000 scale and accordingly NCSCM has prepared the draft ICRZ maps in 1:25000 scale. After receipt of ICRZ map, the same was published in print and electronic media for wide publicity and for obtaining claims/suggestion/views from general public and other stakeholders. Public hearing on the draft Island Coastal Regulation Zone (ICRZ) Plan was also conducted. The ICRZ Plan of the Great Nicobar Island as per the ICRZ Notification 2019 was finalized after following the due process and after consulting the stakeholders in a fair and f transparent manner.

17. **As per the guidelines of Forest (Conservation) Act, 1980 formulated by the MoEF&CC dated 22.05.2019, the states/UTs having forest land of more than 75% of their respective total geographical area, shall not be insisted upon for providing non-forest land for raising compensatory afforestation and the same may be taken up in any other state/UT having deficient forest land/cover and having land bank for CA.** Since, the UT of Andaman 86 Nicobar Islands is having recorded forest cover of more than 75% of the geographical area, the compensatory afforestation is proposed to be raised in other States in conformity with the aforesaid guideline formulated by the MoEF&CC and in view of the fact that sufficient non-forest land for the purpose is not available in this UT. The project area does not fall within the boundary of any National Park or Wildlife Sanctuary or their Eco-Sensitive Zones. Therefore, the project is not proposed to be established in any Eco Sensitive Zone of any Protected Area contrary to what has been claimed in the present appeals.

Rejoinder

18. The appellants have filed rejoinders reiterating their stand in the main appeal.

Consideration by the Tribunal

19. We have heard learned counsel for the appellants – M/s Kaustav Dhar and A. Yogeshwaran and learned ASGs for the respondents - Ms. Aishwarya Bhati for MoEF&CC and Mr. Vikramjit Banerjee for ANIIDCO Ltd. and perused the record. We have given due consideration to the rival submissions already set out above.

20. Issue for consideration is whether the impugned FC/EC are liable to be interfered with either on account of failure of the authorities in following laid down procedure or on account of adverse impact on environment rendering the project unviable on anvil of sustainable development principle.

21. As already mentioned, main contentions on behalf of the appellants are that the area is rich in bio-diversity. It is covered by CRZ IA as per ICRZ Notification, 2019 where port is expressly prohibited. It has Mangroves, Corals and Coral reefs, Turtle nesting grounds, nesting ground of birds. It has high eroding stretches of critical habitats for turtle nesting, comprehensive EIA based on three seasons data has not been prepared, EIA report by Vimta, ZSI etc is not even a Rapid EIA, incorrect information in Form – I vitiates the EC, EIA report does not conform to TOR, no assessment of impact on biodiversity has been done in the EIA report, Public hearing is vitiated, impact of the project on Tribals has not been assessed, Wildlife clearance has not been taken, Port and Power plant are Red category activities prohibited in ESZ and Forest land cannot be diverted for township.

22. As against above, the stand of MoEF&CC and the PP is that the project is of great defence, national security and strategic significance for holistic development of Great Nicobar Island. It will strengthen India’s presence in the Andaman Sea and in Southeast Asia and create an economic hub with a major cargo transshipment terminal and a global tourism destination. It presents immense opportunities to further strengthen India's trading position in the world by developing an International Transshipment terminal. A new transshipment port at GNI can be competitive because of the cost saving that shippers can realize using feeder ships to service ports around the rim of the Bay of Bengal. A

new port at GNI highlights its locational advantages over competing ports in the region for accessing ports in Bay of Bengal region. The airport will be developed as a joint military-civil dual use airport under the operational control of Indian Navy. There has been comprehensive evaluation by the EAC of Infra-I Sector with the association of Infra-II Sector, Thermal Sector, Nuclear Defence and Strategic (NDS) Sector, Coastal Regulation Zone (CRZ) Sector. Detailed ToRs were issued and public hearing was held with participation of 138 persons. EC has specific and general conditions ensuring protection of environment in every possible manner. Further studies will be conducted by relevant Institutions apart from taking conservation and mitigation measures with no disturbance to the tribal or eco-sensitive areas like National Park, Wildlife Sanctuaries with no damage to corals or mangroves. Since more than 75% area is on the forest, requirement of compensatory afforestation in the same area does not apply under the declared policy of the State.

23. During the hearing, Dr. Dhriti Banerjee, Director, Zoological Survey of India (ZSI) appeared by V.C. and explained that corals can be protected. Environmental impact can be sustainably managed. On being required, she has filed her specific statement as follows:

> *"The assessment made by ZSI revealed that the environmental impact can be managed sustainably to restore the pristine ecosystem though proper conservatory measures and have suggested long term environmental management plans for that area.*
>
> ***A total of 309 species of scleractinian corals under 66 genera, 19 families are recorded from Great Nicobar Island based on the comprehensive studies for last 14 years across all the coastal areas of this island. However, it has been noted that no major coral reef exists within the work area of the project. Only scattered coral reefs are available at the peninsular part of Galathea Bay. As per the detailed analysis, the environmental status and physicochemical status of the sampling sites are conducive to the oligotrophic environment. Hence, the overall benthic community of Galathea Bay is different from other major reefs. The size of the colonies reported from Galathea Bay is relatively small and most of the***

species are found scattered with small growth forms which may be due to the presence of an extremely high cover of algae (51.75%). The high density of Halimeda sp. growing in Galathea Bay is known for its quick growth rate and deposit of calcium on a higher scale.

During the construction in seafront areas, the marine ecosystem may be affected especially wherever there are coral reefs. The development of jetties and ports along the coastal areas is likely to have an impact on the entire benthic cover including coral reefs, seagrass, and seaweed habitats along with associated faunal communities.

Even though there are no coral reefs in the proposed site, coral reefs are recorded in the adjoining areas of the proposed project site. However, as a precautionary measure, to avoid damage to the corals by any means, it is a prerequisite to translocate the corals from the Galathea Bay adjoining up to the depth limit of 15 m.

Any coral colonies which are presumed to be get impacted by the proposed construction has been recommended by ZSI to be translocated to a suitable place where similar environment as well as topographic features prevails in the Great Nicobar.

Reef restoration and coral relocation due to coastal development and/or dredging, are among the most common reasons for transplantation and is world-wide solution, which could be easily executed in Great Nicobar in alternate suitable offshore habitats. Successful coral reef restoration has previously been accomplished by ZSI in Gulf of Kachchh and the transplanted corals had >90% survival and effectively transformed into a functional coral reef.

Rehabilitation, restoration and development of new reef areas by modern technologies can lead to protection and conservation of reef and reef associated fauna of Great Nicobar."

24. ANCZMA recommendations dated 8.7.2022 have also been filed which inter-alia are as follows:

"The effective ICRZ areas involved in various activities of the project are given as under.

S. No	*Name of the Activity*	*Total area in Sq.km*	*ICRZ I*		*ICRZ III*		*ICRZ IV*	
			IA	*IB*	*NDZ*	*50-100M*	*IVB*	*IVA*
1	*Port*	*7.39*	*0.67*	*0.38*	*0.00*	*0.00*	*0.18*	*0.62*
2	*Airport*	*8.49*	*0.58*	*0.82*	*0.38*	*0.10*	*0.14*	*0.56*
3	*Power Plant*	*0.39*	*0.00*	*0.00*	*0.00*	*0.00*	*0.00*	*0.00*
4	*Township Defence*	*12.60*	*0.81*	*1.43*	*0.02*	*0.00*	*0.07*	*0.20*

5	*Township Other Landuse*	*137.27*	*4.93*	*5.92*	*1.69*	*0.45*	*2.50*	*3.55*
6	*Port reclamation area*	*2.27*	*0.06*	*0.11*	*0.00*	*0.00*	*0.00*	*2.10*
7	*Airport Reclamation on area*	*0.71*	*0.02*	*0.08*	*0.04*	*0.00*	*0.32*	*0.02*
	Total	***169.08***	***7.07***	***8.74***	***2.13***	***0.55***	***3.21***	***7.05***

The project proponent submitted the revised area falling under various categories of ICRZ and the details are as follows.

Sr. No	*Activity*	*Area in Sq.km*	*ICRZ I*		*ICRZ III*		*ICRZ IV*	
			CRZ IA	*CRZ IB*	*NDZ*	*5°- 100m*	*IVB*	*IVA*
1	*Port (ICIT)*	*7.39*	*0.57*	*0.25*	*0*	*0*	*0.18*	*0.62*
2	*Airport*	*8.45*	*0.60*	*0.82*	*0.38*	*0.1*	*0.14*	*0.56*
3	*Power Plant*	*0.39*	*0.00*	*0.00*	*0*	*0*	*0*	*0*
4	*Township (Defence)*	*12.6*	*0.81*	*1.43*	*0.02*	*0*	*0.07*	*0.2*
5	*Township (other landuses)*	*137.27*	*5.03*	*6.05*	*1.69*	*0.45*	*2.5*	*3.55*
Total		***166.1***	***7.01***	***8.55***	***2.09***	***0.55***	***2.89***	***4.93***
A	*Port (reclamation area)*	*2.27*	*0.06*	*0.11*	*0*	*0*	*0*	*2.1*
B	*Airport (reclamation area)*	*0.71*	*0.00*	*0.33*	*0.04*	*0*	*0.32*	*0.02*
Total (including 169.08 reclaimed area)			***7.07***	***8.74***	***2.13***	***0.55***	***3.21***	***7.05***

It is mentioned that the revised effective area ICRZ involved in the project includes the same area of 7.07 sq.km in ICRZ IA and 8.74 Sq.km in ICRZ IB, 2.13 Sq.km in ICRZ III NDZ, 0.55 Sq.km in ICRZ III, 3.21 sq.km in ICRZ VI B and 7.05 Sq.km in ICRZ IVA. The only difference in the revised effective area mentioned by the project proponent is 0.57 sq.km and 0.25 sq.km instead of 0.67 sq.km and 0.38 sq.km in ICRZ IA and IB respectively in case of Port and 5.03 sq.km and 6.05 sq.km instead of 4.93 sq.km and 5.92 sq.km in ICRZ IA and IB respectively in the case of township (other land uses). In case of Airport reclamation, there is no CRZ IA involved and the area involved in ICRZ IB is 0.33

sq.km, 0.04 sq.km in NDZ of ICRZ III, 0.32 sq.km in ICRZ IV B and 0.02 Sq.km in ICRZ IV B. The proposed activities are permissible in ICRZ areas as per ICRZ notification 2019 as the Greenfield Airport Project is part of holistic Development of GNI project is now for Defence, Strategic, National Security, and Public Purpose.

Recommendation:

Taking into consideration of the above facts namely the revised ICRZ area involved in the holistic development of Great Nicobar Island and the green field airport project is for defence, strategic, National Security and public purpose, ANCZMA further recommends the project with revised ICRZ area involved in the project as above. The conditions stipulated in the earlier meeting dated 17.03.2022 and communicated vide letter No. PCCF/ EPA/ 1 / Vol-XVI/ 653 dated 22.03.2022 continue to remain valid and the project proponent has to follow those conditions while executing/implementing the project."

25. Copy of report of July 2021 prepared by ZSI has also been placed on record with following executive summary:

"*Executive Summary*

1. *The Andaman and Nicobar Islands comprise an accurate chain of 836 islands, islets and rocky outcrops (including 649 islands and 187 rocks and rocky islands), spreading in a linear distance of around 900 km in the Bay of Bengal and the Andaman Sea between latitudes 06° and 14°N and longitudes 92° and 94° E.*
2. *The archipelago has a total land area of 8249 sq km and a coastline of 1962 km. The Andaman Islands and Nicobar Islands are distinctly separated by the wide Ten Degree Channel which is about 150 km wide and 400 fathoms deep. The Andaman group consists of more than 324 major islands with an area of 6408 sq km and the Nicobar group comprises 24 major islands with the landmass of 1841 sq km.*
3. *The Andaman and Nicobar Islands have a Continental Shelf of 35,000 sq km with an EEZ of 0.6 million sq. km, includes the ecologically enriched faunal and floral diversities.*
4. *The Great Nicobar Island is the southernmost landmass in Andaman and Nicobar Archipelago. The total area of this island is 1044 km^2. It is a tropical and sub-tropical moist broadleaf forest biome and located in the Indo-Malayan bio-geographic zone. The Great Nicobar Biosphere Reserve (GNBR) of this island is one of the 11 Biosphere Reserves declared under the Man and Biosphere Programme of Ministry of Environment, and Forests, Government of India and UNESCO.*
5. *Great Nicobar Biosphere Reserve (GNBR) was declared on 6th January 1989 by the Government of India Order No. J-22010/ 14/ 89-CSC. The GNBR is comprised of Campbell Bay National Park in the north and Galathea National Park in the south. GNBR spread 885 km^2 in two zones. A total area of*

705 km^2 has been designated as Core Zone, and 180 km^2 is Buffer Zone.

6. *The President of India is acting through the NlTl Aayog, Government of India for holistic development of Great Nicobar Island.*
7. *As per the Vision Document prepared by NITI Aayog, a contiguous stretch of land is required in the south-eastern and south-western part of the island, which has a narrow strip ranging from 1.83 km to 3.8 km in the eastern side and 1.3 km to 5.4 km in the western side from the Galathea National Park which also happens to be the Protected Forest and Tribal Reserve.*
8. *In the eastern side, the NITI Aayog has proposed to construct an Airport, requiring 21.64 sq. km of land at the south eastern part and construction of Rapid Mass Transit System originating from Campbell Bay and terminating somewhere in the western part and running parallel to the coastline. In the southern part, besides the development of a major Transshipment Port, the area is also earmarked for future strategic Defence use in view of the developing geo-political scenario in the area. The south-western and western part of Great Nicobar Island outside the Galathea National Park are narrow and proposed to be used as Free Trade Zone as ancillary to the trans-shipment port leaving little area for declaration of ESZ and thereby the Committee recommended finalization of the ESZ notification of Galathea National Park. The proposed holistic development includes 1) Tourism and Hospitality; 2) Jetty and Marina; 3) Mixed use area; 4) Airport; 5) Port & 6) A Marina for Eco-Tourism.*
9. *AECOM is currently undertaking environmental monitoring for the Great Nicobar Island which is one of the largest islands in Andaman and Nicobar archipelago. In consultation with the concerned UT Administration and the concerned central ministries, it has been decided to undertake the holistic development of the Great Nicobar Island.*
10. *In view of this, AECOM, 9th Floor, Infinity Tower-'C', DLF Cyber City, DLF Phase-2, Gurgaon-122 002 has approached the Zoological Survey of India, Headquarters, Kolkata by electronic communication through an e-mail with the subject 'Andaman Project' dated 14th December 2020 to undertake 'Rapid Environmental Impact Assessment studies on Marine Ecology for the Master Plan of Development of Great Nicobar Island' to fulfill the requirement of Environmental and CRZ clearance from the Ministry of Environment, Forest and Climate Change, Government of India. Hence the present study has been executed.*
11. *Along the intertidal stations of the coastal waters of Great Nicobar Island, Station GB 1 (Galathea beach) witnessed the highest concentration of silicate (3.567 µg/ml) while station RB 1 (Rajiv Nagar Beach) had the least silicate concentration (2.131µg/ml).*
12. *The average phytoplankton abundance in the marine waters of sampling stations of Great Nicobar Island is about 24400 no./L (no. of organisms per litre). The phytoplankton abundance ranges from a maximum of 34200 no./L in the*

station GB3 M to a minimum of 15200 no./L at station LB2 IT.

13. *The two major groups of phytoplankton observed are diatoms and mixotrophic (photosynthetic) dinoflagellates. The abundance of diatoms is much higher than the dinoflagellates across all stations, both in the intertidal and marine coastal study sites. This data is supported by the overall high silicate concentrations in the study area.*
14. *In terms of phytoplankton diversity, station LB M is the most diverse. Mixotrophic dinoflagellate diversity is high in Lakshman Beach stations, while diatom diversity is high in Galathea Bay stations.*
15. *The average microzooplankton abundance in the marine waters of sampling stations of Great Nicobar Island is about 19033 no./L (no. of organisms per litre). The microzooplankton abundance ranges from a maximum of 20800 no./L in the station GB3 M to a minimum of 16900 no./L at station LB3 IT.*
16. *The major microzooplankton groups recorded from the study area are Ciliophora, heterotrophic Dinoflagellata, Foraminifera, Radiolaria and larval forms of Copepoda, Decapoda, Bivalva to name a few. In the intertidal stations the larval forms, especially copepod nauplii and bivalve larvae dominate the numbers, followed by foraminiferans (except in Galathea beach stations, where ciliates are the dominant group.*
17. *A total of 17 groups of organisms or taxa were obtained in zooplankton collection namely, Copepoda, Ostracoda, Amphipoda, Decapoda, Siphonophora, Decapoda larvae, Polychaete, Polychaete larvae, Mollusca, Mollusca larvae, Appendularia, Thaliacea, Cumacea, Cladocera, Chaetognatha, fish/invertebrate eggs and fish larvae. Copepods comprised the major portion of the mesozooplankton biomass.*
18. *A total of 92 species of mesozooplanktons were recorded from the study among which Copepoda showed the maximum species diversity. Copepoda comprised of 34 species, Ostracoda comprised of 9 species, Euphausiacea comprised of 12 species, Decapoda constituted of 5 species, Chaetognatha constituted of 9 species, Anthoathecata constituted of 2 species, Siphonophorae constituted of 4 species, Amphipoda and Pteropoda comprised of 2 species each, Appendicularia comprised of 4 species and Thaliacea comprised of 9 species.*
19. *A total of 309 species of scleractinian corals under 66 genera, 19 families (including two genera under Scleractinia Incertae Sedis) are recorded from Great Nicobar Island. The present database of scleractinian species is prepared based on the available literature and studies made by the present author during period of last 12 years.*
20. *Among the recorded 309 species, 66 species are under threatened category (2 species are under Endangered and 64 species are under Vulnerable categories) as per the category and criteria of IUCN (2021), while 90 species are recorded under Near Threatened, 135 species are under Least Concern and 9 species are under Data Deficient categories, whereas 9 species are under not evaluated category.*

21. *A total of 245 species of scleractinian corals under 53 genera, 15 families (including 2 genera under Scleractinia Incertae Sedis) are recorded from seven sites including the proposed project site of Great Nicobar Island during the present study. A maximum of 117 species have been documented from Galathea Bay followed by 111 species from Sastri Nagar, 107 species from Campbell Bay, 102 species from Laxman Beach, 76 species from Gandhi Nagar, 25 species from Anderson Bay, and only 15 species Laxmi Nagar.*
22. *Thorough studies were carried out at the seven study locations of Great Nicobar Island to estimate the benthic cover. Maximum 39.27% of live coral cover was recorded from Campbell Bay region followed by 30.81% from Gandhi Nagar, 25.59% from Sastri Nagar, 24.10% from Laxman Beach, 19.92% from Anderson Bar, 17.46 from Galathea Bay, and the minimum of 13.45% from Laxmi Nager. Among the other algae, a maximum of 51.75% was recorded from Galathea Bay while the minimum of 5.52% from Anderson Bay.*
23. *The present study indicates a total of 491.7975 hect. reef areas across the seven study areas including 116.4173 hect. of reef areas at the Galathea Bay which is distributed up to the maximum extent of 1200m (perpendicular) from the coastline while most of the reefs are scattered in distribution within the limit of a mean distance of 500m, whereas the reef areas of Sastri Nagar are recorded with a total distributional cover of around 103.8703 hect. along with the mean distributional range from the coast is 250m (perpendicular) along with the maximum of 500m, while Laxman Beach represents the minimum of 34.4921 hect. Of reef areas within the mean proximity of 150m from the coast while the maximum distributional ranges are within 350m.*
24. *Great Nicobar Island is the land of two indigenous tribal population viz. Shompen and Nicobarese.*
25. *Shompens live in small groups in dense interior forests of the island and are entirely dependent on forest resources and sea products for their sustenance. They probably migrated into this area, several hundred years ago from nearby Malaysian regions. The Mongoloid Shompen Tribe, about 219 in number, is living within the Biosphere Reserve. They are shy in nature and avoid contact with outsiders. They live around and along the perennial freshwater rivers and constructs huts using palm and pandanus leaves. The Shompens are hunters and food gatherers leading a semi-nomadic life with stone-age civilization. They cultivate yams, pandanus, coconuts, arecanuts, bananas etc. They maintain small herds of pigs and also hunt wild pigs with spears and fish with harpoons.*
26. *The Nicobarese are horticulturists, are the second indigenous tribe, situated in mostly coastal areas of Great Nicobar Biosphere Reserve. Coconut, pandanus, banana, papaya, yam and other starchy roots and tubers are their principal items of crop. They also depend for food on hunting and fishing. Pig rearing is an important traditional practice of Nicobarese.*
27. *The Nicobarese live in villages located along the coast. The huts are made of wooden logs, stems of areca palm, coconut palm etc. while the roof is thatched with grass, canes,*

bamboo and coconut leaves. At present, their traditional beliefs and customs are changing and modern education and Government jobs are readily accepted if they are in their own place.

28. *According to the data of Botanical Survey of India, approximately 600 species of flora reported from Great Nicobar Island. Among them, 86 species of plants found endemic to Great Nicobar Island. Of which 28 species are exclusively reported from Great Nicobar Island, while 18 species identified from entire Nicobar group of Islands and 40 species recorded from Andaman and Nicobar Islands. Considerable number of plant species reported from Great Nicobar Island has ethno-botanical significance*
29. *A total of 695 species of fauna with the endemism of 158 species, which is equivalent to 22.73% have been reported from Great Nicobar Island.*
30. *A total of 48 vertebrates, recorded as endemic to Andaman and Nicobar Islands, were found in Great Nicobar Island during the study period. Among them 3 species are mammals, 36 species are birds, 7 species are reptiles and 2 species are amphibians.*
31. *This reserve is home for several endemic and endangered species including Nicobar Megapode Megapodius nicobariensis, Edible-nest Swiftlet Aerodramus fuciphagus, NicobarTree Shrew Tupaia nicobarica, Long-tailed Macaque Macaca fascicularis, Saltwater Crocodile Crocodylus porosus, Giant Leatherback Sea Turtle Dermochelys coriacea, Reticulated python Pythonreticulatus and Coconut Crab Birgus latro.*
32. *The Saltwater Crocodile is a common species throughout the Andaman and Nicobar Islands. Population estimates of saltwater crocodiles in Great Nicobar Island are about 6 adults and 3 sub-adults-based on questionnaire. It was sighted at Indira Point, Mahar Nallah, Gandhi Nagar, Shastri Nagar, and Galathea Bay.*
33. *Out of the five species of turtles recorded from mainland coast of India, the leatherback turtle Dermochelys coriacea (Vandelli, 1764) is well known for its nesting in the Andaman and Nicobar Islands. Leatherback turtles nesting have been recorded mainly on the long and wide beaches at the mouth of the Dagmar and Alexandira rivers on the west coast and at the mouth of the Galathea River along its south eastern coast.*
34. *Globally, leatherback turtle status according to IUCN is listed as Vulnerable. The Northeast Indian leatherback subpopulation nests primarily in the Andaman and Nicobar Islands of India, in some parts of Sri Lanka and to a lesser extent in Thailand. The first documentation of leatherback turtle nesting in the Great Nicobar Island was by Dr. Satish Bhaskar in 1978-79 and subsequently by other researchers including A&NB Forest Department and NGOs and institutions in the Andaman & Nicobar Islands. The leatherback nesting population in the Nicobar is one of the four colonies that exceeds 1000 individuals in the Indo-Pacific, and hence of global significance.*
35. *The southern bay of Great Nicobar is Southeast Asia's largest leatherback turtle nesting site. In Galathea bay nesting, egg*

laying and hatchling are more for Leatherback turtle compared to the other regions of Great Nicobar Island. In current year, estimation of the number of hatchlings is not completed; hence the number is not mentioned.

36. *The number of nestings, eggs laid and number of hatchlings has been increasing over past four years. The number of hatchlings increases at a rate of 21 % from 2018 to 2019 while it increases at a rate of 147 % from 2019 to 2020. The nesting leatherback populations of this species have also shown an increase in the trend in Galathea Bay. It is estimated that the succession rate of hatchlings of leatherback turtle are 59% in 2018; 60% in 2019 and 63.5% in 2020. The hatchling process has not completed for this year and hence not enumerated and presented.*
37. *The Nicobar Megapode Megapodius nicobariensis abbotti (Oberholser, 1919) is an endemic bird species in the Nicobar group of Islands. According to the IUCN, this species was listed as Vulnerable (Birdlife International, 2000) and as per Govt. of India, Schedule-I of the Wildlife Protection Act (1972). As per the survey by ZSI, there are ~ 100 active mounds were recorded and ~ 202 megapodes were detected during the point-transect and playback surveys Megapodius nicobariensis abbotti occurs in all of the southern group of islands, it was estimated that 7 active mounds and 14 breeding pairs in Galathea.*
38. *The Long-Tailed Macaque Macaca fascicularis umbrosus (Miller, 1902) is the only non-human primates found on Nicobar group of Islands. In 2000, a total of 88 groups, having a mean size of 36 monkeys, were recorded in Great Nicobar, Little Nicobar and Katchal Islands. However, in 2006 a total of 40 groups, including 814 monkeys were recorded in Great Nicobar, Little Nicobar and Katchal Islands while assessing the impact of the Tsunami on the Long-Tailed Macaque of Nicobar Islands. This is the only primate in the Nicobar Islands, and is listed in Schedule I of the Indian Wildlife (Protection) Act, 1972.*
39. *The coconut crab or Robber crab or Palm thief (Birgus latro (Linnaeus, 1767)) is the largest terrestrial arthropod in the World (which is related to hermit crabs and lobsters). The crab is named because it is associated with coconut tree. It is listed as Schedule – I, Part - I under Wildlife Protection Act, 1972. The coconut crab populations are threatened with extinction in the Nicobar group of Islands, except for Menchal Island due to human predatory practices.*
40. *Prediction of Environmental Impacts, Environmental Management Plan and Recommendations are given in detail in the report for the proposed 14.2 Million TEU (Twenty Feet Equivalent Unit) ICTT Port, (main project), Airport (4,000 Peak hour passenger, Category 4F), Township and Area Development for 14,960 Ha and Power Plant (405 MVA Gas + Diesel) (Additional 45 MVA from solar power will be included in total power generation.***”**

Finding

26. From above resume, it is patent that the project has great significance not only for economic development of the island and surrounding areas of strategic location but also for defense and national security. Even the appellants have not joined issue on these aspects. **While the Tribunal's consideration is confined to material on record, we have also noted (without any comment) media reports that the area is located in China's 'string of pearls' strategy[1] which is sought to be countered by Indian Authorities under India's 'Act East' policy. Indian Ocean has emerged as a key intersection zone of Indian and Chinese strategic interests. There are further media reports of huge poaching of environmental marine resources of Andaman by poachers from Myanmar for which number of people have been arrested. Poaching activities include destruction of corals, killing of sharks, taking away of valuable fishes[2]. The project will help bridge infrastructural gap in island and promote international trade saving huge amount on transhipment cargo[3].**

27. In view of above, what remains to be seen is whether the project is compliant with the mandatory environmental norms.

Forest Clearance

28. As regards forest clearance, it is seen that forest cover in the area is more than 75%. While forest is of great significance in tackling air pollution and climate change, development cannot be totally ignored. There is hardly

[1] https://idsa.in/askanexpert/why-has-india-necklace-diamonds-strategy-indian-ocean-region
[2] https://www.reuters.com/article/environment-india-poaching-andaman-dc-idUSDEL4606520070607
https://link.springer.com/article/10.1007/s11852-018-0640-y
[3] https://www.financialexpress.com/business/infrastructure-government-to-build-international-container-transhipment-port-in-great-nicobar-island-2961754/
https://economictimes.indiatimes.com/news/economy/infrastructure/centre-prepares-for-rs-41000-crore-international-transhipment-port-at-great-nicobar-island/articleshow/97379332.cms

any development in the area. There is need not only for economic development but also national security. These factors are not shown to be irrelevant. There is no conflict of interest as such. There is policy permitting afforestation outside the State if forest cover is more than 75%. Thus, no case is made out to interfere with the FC, considering the countervailing public interest in allowing diversion of forest land for the project which is subject to all relevant conditions. In Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338, it was observed :

> *" .. Time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilisation of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."*

29. Considering the above, we do not find any ground to interfere with the FC.

Environmental Clearance

30. Issues in this regard are alleged violation of ICRZ, 2019 for locating the port in prohibited area, ignoring soil erosion, damage to corals, wildlife habitats and tribals. Further issue is compliance of laid down procedure under the EIA notification, including public hearing. While it is true that EIA procedure is mandatory, it does not however follow that hyper technical

approach should be adopted ignoring ground realities about need of the country for development and national security. Every developmental activity is bound to have some adverse impact on environment but if impact can be mitigated and advantages to the society are greater, such project have to be allowed in larger public interest. In the present case, laid down procedure has been followed, public hearing held, EIA prepared, EAC evaluation undertaken, wildlife habitats protection, Tribal welfare considered and necessary conservation measures planned. MoEF&CC and the PP have stated that area proposed to be part of Port, falling in prohibited area as per CRZ notification will be left out, there will be no coverage of eco sensitive areas, corals will be protected and all other necessary measures taken.

31. The legal position has been discussed inter-alia in *G. Sundarrajan vs. Union of India & Ors.*[4] as follows:

> *"238.1. In Intellectuals Forum, Tirupathi v. State of A.P. and others[5], it has been held that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What is required to be prescribed is the principle of sustainable development and find a balance between the developmental needs and the environmental degradation.*
>
> *238.2. In Bombay Dying & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and others[6], while dealing with the concept of sustainable development and planned development vis-à-vis Article 21 of the Constitution, a two-Judge Bench has opined thus:- (SCC p. 521)*
>
> > ***"**25l. It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication[7]* of water systems and biodiversity and global warming, the need to protect the environment has*

[4] (2013) 6 SCC 620
[5] (2006) 3 SCC 549
[6] (2006) 3 SCC 434
[7] *** Ed.:** Eutrophication of a water body is phenomenon that can impel a great deal of algae and other plankton or other plant life to reproduce quickly and lead to extermination of other aquatic life such as fish. Eutrophication occurs when excessive nutritional substances such as nitrogen and phosphorus are discharged into lakes, reservoirs and gulfs, etc.

*become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines "sustainable development" as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.***"**

238.3. In M.C. Mehta v. Union of India and others[8], while stating about sustainable development and the needs of the present without compromising the ability of the future generation to meet their own needs, this Court has expressed thus:- (SCC pp. 166-67, para 46)

"*46. … The definition of "sustainable development" which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In Narmada Bachao Andolan v. Union of India[9] this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. [See Chairman Barton: The Status of the Precautionary Principle in Australia (Vol. 22, 1998, Harv. Envtt. Law Review, p. 509 at p. 549-A) as referred to in para 28 in A.P. Pollution Control Board v. Prof. M.V. Nayudu[10].]***"**

238.4. In Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and others[11], while dealing with the concept of sustainable development, the Court has observed as under:- (SCC p. 747, para 26)

"*26. The concept of "sustainable development" has been explained that it covers the development that meets the needs of the person without compromising the ability of the future generation to meet their own needs. It means the development, that can take place and which can be sustained by nature/ecology with or without mitigation. Therefore, in such matters, the*

[8] (2004) 12 SCC 118
[9] (2000) 10 SCC 664
[10] (1999) 2 SCC 718
[11] (2009) 9 SCC 737

> *required standard is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. The development of the industries, irrigation resources and power projects are necessary to improve employment opportunities and generation of revenue, therefore, cannot be ignored. In such eventuality, a balance has to be struck for the reason that if the activity is allowed to go on, there may be irreparable damage to the environment and there may be irreparable damage to the economic interest. A similar view has been reiterated by this Court in T.N. Godavarman Thirumulpad (104) v. Union of India[12] and M.C. Mehta v. Union of India[13].***"***

238.5. In T.N. Godavarman Thirumalpad (through K.M. Chinnappa) v. Union of India and others[14], this Court observed that: (SCC p. 628, para 35)

> ***"****35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.****"***

238.6. In Narmada Bachao Andolan v. Union of India and others[43], a three-Judge Bench, while dealing with the public projects and policies, has opined that the court does not become the approving authority of such policies. Thereafter, the Bench observed thus:- (SCC p. 763, para 234)

> ***"****234. … Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government.****"***

239. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on onehand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development.

240. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of

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[12] (2008) 2 SCC 222
[13] (2009) 6 SCC 142
[14] (2002) 10 SCC 606

people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property.

241. I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the intergenerational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is taken and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution. It would be guillotining the human right, for when the candle of life gets extinguished, all rights of that person perish with it. Safety, security and life would constitute a pyramid within the sanctity of Article 21 and no jettisoning is permissible. Therefore, I am obliged to think that the delicate balance in other spheres may have some allowance but in the case of establishment of a nuclear plant, the safety measures would not tolerate any lapse. The grammar has to be totally different.

242. I may hasten to clarify that I have not discussed anything about the ecology and environment which has been propounded before us, but I may particularly put that the proportionality of risk may not be "zero" regard being had to the nature's unpredictability. All efforts are to be made to avoid any man-made disaster. Though the concept of delicate balance and the doctrine of proportionality of risk factor gets attracted, yet the same commands the highest degree of constant alertness, for it is disaster affecting the living. The life of some cannot be sacrificed for the purpose of the eventual larger good."

Conclusion

32. We are of the opinion that there can be no two views about need for adequate studies of adverse impact on coral reefs, mangroves, turtle nesting sites, bird nesting sites, other wildlife, of erosion, disaster management and other conservation and mitigation measures. ICRZ 2019 has to be duly complied with about the location of the Port. Tribal rights and their rehabilitation has to be ensured. Compensatory

Afforestation/mangrove plantations have to be as per forest policy. Stand of the respondents shows that such studies have already been undertaken and further studies are proposed. The respondents are committed to comply with the ICRZ 2019 and tribal rights. They have also planned compensatory afforestation and mangrove plantations. Thus, by and large the project is compliant and EC does not call for interference.

33. However, there are some unanswered deficiencies pointed out by the appellants which need to be addressed. By way of instance, it is pointed out that out of 20668 coral colonies, 16150 are proposed to be translocated without any mention of threat to remaining 4518 coral colonies. It is pointed out that ICRZ Regulations prohibit destruction of corals. Further, data collected for impact assessment is only of one season as against requirement of three seasons. It is also shown that part of the project is in CRZ IA area where Port is prohibited. These aspects may call for revisiting the EC by a High-Powered Committee (HPC) which we propose to constitute. The same will be headed by Secretary, MoEF&CC, GoI. Other members will be Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, Central Pollution Control Board, nominee of Vice Chairman of Niti Aayog, nominee of Secretary, Ministry of Shipping and Director, Wildlife Institute of India. Secretary, MoEF&CC may appoint a nodal officer, not below the rank of Joint Secretary, for facilitating functioning of the Committee. The Committee may meet within two weeks from today and finalise its proceedings within two months. It will be open to the Committee to associate any other institution/expert. In the light of report of the Committee, the EC or its conditions may be re-looked into by the competent authority. Till then, further work in pursuance of impugned EC may not proceed except for the work which may not be of irreversible nature.

The appeals will stand disposed of accordingly.

A copy of this order be forwarded to Secretary, MoEF&CC, GoI, Chief Secretary, Andaman & Nicobar, Zoological Survey of India, Botanical Survey of India, CPCB, Vice Chairman of Niti Aayog, Secretary, Ministry of Shipping and Director, Wildlife Institute of India by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

April 03, 2023
Appeal Nos. 29 to 32/2022/EZ
SN+DV+AB

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(2011) 1 Supreme Court Cases 744 : 2010 SCC OnLine SC 1384

In the Supreme Court of India

(BEFORE S.H. KAPADIA, C.J. AND AFTAB ALAM AND K.S.P. RADHAKRISHNAN, JJ.)

IN RE: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY

ANAND ARYA AND ANOTHER . . Applicants;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

T.N. GODAVARMAN THIRUMULPAD . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

IAs Nos. 2609-10 of 2009 in WP (C) No. 202 of 1995[†] with IAs Nos. 2896, 2900 of 2010 in IAs Nos. 2609-10 of 2009 and IA No. 2928 of 2010 in IAs Nos. 2609-10 of 2009 in WP (C) No. 202 of 1995, decided on December 3, 2010

A. **Environment Protection and Pollution Control — Forests — What are — Determination of forest land — Approach and considerations — Man-made forest and Afforestation — What are — Plantations for purpose of creating an urban park distinguished from afforestation — State Government project at NOIDA for building large-scale memorial with extensive stone-work diverting such urban park land and felling all trees thereon — Legality of — Held, any definition of "forest" howsoever wide relates to a context and cannot be applied absolutely, universally and totally independent of context — Though man-made forest with passage of time may acquire forest-like character and become forest, this rule has no universal application — Planting of trees in agricultural/non-forest land being for purpose of creating urban park and not for purpose of afforestation — Such trees being allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for alleged project on forest land — Said plantation, held, cannot be classified as forest land, nor deemed forest nor forest-like area — Hence impugned project not illegal — Forest (Conservation) Act, 1980 — S. 2 — Term "forest" under — Determination of ambit of**

B. **Environment Protection and Pollution Control — Forests — Identification — Acceptable evidence/proof — Satellite image showing forest cover, held, may not reveal complete picture — Revenue records corroborated by land acquisition proceedings revealed that land was not forest — Such revenue records were reliable because, they were much prior to project alleged to have diverted forest land — Forest (Conservation) Act, 1980 — S. 2 — Evidence Act, 1872 — S. 4 — Evidentiary value of satellite**

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image for determining forest areas, held, may not be conclusive — Therefore, such evidence read with other evidence and ground realities

C. **Environment Protection and Pollution Control — Forest (Conservation) Act, 1980 — S. 2 — Prior approval under, for using land for non-forest purpose — When not required — Project site not being classifiable as forests, prior approval of Central Government, held, was not required**

The centre of the controversy in the present IAs involved a very large project of the Uttar Pradesh Government at NOIDA. The two applicants were residents of NOIDA and had challenged the project on the grounds (1) that the project area was a forest area and violated Section 2, FC Act, (2) that no environmental clearance of EIA Authorities was obtained even if the project fell within the EIA Notification, 2006 under Section 3(3), EP Act and (3) that the project devastated the delicate and sensitive ecological balance of the Okhla Bird Sanctuary to which the site of the project lay adjacent.

Disposing of the IAs, the Supreme Court

Held :

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The project site is not forest land and the construction of the project without the prior permission from the Central Government does not in any way contravene Section 2, FC Act. The restriction imposed by Section 2(*ii*) is in respect of forest land.

(Para 37)

A satellite image may not always reveal the complete story. In support that there used to be a forest at the project site, the applicants rely upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application.

(Para 24)

In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, banjar (uncultivable) or parti (uncultivated). The records of the land acquisition proceedings in 1980 to 1983 and 1991 also complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest*. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.

(Paras 24 and 25)

Samatha v. *State of A.P.*, (1997) 8 SCC 191; *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267, *referred to*

The records pertaining to satellite images have not given information about the different species of trees, their age and the girth of their trunks, etc. The satellite images only reveal that in October 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted. The State Government admits to felling of over 6000 trees in 2008. As per government information on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project.

(Paras 27 and 26)

But trees planted in the project area cannot be branded as "forest". It is inconceivable that trees planted with the intent to set up an urban park would

turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land.

(Paras 28 and 27)

In the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad case*, (1997) 2 SCC 267 the Court gave a very wide definition of "forest". But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered.

(Paras 29 to 31)

If the contention of the applicants is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-1996.

(Para 36)

The CEC on a consideration of all the materials made available to it, including the report of the FSI (on which the applicants heavily rely), came to hold and find that the project site was not a forest or a deemed forest or a forest-like area in terms of the order of the Supreme Court dated 12-12-1996.

(Paras 9 to 16)

No doubt a man-made forest may equally be a forest as a naturally grown one and a non-forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case. Otherwise it would

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lead to highly anomalous conclusions. Almost all the relied on orders and judgments defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon can be applied only to an extent and not in absolute terms.

(Para 35)

T.N. Godavarman Thirumulpad v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad (98)* v. *Union of India*, (2006) 5 SCC 28; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 6 SCC 747, *referred to*

Samatha v. *State of A.P.*, (1997) 8 SCC 191; *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118, *partly distinguished*

Ambica Quarry Works v. *State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504; *Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority*, (1997) 11 SCC 605; *State of Bihar* v. *Banshi Ram Modi*, (1985) 3 SCC 643, *cited*

D. **Environment Protection and Pollution Control — Forests — Diversion of forest land — State Government project at NOIDA for building large-scale memorial with extensive stone-work — Classification of — EIA clearance, whether required as per scheme of EIA Notification S.O. 1533 (E) dt. 14-9-2006 issued under S. 3(3), EP Act — (1) Applying common parlance**

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test to consider dominant purpose of alleged project, and (2) considering scheme of said notification, held, project concerned does not fall under B1 category requiring EIA report/clearance — Project cannot be classified as "township and area development project" under Item 8(b) because its total area and building area are 33.43 ha and 1,05,544.49 sq m respectively whereas the threshold limit for EIA eligibility is 50 ha and 1,50,000 sq m respectively as per Columns 5 and 4 of Schedule to said notification, respectively — Project cannot be classified as "building and construction project" under Item 8(a) either as notification treats projects under Item 8(b) separately and differently from those under Item 8(a) and considering dominant character of project it could have fallen under Item 8(b) if it would not have been within prescribed threshold limits — Environment (Protection) Act, 1986 — S. 3(3) — Notification S.O. 1533(E) dt. 14-9-2006 Items 8(a) and (b) of Schedule — Applicability

(Paras 43 to 46, 60 and 66)

T.N. Godavarman Thirumulpad v. *Union of India*, (2010) 13 SCC 740, *referred to*

E. **Environment Protection and Pollution Control — Forests — Diversion of forest land — EIA clearance, whether required as per scheme of EIA Notification S.O. 1533(E) dt. 14-9-2006 issued under S. 3(3), EP Act — Different categories and their requirements, stated**

(Paras 50 and 51)

F. **Evidence Act, 1872 — Ss. 3, 5, 7 and 9 — Irrelevance of derivative issues — Since it is held that project concerned does not come within ambit of notification concerned, the other three arguments based on activity area, application of general condition and application of the Office Memorandum dt. 2-12-2009, held, become irrelevant and need not be gone into**

(Paras 67 and 57)

G. **Constitution of India — Arts. 21, 48-A and 51-A(g) — Town planning project — Viability and continuance of, considering it being adjacent to bird sanctuary — Expert body not holding project to be calamitous or ruinous enough to be entirely scrapped in order to save bird sanctuary — Therefore, said project allowed to continue with conditions recommended by expert bodies and further condition of being overseen by expert committee as directed — Further clarified that this is not to be treated as a precedent when Court is hearing matter on "buffer zones" — Environment Protection and Pollution Control — Wildlife — Wildlife sanctuary — Buffer zones — Applicable principles and law**

(Paras 74 and 79 to 82)

Goa Foundation v. *Union of India*, WP (C) No. 460 of 2004 order dated 4-12-2006; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740; *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *M.C. Mehta* v. *Union of India*, (1987) 4 SCC 463; *M.C. Mehta* v. *Union of India*,

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H. **Environment Protection and Pollution Control — Environment (Protection) Act, 1986 — S. 3 (3) — Notification for EIA clearance under — Clarity of notification, stressed — EIA Notification S.O. 1533(E) dt. 14-9-2006 not being clear enough — Government directed to urgently look into said issue**

(Para 83)

SS-D/47084/C

Advocates who appeared in this case:

H.P. Raval, Additional Solicitor General, S.K. Dwivedi, Additional Advocate General, Harish N. Salve, U.U. Lalit, Jayant Bhushan, K.K. Venugopal, Raju Ramachandran and S.C. Mishra, Senior Advocates (Siddhartha Chowdhury, A.D.N. Rao, P.K. Manohar, Mihir Chatterjee, Harish Beeran, Manish Kr. Bishnoi, Gautam Talukdar, R.K. Gupta, Rajiv Kr. Dubey, Ankur Talwar and Kamlendra Mishra, Advocates) for the appearing parties.

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The Judgment of the Court was delivered by

AFTAB ALAM, J.— At the centre of the controversy is a very large project of the Uttar Pradesh Government at NOIDA. Objecting to the project are the two applicants who are residents of Sector 15-A, NOIDA, U.P. They claim to be public-spirited people, committed to the cause of environment. According to them, the project, undertaken at the instance of the Uttar Pradesh Government is a "huge unauthorised construction".

2. The applicants state that a very large number of trees were cut down for clearing the ground for the project. The trees that were felled down for the project formed a "forest" as the term was construed by this Court in its order dated 12-12-1996 in *T.N. Godavarman Thirumulpad* v. *Union of India*[1] and the action of the Uttar Pradesh Government in cutting down a veritable forest without the prior permission of the Central Government *and* this Court, was in gross violation of Section 2(*ii*) of the Forest (Conservation) Act, 1980 (hereafter "the FC Act"). The project involved massive constructions that were made without any prior environmental clearance from the Central Government based on environment impact assessment. The constructions were, therefore, in complete breach of the provisions of the Environment (Protection) Act, 1986 (hereafter "the EP Act") and the notification issued under the Act. More importantly, the project was causing great harm, and was bound to further devastate the delicate and sensitive ecological balance of the Okhla Bird Sanctuary to which the site of the project lay adjacent. The project was, thus, in complete disregard of this Court's directions concerning "buffer zones".

3. The State of Uttar Pradesh, of course denies, equally strongly, all the allegations made by the applicants. According to the State, it was setting up a park that would develop and beautify the area in a unique way. The park was conceived as a fine blend of hard and soft landscaping with memorial structures and commemoration pieces. The construction of the park did not violate any law or the order of the Court. There was no infringement of the provisions of the FC Act or the EP Act or the notification made under it. Further, the setting up of the park caused no harm to the bird sanctuary. The applicants' objections to the construction of the park were fanciful and imaginary and actuated by oblique motives.

The Project

4. Before proceeding to examine the arguments of the two sides in greater detail it would be useful to take a look at the project and to put at one place the basic facts concerning it that are admitted or at any rate undeniable.

(*i*) The project is sited at Sector 95, NOIDA. According to the applicants, at the site of the project previously there used to be five parks on the Yamuna front, namely, Mansarovar, Nandan Kanan, Children's Park, Smriti Van and Navagraha, opposite Sectors 14-A, 15-A and 16-A, NOIDA.

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(*ii*) The project site, on its western side, lies in very close proximity to the Okhla Bird Sanctuary. The bird sanctuary was formed as a large water body with the adjoining land mass of the embankment as a result of the construction of the Okhla Barrage. It falls partly in Delhi and partly (400 ha in area) in the district of Gautam Buddha Nagar, U.P. The administrative control of the area of the sanctuary is under the Uttar Pradesh Irrigation Department and its management is with the Uttar Pradesh Forest

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Department. The sanctuary is home to about 302 species of birds. According to the Bombay Natural History Society, out of the bird species found here, 2 are critically endangered, 11 are vulnerable and 7 are nearly threatened. About 50 species are migratory in nature and come here mainly during the winter months. The annual population/visit is estimated as under:

2006-2007	24,166
2007-2008	17,111
2008-2009	21,272

This haven for birds was declared a bird sanctuary (the Okhla Bird Sanctuary) vide Notification dated 8-5-1990 issued by the State of Uttar Pradesh under Section 18 of the Wildlife (Protection) Act, 1972. The project, subject of the present controversy, is sited in very close proximity to the Okhla Bird Sanctuary on its eastern side. The applicants refer to it as adjoining the left afflux bund of the Okhla Bird Sanctuary but to be accurate it lies about 35-50 m away from the outer limit of the sanctuary. According to the applicants, the boundary of the project site is as under:

North	Delhi-U.P. DND Toll Road
South	Not clearly stated
East	Dadri Road
West	Okhla Bird Sanctuary, left afflux bund

(*iii*) The project is spread over an area of 33.43 ha, equal to 334334.00 sq m of land surrounded by a boundary wall made of stone, 2 m in height and 0.3 m in thickness. The estimated cost of the project is Rs. 685 crores.

(*iv*) At the site of the project there used to be a tree cover, thin to high-moderate in density and for clearing the ground for the project six thousand one hundred and eighty -six (6186) trees were cut down and one hundred and seventy-nine (179) were "shifted". These trees were of subabul, bottle brush, bottle palm, morepankhi, *Ficus benjamina*, *Cassia siamea*, eucalyptus, fishtail palm, rubber plant, silver oak, etc.

(*v*) The project, though insisted upon by the Uttar Pradesh Government as nothing but a "recreational park", involves the construction of dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life-size statues on tall

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pedestals, large stone tablets with tributary engravings, pedestrian pathways, service block, boundary wall, hard landscape, soft landscape, etc. As initially planned the break-up of the area under different uses was as under:

1.	Total area within boundary wall	3,34,334.00 sq m	
2.	Total built-up covered area for activities		
	(*a*) Memorial building and toilet blocks	3499.50 sq m	1.05%
	(*b*) Utilities and facilities	3500.00 sq m	1.05%
3.	Area under hard landscape (including platforms, plinth, sculptures and surrounding paved areas, paths)	1,29,140.80 sq m	38.62%
4.	Total area under soft landscape		
	(*a*) Area under grass and plantation	1,57,161.79 sq m	47.01%
	(*b*) Area under planters built within paved areas	6181.91 sq m	1.85%

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5.	Total area for vehicular movement with grass pavers (maintenance, fire path, etc.)	34,850.00 sq m	10.42%

(*vi*) According to the State Government, the work on the project commenced in January 2008. The applicants filed IA No. 1179 before the Central Empowered Committee (hereafter "CEC") constituted by this Court on 5-3-2009. They filed IAs Nos. 2609-10 of 2010 (presently in hand) before this Court on 22-4-2009. According to the State Government, by that time 50% of the construction work of the project was complete. The report from CEC was received in this Court on 4-9-2009 and on 9-10-2009, this Court by an interim order restrained the State Government from carrying on any further constructions till further orders. By that time, according to the Government, 70-75% of the construction work of the project was completed.

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(*vii*) In the course of hearing of the matter, on a suggestion made by the Court, the State Government modified the layout plan increasing the soft/green area from 47% to 65.28% of the total area of the project. The revised layout plan is as under:

Sl. No.	*Description*	*Existing (in sq m + %)*	*Modified (in sq m + %)*
1.	Green area	1,57,161.79 (47%)	2,18,246.51 (65.28%)
2.	Hard landscape	1,29,140.80 (38.6%)	98,544.99 (29.48%)
	(*a*) Boundary wall	2700.79 (0.81%)	2700.79 (0.81%)
	(*b*) Platforms, plinths, sculpture and surrounding paved areas	1,26,440.00 (37.79%)	95,844.99 (29.48%)
3.	Area for vehicular movement	34,850.00 (10.42%)	0.00 (Nil)
4.	Area under ornamental water feature (may be considered part of the eco friendly area)	0.00 (Nil)	6302.00 (1.88%)
5.	Area under parking with grass pavers (may be considered part of the eco friendly area)	0.00 (Nil)	4241.00 (1.27%)
6.	Utilities and facilities	3500.00 (1.05%)	3500.00 (1.05%)
7.	Memorial building and toilets	3499.50 (1.05%)	3499.50 (1.05%)
8.	Total area	3,34,334.00 (100%)	3,34,334.00 (100%)

Under the amended plan, around 7300 trees, more than 4 years of age and measuring 8-12 ft in height, belonging to the native species such as neem, peepal, pilkhan, maulsari, imli, shisham, mango, litchi and belpatra will be planted in the project area.

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5. According to the State Government, the revised plan that includes planting of trees in such large numbers would not only restore the tree cover that was in existence at the site earlier but would make the whole area far better, more beautiful and environment friendly. The applicants, however, would have none of it. On their behalf it is contended that the whole project is bad and illegal from every conceivable point of view; its construction was started and sought to be completed at a breakneck speed in flagrant violation of the laws. According to the applicants, therefore, all the structures at the project site, complete, semi-complete or under construction must be pulled down and the project site be restored to its original state.

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The project and Section 2 of the FC Act

6. Mr Jayant Bhushan, learned Senior Counsel appearing for the applicants submitted that over six thousand trees were admittedly cut down for clearing the area for the construction of the project and it was, thus, clearly a case of forest land being put to use for non-forest purpose in complete violation of Section 2(*ii*) of the FC Act.

7. Section 2 of the FC Act, insofar as relevant for the present, provides as follows:

"2. *Restriction on the de-reservation of forests or use of forest land for non-forest purpose*.—Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

(*i*) * * *

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

(*iii*)-(*iv*) * * *

Explanation.—For the purposes of this section 'non-forest purpose' means the breaking up or clearing of any forest land or portion thereof for—

(*a*) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(*b*) any purpose other than re-afforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of checkposts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

The restriction imposed by Section 2(*ii*) is in respect of forest land. It, therefore, needs to be ascertained whether the project area can be said to be forest land where there was a forest that was cut to make the site clear for the project.

8. In support of the contention that the trees that were cleared for the construction of the project comprised a forest, the applicants rely heavily on the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulpad*[1], being the first in a series of landmark orders passed by this Court in an effort to save the fast diminishing forest cover of the country against the greedy and wanton plundering of its natural resources. In that order the Court gave a number of directions. One such direction, at Serial No. 5 to each of the State Governments, is as under: (SCC p. 271, para 5)

"*5*. (*5*) Each State Government should constitute within one month an Expert Committee to:

(*i*) identify areas which are 'forests', irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

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(*ii*) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(*iii*) identify areas covered by plantation trees belonging to the Government and those belonging to private persons."

9. In pursuance of the direction of the Court in *T.N. Godavarman Thirumulpad*[1], the Uttar Pradesh Government constituted the State Level Expert Committee for identifying forests and forest-like areas. The Committee in its report dated 12-12-2007 framed certain parameters for identification of forest-like areas according to which, in the plains, any stretch of land over 2 ha in area with the minimum density of 50 trees per hectare would be considered as "forest". On 11-1-2008 (as taken note of in the order of that date) it was reported to this Court that the guidelines were issued for identification of forest-like areas and steps would be taken to identify "forest-like areas" in all the districts in the State of Uttar Pradesh within four months and such areas would be handed over to the Forest Department, excepting the private areas, if any.

10. As the process of search and identification of forest-like areas in the districts of Uttar Pradesh proceeded, the District Level Committee headed by the District Collector, Gautam Buddha Nagar, by its letter dated 26-2-2008 addressed to the Conservator of Forests and Regional Director intimated that there was no forest-like area in the district and consequently the project site was not identified as a forest or forest-like area by the State Level Expert Committee constituted in pursuance of this Court's order dated 12-12-2006. It was in this background that the project started, according to the State Government, in January 2008. When the work on the project became noticeable from the outside the applicants filed their complaint before the CEC on 5-3-2009.

11. As the controversy erupted with regards to "large-scale construction near the Okhla Bird Sanctuary by the State Government" the Ministry of Environment and Forests (hereafter "MoEF") asked the Chief Conservator of Forests (CCF), Central Region, Lucknow, to make a site inspection of the project and to give his report. The CCF in his report dated 10-7-2009 did not accept the stand of the State Government that there was no forest on the project site. He stated that 6000 trees were "sacrificed" in an area of 32.5 ha and that showed that the area had sufficiently dense forest cover and would qualify as "forest" according to the dictionary meaning of the word and as directed by the Supreme Court. He, however, suggested that before taking a final view on the matter a report may be called for from the Forest Survey of India (hereafter "FSI") in order to verify the vegetation cover over the area before the construction work started there.

12. In the light of the report by the CCF, the MoEF noted that the number of cut trees, in ratio to the project area, was apparently more than three times in excess of the criterion fixed by the State Level Expert Committee for identification of forest like areas (i.e. minimum of 50 trees per hectare). As

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suggested by the CCF, therefore, the MoEF called for a report from the FSI based on satellite imagery and properly analysed by GSI application from the year 2001 onwards (vide Letter dated 17-7-2009 from the Deputy Conservator of Forests (C) to the Director, Forest Survey of India). The FSI gave its report on 7-8-2009 which we shall examine presently. In light of the report of the CCF and the report from the FSI, MoEF in its first response to the applicants' complaint before the CEC (under covering letter that is

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undated, received at the CEC on 12-8-2009) stated that at the project site "there was a good patch of forests and which *could* be treated as deemed forest". It further said that the report of the FSI showed that the forest cover existed there up to 2006 and the felling of trees might have taken place after that only.

13. In the meeting convened by the CEC on the applicants' complaint on 12-8-2009, the Chief Conservator of Forests (CCF), MoEF, Lucknow stated that the plantation done in the project area was naturalised and having regard to the number of trees that existed in the area, the project area should be seen as "deemed forest" and, therefore, it attracted the provisions of the FC Act, and any non-forest use of the land required prior approval of the Central Government. In view of the stand taken by the CCF, the CEC by its letter of 13-8-2009 requested the MoEF to give its response on the issue.

14. Here it may be noted that till that stage the stand of the MoEF, based on the reports of the CCF and the FSI, though tentative, seemed to be definitely inclined towards holding that the trees that were felled for clearing the site comprised a forest/deemed forest and the construction at the project site was hit by the provisions of the FC Act. But now in a perceptible shift in its stand the MoEF informed the CEC by its Letter of 22-8-2009/24-8-2009 that in its view, the project site did not attract the provisions of the FC Act. It referred to the order of this Court dated 12-12-1996[1] and pointed out that the project site did not appear in the list of deemed forest land identified by the State Level Expert Committee in pursuance of the order of the Court. It concluded by saying as follows:

> "In view of the above, it is informed that the area under discussion is neither recorded as forest nor deemed forest and is actually an urban tree park. Therefore, construction work in this area does not attract the provisions of the Forest (Conservation) Act, 1980."

15. The Letter dated 22-8-2009/24-8-2009 from the MoEF was followed by another Letter of 2-9-2009. This was purportedly to put the observation in the previous letter that "… [C]onstruction work in this area does not attract the provisions of the Forest (Conservation) Act, 1980" in context. This letter referred to the satellite images provided by the FSI and the reports submitted by the CCF but in the end, "given the sensitivity of the matter and the high degree of public interest" left it to the CEC to draw appropriate conclusions from the materials furnished to it.

16. The CEC on a consideration of all the materials made available to it, including the report of the FSI (on which the applicants heavily rely), came to hold and find that the project site was not a forest or a deemed forest or a forest-like area in terms of the order of this Court dated 12-12-1996[1]. In its report to this Court dated 4-9-2009 it observed in this regard as follows:

> "28. … In the present case, even though as per the report of the Forest Survey of India, the area was having good forest/tree cover and the project area had more than 6000 trees, it does not fall in the category of 'forest' for the purpose of Section 2 of the Forest (Conservation) Act and therefore does not require any approval under the Forest (Conservation) Act. *The project area does not have naturally grown trees but planted trees. The area has neither been notified as 'forest' nor recorded as 'forest' in the government record. In the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest*. The CEC does not agree with the Regional Chief Conservator of Forests, MoEF, Lucknow that the plantation done in the area has naturalised because of natural regeneration and therefore now falls in the category of

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deemed forest. Most of the trees are of species such as subabul, bottle brush, bottle palm, morepankhi, *Ficus benjamina*, *Cassia siamea*, eucalyptus, fishtail palm, rubber plant, silver oak, etc. *which are not of natural regeneration. As such hardly any tree of natural regeneration exists*.

29. As per the definition of 'forest' as held by the Hon'ble Supreme Court in its order dated 12-12-1996, the project area therefore cannot be treated as 'forest' for the purpose of the Forest (Conservation) Act."

(emphasis added)

17. Mr Jayant Bhushan strongly assailed the finding of the CEC as erroneous. The learned counsel stated that the CEC took the view that the project area could not be described as "forest" and did not attract the provisions of the FC Act mainly because the trees in the project area that were cut down for making space for the constructions were planted trees and not naturally grown trees. He contended that the reason given by the CEC was quite untenable being contrary to the judgments of this Court where it is held that forest may be natural or man-made. He further submitted that the view that in order to qualify as forest the trees must be "naturally grown" is fraught with grave consequences inasmuch as a very large portion of the forests in India are planted forests and not original, natural forests. Further, any afforested area would also cease to be recognised as a forest if the view taken by the CEC were to be upheld.

18. The other reasons given by the CEC for holding that the project area was not a forest was that it was neither notified as "forest" nor recorded as "forest" in the government record and even in the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest.

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Mr Bhushan contended that these reasons were as misconceived as the previous one. The area was not notified or recorded as forest meant nothing since this Court had passed a series of orders with the object to bring such areas within the protection of the FC Act that were not notified or recorded as forest. In the same way the failure of the State Level Expert Committee to identify the project area as forest even though it fully satisfied the criterion set by the Committee itself for the purpose will not alter the true nature and character of the area as forest land.

19. Mr K.K. Venugopal, learned Senior Counsel appearing for the State of U.P. strongly supported the view taken by the CEC. The learned counsel submitted that the omission to identify the trees at the project site as forest or deemed forest was not due to any mistake or by chance. He pointed out that in the parameters set out by the State Level Expert Committee for identification of forests or forest-like areas it was clarified that "trees mean naturally grown perennial trees" and it was further stipulated that "the plantation done on public land or private land will not be identified as forest-like area". Mr Venugopal submitted that the guidelines made by the Expert Committee were reported to this Court and accepted by it on 12-12-2007. The project site clearly did not come within the parameters fixed by the Expert Committee and it was rightly not identified as a forest-like area. The parameters fixed by the Expert Committee for identification of forests or forest-like area were never challenged by anyone and now it was too late in the day to question those parameters, more so after those were accepted by this Court. Mr Venugopal contended that the non-inclusion of the project site as a forest or forest-like area by the State Level Expert Committee should be conclusive of the fact that the area was not forest land and the trees standing there were no forest.

20. Mr Bhushan contended that a tract of land bearing a thick cluster of trees that would qualify as forest land and forest as defined by the orders of this Court would not cease to be so simply because the parameters adopted by the Expert Committee were

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deficient and inconsistent with this Court's orders. In support of the submission that there was actually a forest in that area that was cut down for the project he relied upon the report of the FSI dated 7-8-2009 in which the forest cover status at the project site based on IRS 1D/P6 LI88 III data is shown as follows:

Forest Cover Status in the Area of Interest (AOI) of NOIDA *from 2001 to 2007*

Area in ha

Assessment (State of Forest Report)	*Date of satellite data (sic)*	*Very dense forest*	*Moderately dense forest*	*Open forest*	*Total forest cover*	*Non-forest*	*Total area*
8th (2001)	October 2000	0	3.74	10.42	14.16	32.27	46.43
9th (2003)	November 2002	0	6.05	10.71	18.76	29.67	46.43

10th (2005)	November 2004	0	7.54	14.23	21.77	24.66	46.43
11th (2007)	October 2006	0	9.04	12.73	21.77	24.66	46.43

21. In the report it was also stated that the latest forest cover assessment by the FSI was based on satellite data of 2006 and it did not have any data of the later period. It further stated that the felling of trees might have taken place after October 2006. Mr Bhushan invited our attention to the order of this Court in *T.N. Godavarman Thirumulpad (98)* v. *Union of India*[2] (SCC paras 16, 18, 33, 37, 38) to show that this Court had accepted the reliability of the FSI Report based on satellite imagery.

22. Mr Bhushan also relied upon the report of the CCF, MoEF, Lucknow, a reference to which has already been made above. He also relied upon the first response of the MoEF, where it was stated that at the project site there was a "good patch of forests and which could be treated as a deemed forest" and further that the report of the FSI showed that the forest cover existed there up to 2006 and the felling of trees might have taken place after that only. Mr Bhushan lastly relied upon the Google image which has a dark patch in approximately 1/3rd of the area interpreted by him as a dense cover of trees.

23. In support of the submissions the learned counsel relied greatly on the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulpad*[1]. He also relied upon the decisions of this Court in *Samatha* v. *State of A.P.*[3] (SCC paras 119, 120, 121, 123) and *M.C. Mehta* v. *Union of India*[4] (SCC paras 55, 56, 57).

24. The point raised by Mr Bhushan may be valid in certain cases but in the facts of the case his submissions are quite out of context. In support of the applicants' case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, banjar (uncultivable) or parti (uncultivated).

25. NOIDA was set up in 1976 and the lands of the project area were acquired under the Land Acquisition Act mostly between the years 1980 to

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1983 (two or three plots were notified under Sections 4/6 of the Act in 1979 and one or two plots as late as in the year 1991). But the possession of a very large part of the lands under acquisition (that now form the project site) was taken over in the year 1983. From the details of the acquisition proceedings furnished in a tabular form (Annexure 9 to the counter-affidavit on behalf of Respondents 2 and 3) it would appear that though on most of the plots there were properties of one kind or the other, *there was not a single tree on any of the plots under acquisition*. The records of the land acquisition proceedings, thus, complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest*. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.

26. Further, in the second response of the MoEF, dated 22-8-2009/24-8-2009 there is a reference to the information furnished by the Deputy Horticulture Officer, NOIDA according to which plantations were taken up along with seed sowing of subabul during the years 1994-1995 to 2007-2008. A total of 9480 saplings were planted (including 314 saplings planted before 1994-1995). NOIDA had treated this area as an "urban park". It is, thus, to be seen that on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project.

27. The satellite images tell us how things stand at the time the images were taken. We are not aware whether or not the satellite images can ascertain the different species of trees, their age and the girth of their trunks, etc. But what is on record does not give us all that information. What the satellite images tell us is that in October 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted; the State Government admits felling of over 6000 trees in 2008. How and when the trees came up there we have just seen with reference to the revenue and land acquisition proceedings records. Now, we find it inconceivable that trees planted with the intent to set up an urban park would turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land.

28. The decisions relied upon by Mr Bhushan are also of no help in this case and on the basis of those decisions the trees planted in the project area cannot be branded as "forest".

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29. In the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad*[1] this Court held and observed as under: (SCC pp. 269-70, paras 3-4)

> "*3.* It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short 'the Act') and the meaning of the word 'forest' used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

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4. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest (Conservation) Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works* v. *State of Gujarat*[5], *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[6] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority*[7]). The earlier decision of this Court in *State of Bihar* v. *Banshi Ram Modi*[8] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so

far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

In the above order the Court mainly said three things: one, the provisions of the FC Act must apply to all forests irrespective of the nature of ownership or classification of the forest; two, the word "forest" must be understood according to its dictionary meaning and three, the term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership.

30. The order dated 12-12-1996[1] indeed gives a very wide definition of "forest". But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. In the order the Court said: (SCC p. 270, para 4)

"*4*. … The term 'forest land' occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, *but also any area recorded as forest in the government record irrespective of the ownership*." (emphasis added) Now what is meant by that is made clear by referring to the earlier decision of the Court in *State of Bihar* v. *Banshi Ram Modi*[8].

31. In the earlier decision in *Banshi Ram Modi*[8] the Court had said: (SCC p. 647, para 10)

"*10*. … Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been

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accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply."

32. The observation in *Banshi Ram Modi*[8] (which again was made in the peculiar context of that case!) was sought to be interpreted by some to mean that once the land was broken in course of mining operations it ceased to be forest land. It was in order to quell the mischief and the subversion of Section 2 of the FC Act that the Court in the order dated 12-12-1996[1] made the observation quoted above in italics.

33. In *Samatha*[3], this Court was dealing with cases of grant of mining leases to non-tribals in reserved forests and forests that were notified as scheduled area under the Andhra Pradesh Scheduled Areas Land Transfer

Regulation, 1959. It was contended on behalf of the leaseholders that the Regulation and the Mining Act do not prohibit grant of mining leases of government land in the scheduled area to non-tribals. The Forest (Conservation) Act or the Andhra Pradesh Forest Act, 1967, does not apply to renewal of leases. The observations in regard to what constitutes a forest made in SCC paras 119, 120, 121 and 123, relied upon by Mr Bhushan, were made when it was sought to be argued by the leaseholders that unless the lands are declared either as reserved forests or forests under the Andhra Pradesh Forest Act, 1967, the FC Act had no application. Hence, there was no prohibition to grant mining lease or to renew it by the State Government. The context in which the Court expanded the definition of forest is, thus, manifest and evident.

34. In *M.C. Mehta* v. *Union of India*[4], in the paragraphs relied upon by Mr Bhushan, this Court was considering the question of permitting mining in Aravalli hills where large-scale afforestation was done by spending crores of rupees of foreign funding in an effort to repair the deep ravages caused to the Aravalli hill range over the years by mostly illegal mining. The context is once again evident.

35. Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon by Mr Bhushan can be applied only to an extent and not in absolute terms. To an extent Mr Bhushan is right in contending that a man-made forest may equally be a forest as a naturally grown one. He is also right in contending that non-forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.

36. Like in this case, Mr Bhushan argued that the two conditions in the guidelines adopted by the State Level Expert Committee i.e. (*i*) "trees mean naturally grown perennial trees", and (*ii*) "the plantation done on public land or private land will not be identified as forest like area" were not consistent with the wide definition of forest given in the 12-12-1996[1] order of the Court and the project area should qualify as forest on the basis of the main parameter fixed by the Committee. If the argument of Mr Bhushan is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-1996[1].

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37. In the light of the discussion made above, it must be held that the project site is not forest land and the construction of the project without the prior permission from the Central Government does not in any way contravene Section 2 of the FC Act.

The project and the EIA Notification, 2006

38. Mr Jayant Bhushan next contended that the construction of the project was started by the U.P. Government (and was sought to be completed in great haste!) without obtaining the prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority in complete violation of the Notification issued by the Central Government on 14-9-2006 under Section 3(3) of the EP Act.

39. Before proceeding to examine the issue in detail it would be useful to see the views taken by the different authorities, agencies and the MoEF on the question whether the law required prior environmental clearance for the project. It appears that once the controversy was raised, the project proponents, by letter dated 24-4-2009 approached the State Level Environment Impact Assessment Authority, Uttar Pradesh constituted under the EIA Notification, 2006, seeking environmental clearance for the project. In reply SEIAA by its letter dated 7-5-2009 stated that having regard to the nature and the area of the project it was not covered by the schedule of Notification No. S.O. 1533(E) dated 14-9-2006 issued by the Government of India.

40. Before the CEC, the MoEF in its first response dated 22-8-2009/24-8-2009 took the stand that the project would not require any prior environmental clearance under the EIA Notification, 2006. It further stated that in the EIA Notification, 2006 all building/construction projects/area development projects and townships, were categorised as Category B projects and *the "general condition" prescribed in the notification was not applicable to construction projects*. It went on to say that the project did not require any prior environmental clearance under the EIA Notification, 2006 even though "being within the prescribed distance from a wildlife sanctuary/national park or inter-State boundary". It needs to be stated here that the first response of the MoEF before the CEC was evidently based on the inputs received from the U.P. Government about the nature of the project and the extent of constructions involved in it.

41. In the second response before the CEC dated 2-9-2009 the MoEF did not appear so sure of its earlier stand. It stated that after its earlier Letter of 22-8-2009, 24-8-2009, the MoEF had received further information about the project from various sources and the fresh findings raised far-reaching issues of public concern that extended beyond the parameters set by the EIA Notification of 2006. It further stated that the certificate issued by SEIAA of U.P. stated that the total built-up covered area was only 9542 sq m and the report of the CCF was not clear as to the extent of the covered area vis-à-vis concrete landscaping, pillar(s), platform(s), lawn(s), tree planting, etc. To put

it simply, the MoEF was not fully in possession of the basic facts relating to the project and its likely impact on the environment. It left the decision in the hands of the CEC.

42. The CEC in its report to this Court dated 4-9-2009 held and found that the project was covered by the EIA Notification, 2006 and it required prior environmental clearance in terms of the notification. In its report, the CEC observed as follows:

> "30. The CEC does not agree with the stand taken by the State Government as well as the MoEF that the project does not require environmental clearance in terms of the MoEF Notification dated 14-9-2006. The MoEF, as well as the State of Uttar Pradesh have taken this view primarily on the ground that the built-up area of the project is less than 20,000 sq m and therefore the project does not require environmental clearance.

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The built-up area has been calculated by the State of Uttar Pradesh on the basis of its building bye-laws. The CEC is of the view that for the purpose of environmental clearance, the building bye-laws of the State Government have no relevance at all. As per the details provided by the State Government itself, out of 33.43 ha of the project area, 3499.50 sq m is being used for memorial building and toilet blocks, 3500 sq m is being used for utilities and facilities, 1,29,140.80 sq m area is being used for hard landscape including for platforms, plinth, sculptures and surrounded paved area, path, etc. Another 34,850 sq m area is to be used for vehicular movement. The above comes to more than 50% of the project area which in CEC's view qualify to be included in the activity area. The project cost is about Rs. 685 crores. As per the MoEF Notification dated 14-9-2006, for building/construction project, in the case of facilities open to the sky, the activity area is to be included in the built-up area. In the present case, after including the activity area the total built-up area, for the purpose of environmental clearance, far exceeds the threshold limit of 20,000 sq m of built-up area provided in the notification. The MoEF, on its own admission, has merely relied on the details of the built-up area as provided by the State Government without independently verifying it and has not included the area falling in the category of activity area. In any case, even if there was any doubt in the MoEF regarding the applicability of the environmental clearance in the present case, in view of precautionary principle it should have erred on the side of the caution and should have insisted for the environmental clearance."

43. When the matter finally came up before the Court the MoEF was once again asked to take a clear stand on the issue whether the project was covered by the EIA Notification, 2006. The MoEF filed a brief affidavit on 21-10-2009 in which it acknowledged that the CEC in its report dated 4-9-2006 had stated that the State of U.P. should be directed to seek environmental clearance for the project from the MoEF in terms of the notification. The MoEF, however, reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of

the EIA Notification, 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43 ha) was less than 50 ha and its built-up area (9542 sq m) was less than 20,000 sq m. Having thus made its stand clear, the MoEF went on to say that in case the Court desired the project to be appraised from the environmental angle it would do so and submit its recommendations. It, however, put in a caveat that such appraisals were made before the commencement of the construction activity at the site and in the present case the project was already in the advanced stage of construction.

44. On 22-4-2010[9], this Court passed an order in which after extracting the relevant passage from the affidavit it directed the MoEF to make a study of the environmental impact of the project. The MoEF was further directed to suggest measures for undoing the environmental degradation, if any, caused by the project and the amelioration measures to safeguard the environment, with particular reference to the adjacent bird sanctuary.

45. As directed by the Court, the MoEF asked the project proponents to submit the details concerning the project in the format prescribed under the EIA notification. It also asked the project proponents to have the environmental impact assessment of the project done by some expert agencies. As required by the MoEF, NOIDA submitted the requisite details concerning the project and the reports on the environmental impact assessment of the project based on studies made by three different agencies (we shall have the occasion to consider those reports in the latter part of the judgment). Thereafter, the Expert Appraisal Committee (EAC) constituted by the Central Government for the purpose of the EIA notification examined the project in its 88th meeting held on 28-6-2010, 29-6-2010 and gave its report which is brought on record along with an affidavit filed by the State

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Government on 22-7-2010. In this report the EAC made as many as 15 recommendations to check any environmental degradation or any harm to the Okhla Bird Sanctuary by the project.

46. The MoEF filed yet another affidavit before the Court on 19-8-2010 in which it tried to explain the distinction between Clauses 8(*a*) and 8(*b*) in the schedule to the EIA Notification, 2006 without changing its stand that the project in question did not come within the ambit of the notification.

47. In course of the oral hearing as well, Mr Raval, learned ASG, firmly maintained that the project did not come under the notification and no prior environmental clearance was required for it under the notification.

48. Mr Harish Salve, learned amicus curiae and Mr Jayant Bhushan, counsel appearing for the applicants, both staunchly contended that the stand of the MoEF was patently wrong and incorrect. The project clearly fell within the ambit of the EIA Notification, 2006. The CEC had taken the correct view on the issue. And to start the construction of the project and take it into an advanced stage of construction without obtaining prior

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environmental clearance from the Central Government was in blatant violation of the provisions of the notification. Mr Salve also criticised the Central Government for taking a shifting and inconsistent stand on the issue.

49. Now is the time to take a closer look at the provisions of EIA Notification No. S.O. 1533(E) dated 14-9-2006 issued by the Central Government under Section 3(3) of the EP Act and to consider the submissions advanced by the two sides on that basis. Section 3(3) of the EP Act provides as follows:

> "3. *Power of Central Government to take measures to protect and improve environment*.—(1)-(2) * * *
>
> (3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

50. In exercise of the powers conferred by the above provision the Central Government in the Ministry of Environment and Forests issued Notification No. S.O. 1533(E) on 14-9-2006, which insofar as relevant for the present is reproduced below:

> "MINISTRY OF ENVIRONMENT AND FORESTS
>
> Notification
>
> New Delhi, the 14th September, 2006
>
> *S.O. 1533(E)*.—Whereas * * *
>
> And whereas * * *
>
> And whereas * * *
>
> 2. *Requirements of prior environmental clearance (EC)*.—The following projects or activities shall require *prior environmental clearance* from the regulatory authority concerned, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category A in the

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schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category B in the said schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(*i*) All new projects or activities listed in the schedule to this notification;

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(*ii*) Expansion and modernisation of existing projects or activities listed in the schedule to this notification with addition of capacity beyond the limits specified for the sector concerned, that is, projects or activities which cross the threshold limits given in the schedule, after expansion or modernisation;

(*iii*) Any change in product mix in an existing manufacturing unit included in schedule beyond the specified range.

3. * * *

4. *Categorisation of projects and activities*.—

(*i*) All projects and activities are broadly categorised into two categories — Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources;

(*ii*) All projects or activities included as Category A in the schedule, including expansion and modernisation of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(*iii*) All projects or activities included as Category B in the schedule, including expansion and modernisation of existing projects or activities as specified in sub-para (*ii*) of Para 2, or change in product mix as specified in sub-para (*iii*) of Para 2, but excluding those which fulfil the general conditions (GC) stipulated in the schedule, *will* require prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority (SEIAA). SEIAA shall base its decision on the recommendations of a State or Union Territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category B project shall be treated as a Category A project;

5.-6. * * *

7. *Stages in the prior environmental clearance (EC) process for new projects*.—

(*i*) * * *

I. Stage (1) Screening: In case of Category B projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the State level Expert Appraisal Committee (SEAC) concerned for determining whether or not the project or activity requires further environmental studies for preparation of an environmental impact assessment (EIA)

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for its appraisal prior to the grant of environmental clearance depending upon the nature and location specificity of the project. The projects requiring an environmental impact assessment report shall be termed Category B1 and remaining projects shall be termed

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Category B2 and will not require an environment impact assessment report. For categorisation of projects into B1 or B2 except Item 8(*b*), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

8.-12. * * *

SCHEDULE

(See Paras 2 and 7)

List of Projects or Activities Requiring Prior Environmental Clearance

Project or Activity		*Category with threshold limit*		*Conditions if any*
		A	*B*	
8		*Building/Construction projects/Area development projects and Townships*		
(*1*)	(*2*)	(*3*)	(*4*)	(*5*)
8 (*a*)	Building and construction projects		≥ 20,000 sq m and < 1,50,000 sq m of built-up area*	* (built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8 (*b*)	Townships and area development projects.		Covering an area ≥ 50 ha and or built-up area ≥ 1,50,000 sq m**	** All projects under Item 8(*b*) shall be appraised as Category B1

Note:

General condition (GC):

Any project or activity specified in Category B will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (*i*) Protected areas notified under the Wildlife (Protection) Act, 1972; (*ii*) Critically polluted areas as notified by the Central Pollution Control Board from time to time; (*iii*) Notified eco-sensitive areas; (*iv*) inter-State boundaries and international boundaries.

Specific condition (SC):

* * *

(I) Basic information

* * *

(II) Activity

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

Sl. No.	*Information/checklist confirmation*	*Yes/No*	*Details thereof (with approximate quantities/rates, wherever*

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			possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)		
1.2	Clearance of existing land, vegetation and buildings		
1.3	Creation of new land uses		
1.4	Pre-construction investigation e.g. bore houses, soil testing		
1.5	Construction works		
1.6	* * *		
1.31	* * *"		

51. In substance the EIA notification provides that all projects and activities enumerated in its schedule would require prior environmental clearance before any construction work or preparation of land for the project is started on the project or activity. The projects and activities depending upon various factors such as the potential hazard to environment, location, the extent of area involved, etc. are categorised in Categories A or B. For projects or activities falling in Category A, the competent authority to grant prior environmental clearance is the MoEF and for projects or activities falling in Category B, the State Environment Impact Assessment Authority (SEIAA). The constitution of SEIAA is provided for in Clause 3 of the notification with which we are not concerned in this case. In certain cases a project or activity, though categorised in Category B may be treated as Category A by application of the general condition [on account of its location being within a distance of 10 km from a protected area notified under the

Wildlife (Protection) Act, etc.]. In other words, if a project or activity attracts the general condition, the competent authority to grant prior environmental clearance in that case would be the Central Government, even though, the project or activity may figure in the schedule in Category B.

52. Further, projects or activities categorised as Category B may or may not require an environmental impact assessment before the grant of environmental clearance depending on the nature and location specificity of the project. The projects requiring an EIA report shall be termed as Category B1 and the remaining shall be termed as B2 and will not require an EIA report. For categorisation of projects into B1 and B2, the MoEF would issue appropriate guidelines from time to time. The schedule to the notification has a table that is divided into five columns. The first column contains the serial numbers, and the second the description of the project or activities; the third column lists those projects or activities that fall in Category A and the fourth, those falling in Category B; the fifth column against each item indicates whether any general or specific condition applies to the project or activity described in that item. In some cases where the project or the

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activity is shown in Column 4 as Category B, the application of the general condition is expressly indicated in Column 5 of the table.

53. For the project under consideration, the relevant entries in the schedule are Items 8(*a*) and 8(*b*). Both Items 8(*a*) and 8(*b*) are listed in Column 4 i.e. in Category B. In Column 5, against any of the two items, there is no mention of application of the general condition but it is expressly said that all projects in Item 8(*b*) would be appraised as Category B1, that is to say, for a project under Item 8(*b*) the prior environmental clearance must be preceded by an environmental impact assessment.

54. Item 8(*a*) deals with building and construction projects and the threshold mark that would bring the project within the ambit of the notification is equal to or more than 20,000 sq m and less than 1,50,000 sq m of "built-up area". It is further clarified that the aforementioned figures relate to built-up area for covered construction; in case of facilities open to the sky, the built-up area would be the activity area. Item 8(*b*) deals with townships and area development projects and the threshold mark for the project to come within the ambit of the notification is an area equal to or more than 50 ha or built-up area of more than 1,50,000 sq m.

55. Mr Jayant Bhushan, supported by the amicus curiae forcibly argued that the project under consideration would clearly fall under Item 8(*a*) of the schedule. He submitted that though the area of covered construction in the project was only 6999.50 sq m, the project by its very nature provided facilities open to the sky and in that case, the whole of the activity area would constitute the built-up area. He then referred to the definition of activity [that includes (*i*) permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan), (*ii*) clearance of existing land, vegetation and buildings, (*iii*) creation of new land uses, and (iv) pre-construction investigations e.g. bore houses, soil testing]. He contended that in view of the definition of

activity, virtually the entire area of 33.43 ha from where over 6000 trees were removed for clearing the project site would come within the "activity area" and would, thus, form the built-up area under Item 8(*a*) of the schedule.

56. Further, since the project was located adjacent to the Okhla Bird Sanctuary, it would, without doubt, attract the general condition which provided that any project or activity specified in Category B will be treated as Category A, if located within 10 km from the boundary of protected areas notified under the Wildlife (Protection) Act, 1972. Mr Bhushan insisted that the general condition would apply to the project by virtue of its very close proximity to the Okhla Bird Sanctuary, regardless of the fact that in Column 5 of the table there is no mention of application of the general condition against Item 8(*a*). The application of the general condition would take the project out of Category B and put it in Category A for which the competent authority to grant prior environmental clearance is the MoEF.

57. Mr Bhushan then referred to the Office Memo dated 2-12-2009 issued by the MoEF which in the course of hearing was, in all fairness, produced by Mr Raval, learned ASG, appearing for the MoEF. The office memorandum inter alia provides that "… while granting environmental clearance to projects involving forest land, wildlife habitat (core one of elephant/tiger reserve, etc.) and/or located within 10 km of the national park/wildlife sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4-12-2006 in *Goa Foundation* v. *Union of India*[10]), a specific condition shall be stipulated that the environmental clearance *is subject to their obtaining prior clearance from forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife* as applicable…..". Mr Bhushan submitted that the project under consideration thus does not only require a prior environmental clearance but also a

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clearance from the forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife as precondition for the grant of environmental clearance by the MoEF.

58. Mr Bhushan's arguments proceed in four steps. He first puts the project in Item 8 (*a*) of the schedule as a building and construction project. Then, in the second step, in order to cross the threshold marker he refers to the definition of "activity" to contend that since the project provides facilities open to sky its entire area of 33.43 ha would constitute the built-up area. In the third step, he brings in the general condition [even though in regard to Item 8(*a*) its application is not mentioned in Column 5 of the table] that would make the Central Government as the competent authority for granting prior environmental clearance for the project. And lastly, in the fourth step he refers to the Office Memorandum dated 2-12-2009 to contend that a clearance from the Standing Committee of the National Board for Wildlife was a precondition for the grant of the prior environmental clearance by the MoEF.

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59. Long and elaborate submissions were made from both sides in regard to the application of the general condition to this project. Mr Venugopal, Senior Counsel appearing for the State of U.P. and Mr Raju Ramachandran, Senior Counsel appearing for NOIDA submitted that the general condition would have no application to projects under Items 8(*a*) or 8(*b*) for the simple reason that in regard to those items there was no mention of the general condition in Column 5 of the table. Mr Venugopal submitted, and not entirely without substance that if the general condition were to apply to Items 8(*a*) and 8(*b*) without being mentioned in Column 5 of the table then it would not make any sense to expressly mention it in Column 5 in respect of some other projects and activities classified in Category B in the schedule.

60. Mr Raval, learned ASG, produced before the Court, the draft Notification No. S.O. 1324E, published in the Gazette of India Extraordinary of 15-9-2005. In the draft notification there were two general conditions, GC1 and GC2 and in regard to "(*a*) Construction of all projects (residential and non-residential), and (*b*) New Townships and Settlement Colonies", the application of GC2 was expressly indicated in Column 5 of the table. Later on, in a meeting held on 6-7-2006, chaired by none else than the Prime Minister, it was decided to leave all construction and township projects, housing and area development projects in the hands of the State Government. It was further decided that for all projects involving more than 1,50,000 sq m of built-up area and/or covering more than 50 ha, the EIA requirements should correspond to Category A, even though the clearance would be granted by the State Government. Mr Raval submitted that in light of the decision taken in that meeting, in the final Notification issued on 14-9-2006, the application of general condition was removed in respect of Items 8(*a*) and 8(*b*) in the schedule. In view of the changes made in the two items in the final notification, Mr Raval also contended that the general condition has no application to Items 8(*a*) and 8(*b*), regardless of the project's proximity to any sanctuary or reserved area.

61. But before considering the latter three limbs of Mr Bhushan's arguments it is necessary to examine whether the project in question can be legitimately categorised as a building and construction project falling under Item 8(*a*) of the schedule which is the first premise of his arguments. In the schedule to the notification "building and construction projects" and "townships and area development projects" are enumerated separately, the former in Item 8(*a*) and the latter in Item 8(*b*). This would normally suggest that the notification treats those two kinds of projects separately and differently. It would, therefore, be reasonable to say that an "area development project" though involving a good deal of construction would yet not be a "building and construction project".

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62. When it was pointed out to Mr Bhushan that the project in question may be put more appropriately in Category 8(*b*) as an "area development project" rather than a "building and construction project" under Category 8(*a*), in reply he took a line that nullifies any distinction between the two. Mr Bhushan submitted that so far as construction projects are concerned there is

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no qualitative difference between Items 8(*a*) and 8(*b*) and the difference between the two items was only quantitative. Projects were categorised under Items 8(*a*) or 8(*b*) as "building and construction projects" or "townships and area development projects" not on the basis of their nature and character but depending upon the extent of construction. The learned counsel pointed out that the upper limit under Item 8(*a*) (1,50,000 sq m of built-up area) was the threshold mark under Item 8(*b*) and contended that this was a clear indication that projects with built-up area up to 1,50,000 sq m would be defined as "building and construction projects" and projects with built-up area in excess of 1,50,000 sq m would be categorised as "townships and area development projects".

63. In support of the contention, Mr Bhushan gave the example of a "building and construction project", consisting of a number of multi-storied buildings, the aggregate of the built-up area of which exceeds 1,50,000 sq m. Mr Bhushan submitted that since the total built-up area of the project crosses the upper limit of Item 8(*a*) the project would not fall within that item. But at the same time since the project is a "building and construction project" and not a "township and area development project", it would not come under Item 8(*b*) and this would be indeed a highly anomalous position where a project with a smaller built-up area would fall within the ambit of the notification, whereas a project with a larger built-up area would escape the rigours of the notification.

64. The amicus, also arguing in the same vein, submitted that as far as building and construction projects are concerned there was no qualitative difference in Items 8(*a*) and 8(*b*) of the schedule to the notification. A combined reading of the two clauses of Item 8 of the schedule would show the continuity in the two provisions; 1,50,000 sq m of built-up area that was the upper limit in Item 8(*a*) was the threshold marker in Item 8(*b*). This clearly meant that building and construction projects with built-up area/activity area between 20,000 sq m to 1,50,000 sq m would fall in Category 8(*a*) and projects with built-up area of 1,50,000 sq m or more would fall in Category 8(*b*). The amicus further submitted that though it was not expressly stated, the expression "built-up area" in Item 8(*b*) must get the same meaning as in Item 8(*a*), that is to say, if the construction had facilities open to sky the whole of the "activity area" must be deemed to constitute the "built-up area".

65. It is extremely difficult to accept the contention that the categorisation under Items 8(*a*) and 8(*b*) has no bearing on the nature and character of the project and is based purely on the built-up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different *both quantitatively and qualitatively* from a mere building and construction project. Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and

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pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development

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project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

66. The illustration given by Mr Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between Items 8(*a*) and 8 (*b*). But it must be realised that the converse of the illustration given by Mr Bhushan may not be true. For example, a project which is by its nature and character an "area development project" would not become a "building and construction project" simply because it falls short of the threshold mark under Item 8(*b*) but comes within the area specified in Item 8(*a*). The essential difference between Items 8(*a*) and 8(*b*) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder.

67. In light of the above discussion it is difficult to see the project in question as a "building and construction project". Applying the test of "dominant purpose or dominant nature" of the project or the "common parlance" test i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorised under Item 8 (*b*) of the schedule as a township and area development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 ha) is less than 50 ha and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 sq m i.e. much below the threshold marker of 1,50,000 sq m. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA Notification S.O. 1533(E) dated 14-9-2006. This is not to say that this is the ideal or a very happy outcome but that is how the notification is framed and taking any other view would be doing gross violence to the scheme of the notification.

68. Since it is held that the project does not come within the ambit of the notification, the other three arguments based on the activity area, the application of general condition and the application of the Office Memorandum dated 2-12-2009 become irrelevant and need not be gone into in this case.

The project and the Okhla Bird Sanctuary

69. Mr Bhushan next raised the issue of the project being located virtually adjoining the Okhla Bird Sanctuary. The very close proximity of the project site to the bird sanctuary actually raises issues of serious concern and poses a dilemma. On the one hand the project proponents cannot be said to have broken any law or violated a definite order or direction of the court but

on the other hand the project may possibly cause serious and irreparable harm to the bird sanctuary.

70. Before the CEC the State Government took the plea that the project area was situated well outside the boundaries of the bird sanctuary and the construction of the project had caused no adverse impact on the sanctuary. It was further stated that NOIDA which was the project proponent was equally conscious about its responsibility in regard to the preservation and conservation of the habitat of the sanctuary. A management plan for the sanctuary was being prepared by the Wildlife Institute of Dehradun for which NOIDA had released Rs. 17,35,350.00 in favour of the Institute and NOIDA was also planning to set up a corpus for the scientific and effective implementation of the management plan.

71. On this issue the MoEF in its responses before the CEC put the blame squarely on the State Government. It stated that despite its letter of 27-5-2005 followed by a number

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of reminders the Government of Uttar Pradesh did not submit its proposal for declaration of "eco-sensitive zone" around the sanctuaries and national parks. It further stated that the State Government failed to take any steps in this regard even after the order of this Court passed on 4-12-2006[10] in Writ Petition (Civil) No. 460 of 2004 by which the MoEF was directed to give all the States final opportunity to send their proposals for declaration of "eco-sensitive zones" to the MoEF within four weeks. The MoEF made the accusation that in the case of the present project the State Government of Uttar Pradesh was trying to take advantage of its own omission. In its second response dated 22-8-2009, 24-8-2009, however, the MoEF, though still blaming the U.P. Government for its failure to notify the "eco-sensitive zones" conceded that "till eco-sensitive zone is declared the construction work did not seem to violate any law/Act". But it went on to say that having regard to its location the project was better suited to be made part of extension of the bird sanctuary.

72. The State Government of Uttar Pradesh took the stand that no proposals were sent from its side because the MoEF failed to issue the necessary guidelines for the purpose. On behalf of the State of U.P., reference was made to a meeting called by the Director General of Forests and Special Secretary, MoEF on 13-5-2010. In that meeting it was decided that the Director General of Forests, MoEF would constitute a committee of officers to finalise the guidelines for declaration of eco-sensitive zones. A reference was also made to a subsequent meeting held on 4-7-2010 at Lucknow in which the attention of the Government of India was drawn to the decision taken in the earlier meeting. Yet, no guidelines were issued by the Government of India so far.

73. The CEC in its report to the Court dated 4-9-2009 put the blame on the State Government of U.P. for its omission to identify the eco-sensitive

zones but like the MoEF seemed to accept that in the absence of a decision/notification there was no legal bar against the construction of the project on the ground that it was sited adjacent to the bird sanctuary. In its report to the Court, the CEC observed as follows:

> 32. The issue regarding identification/notification of eco-sensitive zones around the national park and sanctuaries is presently pending for consideration before this Hon'ble Court. The National Board of Wildlife (NBWL) had earlier decided that area within 10 km around national parks/sanctuaries should be the eco-sensitive zone. Later on, it was decided by NBWL that eco-sensitive zone should be specific to each national park/sanctuary. The CEC had recommended that 500 m around national park/sanctuary should be declared as eco-sensitive zone. The recommendation of the CEC has not so far been accepted by the Hon'ble Supreme Court after the learned amicus curiae took a view that 500 m may not be adequate. Pursuant to this Hon'ble Supreme Court's order dated 4-8-2006[11] in the TWP matter, mining is presently prohibited up to a distance of one kilometre from the boundary of national parks/sanctuaries. For other projects, no restriction has so far been imposed. The MoEF has time and again requested the States/UTs to identify the eco-sensitive zones around the national parks/sanctuaries. However, the State of Uttar Pradesh has so far not prepared any proposal in this regard. *The CEC is of the view that in the absence of a decision/notification, presently there is no legal restriction against the implementation of the project on the ground that the project is adjacent to the Okhla Bird Sanctuary*.
>
> 33. However, it has to be borne in mind that the project area is hardly at a distance of 50 m from the Okhla Bird Sanctuary and that in all probability the project site would have fallen in the eco-sensitive zone, had a timely decision in this regard been taken by the State Government/MoEF.
>
> (emphasis added)

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74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, view the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around sanctuaries and national parks to protect the sensitive and delicate ecological balance required for the sanctuaries. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court environment is not merely a statutory issue. Environment is one of the facets of the right to life

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guaranteed under Article 21 of the Constitution[12]. Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in. The question of the likelihood of the project causing any adverse effects on the Okhla Bird Sanctuary must, therefore, be examined from this angle.

75. We may note here that Mr Venugopal presented before us some photographs trying to show the situation on the western boundary of the Okhla Bird Sanctuary at its Delhi end. In the photographs there is a road, about forty to sixty feet wide (the Kalindikunj-Irrigation Colony-Batla Road) running right next to the wire mesh fencing of the sanctuary. Next to the road is a long row of cheek by jowl concrete structures/houses that seem to lean against one another. The road has the bustling traffic of Delhi where all kinds of vehicles (and cattle!) appear jostling for space. The situation on the western boundary of the sanctuary is indeed deplorable but that is no reason to strangulate the sanctuary from the NOIDA side as well.

76. Earlier in the judgment, it is noted that on 22-4-2010[9], the Court had asked the MoEF to make a study of the environmental impact of the project and to suggest measures for undoing the environmental degradation, if any, caused by the project and the amelioration measures to safeguard the adjacent bird sanctuary. In pursuance of the Court's directions the MoEF had asked the project proponents to have the environmental impact assessment of the project done by some expert agencies. NOIDA, the project proponent got three studies made of the impact assessment of the project. One is a joint study prepared by the Salim Ali Centre for Ornithology and Natural History (SACON), Deccan Regional Station, Hyderabad and the All-India Network Project on Agricultural Ornithology, Aacharya N.G. Ranga Agricultural University, Hyderabad (Annexure II of the paper book Vol. IV); the other by the Wildlife Institute of India (WII) (Annexure III of the paper book Vol. IV); and the third by a group of three individuals that was vetted by the Indian Institute of Technology, New Delhi (Annexure IV of the paper book Vol. IV).

77. SACON, in its report practically gave a clean chit to the project and made the following observations in connection with the felling of trees and the impact of the project construction on the Okhla Bird Sanctuary:

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- The Okhla Bird Sanctuary is primarily an urban wetland and supports primarily water birds, majority of them migrating and using in the winter season. These are

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confined to the water bodies and peripheral marshy vegetation and were not nesting or roosting on the trees of the adjacent parks. The extent of terrestrial habitat in the sanctuary is very small or insignificant.

- The entire development works including removal of trees and construction had taken place outside the boundary of the sanctuary and the construction and felling of trees in the project site has not altered or interfered with the wetland ecosystem of the OBS and the area was undisturbed.
- The birds in the wetland of Okhla Bird Sanctuary are estimated during the month of January by the Wildlife Wing of the U.P. Forest Department during winter, which is the period for the migratory birds. The estimation of birds are as under:

2007-2008	:	17,111
2008-2009	:	21,272
2009-2010	:	22,004

- The clearing of the project site for construction and landscaping was started in the month of January 2008 and continued till 9-10-2009. The bird estimates during migratory season clearly show that there has been no reduction in the number of birds in the sanctuary despite developmental activities in the park. This clearly shows that the construction and felling of trees in the project site has no impact on OBS.
- It appears that the existence of high tension line along the boundary wall of the project site before the start of the project might have been a barrier for movement of the birds from OBS as high electromagnetic influence would restrict the movement of birds. Hence, the construction and the felling of trees in the project site has minimal influence on the OBS.

In view of the above, we are of the opinion that felling of trees and construction have no perceptible impact on the OBS habitat."

SACON suggested certain proactive environmental measures (see paper book Vol. IV, p. 110) that would form part of this judgment.

78. The other report by the Wildlife Institute of India (WII) is not so sanguine about the project's impact on the bird sanctuary. In the WII Report under the heading "Assessment of the Impact" it was observed as under:

"... From this, it is concluded that the erstwhile woodland would have been used by 51-101 species of terrestrial birds and was an extended habitat for the wildlife of the Okhla Bird Sanctuary, primarily terrestrial birds. Some of these birds may be using the erstwhile woodland for breeding as well....

... The erstwhile woodland was acting as a buffer against these disturbances. The project area which was in continuation with the vegetation along the left afflux bund was providing a green belt approximately 2 km long and 218 m wide on an average. Before the felling of trees this patch might have acted as a protective green belt of approximately 190 m width with a tree density of 203.5 trees/ha (density of trees felled) which is now reduced to approximately 28 m (between the western wall of the project and OBS boundary of left afflux dam). From this it is concluded that the sanctuary lost its buffer of around 33.43 ha that will have significant impact on the OBS and its tranquillity....

... Such carbon sequestration value of the erstwhile woodland was lost, though NOIDA has already taken up ameliorative steps in the form of afforestation in and around the project site....

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> … With the loss of buffer and increased artificial light at the project site, it is likely that the migratory bird population may get affected in long run. Bird friendly diffused light with blue tinge may reduce the negative impacts, though much research on this aspect is required."

WII also suggested certain mitigation measures (see paper book Vol. IV, p. 134) that would form part of this judgment.

79. IIT, New Delhi in its review of the report prepared by the group of three people does not record any serious negative finding in regard to the effects that the project may have on the sanctuary. Finally, the Expert Appraisal Committee (EAC) constituted by the Government of India, MoEF in its 88th meeting held on 28-6-2010, 29-6-2010, reviewed the project in question in the light of the aforementioned reports and made a number of recommendations (paper book Vol. III, p. 32) that would form part of this judgment.

80. It is significant to note that none of the expert bodies has taken the view that the project is so calamitous or ruinous for the bird sanctuary that it needs to be altogether scrapped in order to save the sanctuary. The expert bodies have given recommendations which allow the completion of the project subject to certain conditions. On behalf of the State of U.P. it is unequivocally stated that all the conditions laid in the reports of the expert bodies are acceptable to the State Government/NOIDA in their entirety. In the light of the two study reports and the report submitted by the EAC, we see no justification for directing the demolition of the constructions made in the project, as prayed for on behalf of the applicants. We would rather allow the project to be completed, subject, of course to the conditions suggested by the three expert bodies and further subject to the directions contained hereinbelow.

81. It may be noted that the report of WII has focused on the felling of trees resulting in the disappearance of the woodland that acted as a protective buffer for the bird sanctuary and its first recommendation is to compensate the loss of vegetation. It has secondly focused on the increased artificial light

at the project site, which is likely to affect the migratory bird population in the long run. Apart from this, we feel that the extent of stone and concrete constructions in the name of "hard landscaping" is highly out of proportion. In the modified layout plan, the project proponents have reduced the area under hard surface to 35.54% of the total project area. In our opinion, even that is unacceptable from the environmental point of view. The area under hard surface, whether covered, uncovered (including pathways and boundary wall, etc.) or of any kind whatsoever must not exceed 25% of the total project area; of the rest, 25% should be used for soft/green landscaping and the remaining, preferably 50% must have a thick cover of trees of the native variety, a list of which is given by the State of U.P. [Annexure 4(*b*), paper book Vol. IV]. The plantation of trees should be especially dense towards the Okhla Bird Sanctuary on the western side of the project area. Any construction work should commence only on completion of the planting of the trees.

82. In order to ensure full compliance with the recommendations of the expert bodies (which form part of the judgment) and the directions of this Court, the construction of the project needs to be overseen by an expert committee. One member of the committee, preferably an ornithologist will be nominated by the MoEF, the other member will be nominated by the CEC in consultation with the amicus and the Chairman-cum-CEO of NOIDA will be the member-secretary of the committee. The committee should be constituted within two weeks from today.

83. It is made clear that the above directions are given in the peculiar facts of this case and nothing said in the judgment shall form precedent when the court is hearing the matter of the "buffer zones".

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84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(*a*) and 8(*b*) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute. We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organisation under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or at least by agencies appointed and recommended by it.

85. The IAs stand disposed of with the above observations and directions.

———

Appendix I (by SACON)

86. "7. *Suggested proactive environmental measures*

Although there appears to be no perceptible impact, as a precautionary approach, we suggest following measures for the overall improvement of the OBS:

1. The periodical removal of water hyacinth should be ensured for better quality of water.

2. Artificial nest boxes should be placed along the western boundary of the sanctuary and adjoining parts to enhance breeding potential of birds.

3. Periodical monitoring of water quality parameters should be undertaken to enhance wetland dependent species and their population.

4. Regular monitoring of population of avifauna should be undertaken. On the terrestrial habitat also monitoring of small mammals may be carried out.

5. Extensive planting of native species suitable for urban habitat should be done more than 10 times in and around the project area. This will in turn help in sustainability of key bird species. It is noteworthy to mention that NOIDA Authority has already planted 1,70,000 saplings.

6. For the scientific management of the OBS, the prescriptions of the management plan under preparation by the Wildlife Institute of India, Dehradun should be followed with necessary financial support.

7. Inside the sanctuary, battery operated vehicles should be used for visitors.

8. For the effective protection and management of the OBS, the sanctuary should be suitably fenced.

9. In view of its unique location and interspersion of ecological settings of various landscape elements, it is suggested that the proposed park may have an ecological interpretation centre."

Appendix II (by WII)

87. "5. *Suggested mitigation measures*

To mitigate the loss of tree cover and the change in landscape structure due to the construction of the park and subsequent anticipated increase in disturbance due to the increased human activities adjacent to the OBS, following mitigation measures have been suggested:

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(*1*) *Revegetation of the project site to compensate the loss of vegetation*.—Ameliorative measures have already been taken up by NOIDA by planting both native and exotic species within the project area and on the eastern flank of left afflux bund of Yamuna river/OBS at close spacing. However, emphasis should be given to propagate only the native species.

(*2*) *Reduction of adverse impact on the OBS*.—It is suggested that buffer at the north and north-eastern side of the sanctuary to reduce direct disturbance to the OBS may be created. The area north of the wire bund of the OBS is a promising site for water birds which prefer shallow water or grass growth particularly geese and waders. It is suggested that the waterlogged Yamuna floodplain north to the OBS and up to the DND flyover having an area of 130 ha (Fig. 1) may be included with the OBS or protection to it as the buffer under the provision of WPA, 1972 be provided.

The strip of woodland with an area of 24 ha immediately to the north of the project area (Fig. 1) needs to be protected as buffer of the OBS also and its land use needs to be maintained unaltered. Being in close proximity of the OBS it will have an ameliorative effect on the sanctuary. It would also provide additional habitat to the terrestrial bird species of the OBS.

Efforts should also be made to keep the intensity of artificial light and noise at the project site to a bare minimum during night, especially after sunset in migratory season of birds (October-March). Bird friendly diffused light with blue tinge during night, may reduce the negative impacts if any on OBS, though much research on this aspect is required.

It is suggested that at the periphery of the OBS, fence wherever not existing be created and the breach in the existing fence be mended on priority.

(3) *Eliciting support from the Government of Delhi for the conservation of OBS*.—As the OBS is a inter-State protected area having open access from all sides it is imperative that the Government of Delhi may also be persuaded to take active part in its management.

(4) *Ensuring financial commitment for the improved conservation management of the park*.—As per the order of the Honourable Supreme Court granted for other development project adjacent to protected area (e.g. IA No. 856 of 2006), 5% of the total cost of the project be deposited with the Forest Department, Government of U.P. to improve the ecosystem structure and functions, water bird habitat, public amenities and interpretation centre and improved management of the OBS."

Appendix III (by EAC)

88. "During discussions following points emerged:

(*i*) NOIDA Authority, while making presentation, informed that the project involves the renovation, preservation and beautification of park on a total plot area of 33.43 ha. The total built-up area of the covered construction is 6999 sq m. Before the development of site there were 6803 trees of different species out of which 6241 trees were cut and 562

trees were shifted to other parks. Further, they informed that the following components of the project have already been completed:

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(*a*)	Boundary wall and gate	90%
(*b*)	Construction of monument building	60%
(*c*)	Landscaping and plantation	80%
(*d*)	Pavements	75%

The other infrastructural works proposed by the NOIDA Authority for environmental safeguards/measures and for effective EMP are use of treated waste water, solid waste management, energy saving, tree plantation and parking, etc. The other works which are important in the context of Okhla Bird Sanctuary are control of noise, glare and efficient traffic management.

(*ii*) Possibility should be explored to increase the greenery and plant broad-leaf native trees along the pathways inside and outside the park. This will help in the reduction of surface runoff.

(*iii*) The water quality and water balance are key elements and require detailed management and monitoring. No fresh water/groundwater should be used for gardening/horticulture purposes. The requirement of water should be met from self-recycling treated sewage without placing of strain on the supply system for the nearby residential and commercial areas.

(*iv*) Treated waste water from Sector 54 sewerage treatment plant is proposed for horticulture purposes. It must also be utilised as much as possible for such purposes as toilet flushing and pavement/floor washing. The aforesaid purposes will need tertiary treatment of sewage.

(*v*) No more than 20% of rain water shall be discharged out of the project site into the existing drain. The rain water harvesting system should be designed based on the soil characteristics and highest level of groundwater table.

(*vi*) The species of trees inside the park and in buffer zone both on Okhla Bird Sanctuary side and road side should be of indigenous types that do not disturb the water balance of the area. The grass and artificial plantations which are not native should be avoided.

(*vii*) Adequate noise barriers in the form of thick plantation of appropriate species of trees and bushes laid in a tiered form to create a green screen on either side of the bund road should be provided. A no horn zone should be declared and maintained around the Okhla Bird Sanctuary. The development of green belt and tree plantation shall be carried out in consultation with the Indian Council of Forest Research and Education, Dehradun.

(*viii*) Solar energy should be utilised for illumination of common areas, lighting of gardens and paved footpaths, etc.

(*ix*) No artificial illumination on tall poles or towers should be allowed inside the park during the night hours. The street lights on the bund road and the roundabout should be of special design, low intensity and low height with least disturbance to the birds' habitat.

(*x*) The solid waste generated should be properly collected and segregated before disposal. The in-vessel bio-conservation technique should be used for composting the organic waste.

(*xi*) The opening of the park would increase the traffic load on the front road and the adjoining link road intersections. A detailed traffic study should be carried out and proposals for necessary widening/redesign of intersections and strengthening of road structure should be prepared.

(*xii*) Provision of a parking area is proposed inside the park. Allocation and configuration of spaces for other modes of transport like minibuses, 2-3 wheelers, cycle rickshaws and bicycles and even pedestrians have to be considered for realistic assessment of traffic and parking management.

(*xiii*) All required sanitary and hygienic measures should be in place before the opening of the park and should be maintained throughout the operation.

(*xiv*) Adequate drinking water and sanitary facilities should be provided in the park.

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(*xv*) A monitoring committee should be constituted for overseeing the project so as to ensure effective implementation and compliance with environmental safeguards."

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† Under Article 32 of the Constitution of India

[1] (1997) 2 SCC 267

[2] (2006) 5 SCC 28

[3] (1997) 8 SCC 191

[4] (2004) 12 SCC 118

[5] (1987) 1 SCC 213

[6] 1989 Supp (1) SCC 504

[7] (1997) 11 SCC 605

[8] (1985) 3 SCC 643

[9] *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 6 SCC 747

[10] WP (C) No. 460 of 2004 order dated 4-12-2006

[11] *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

[12] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : AIR 1987 SC 965; *M.C. Mehta* v. *Union of India*, (1987) 4 SCC 463; *M.C. Mehta* v. *Union of India*, (1988) 1 SCC 471 : 1988 SCC (Cri) 141 : AIR 1988 SC 1115; *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*, (1990) 4 SCC 449 : AIR 1990 SC 2060; *Subhash Kumar* v. *State of Bihar*, (1991) 1 SCC 598 : AIR 1991 SC 420; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577; *B.L. Wadehra (Dr.)* v. *Union of India*, (1996) 2 SCC 594; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715; *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 10 SCC 606; *Ramji Patel* v. *Nagrik Upbhokta Marg Darshak Manch*, (2000) 3 SCC 29 and *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389 : 2003 SCC (Cri) 1642

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EXHIBIT - K

2015 SCC OnLine NGT 3

Before The National Green Tribunal Principal Bench New Delhi
(BEFORE SWATANTER KUMAR, CHAIRPERSON, M.S. NAMBIAR, J.M., DR. D.K. AGRAWAL, E.M. AND PROF. A.R. YOUSUF, E.M.)

In The Matter of:

Vikrant Kumar Tongad, A-93, Sector - 36, Greater Noida-201308 Distt. Gautam Budh Nagar, Uttar Pradesh … Applicant;

Versus

1. Delhi Tourism and Transportation Corporation, Through its Chairman 18-A, DDA SCO Complex Defence Colony New Delhi-110024
2. National Capital Territory of Delhi, Through The Chief Secretary Delhi Secretariat IP Estate New Delhi-110002
3. Union of India, Through its Secretary Ministry of Environment and Forest Paryavaran Bhawan CGO Complex, Lodhi Road, New Delhi-110003
4. Delhi Pollution Control Committee, Through its Member Secretary 4th Floor, ISBT Building, Kashmere Gate New Delhi-110006 … Respondents.

Original Application No. 137 of 2014

Decided on February 12, 2015, [Hearing on: 19th January, 2015]

Counsel for Applicant:

Mr. Rahul Choudhary, Advocate for the Applicant

Counsel for Respondents:

Mr. S.D. Upadhyay, Senior Advocate along with Mr. H. Peechara, Advocate for Respondent No. 1

Mr. Balendu Shekhar, Advocate for Respondents No. 2 & 4

Mr. Vivek Chib, Advocate for Respondent No. 3

Mr. Avijit Bhushan, Advocate for UPSIDC

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

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

Justice Swatanter Kumar, (Chairperson)

Following precise question of law falls for consideration of the Tribunal in the present application:

> Whether, constructing a 'bridge' across Yamuna is a 'project' or 'activity' that shall require prior Environmental Clearance from the Regulatory Authority, particularly with reference to Entry 8(a) and/or 8(b) of the Schedule to the Environment Clearance Regulations, 2006 (for short 'Regulations of 2006')?

2. The necessary facts giving rise to the present application are that, the applicant, who claims to be a public spirited person, working in the field of environmental conservation, particularly devoted to conservation of wetlands and ground water, has filed the present application, challenging construction of a 'Signature Bridge' across River Yamuna at Wazirabad, Delhi. The challenge is primarily on the ground that the said construction has commenced and is being carried on without obtaining prior Environmental Clearance from the Regulatory Authority in terms of the provisions of

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the Regulations of 2006. Delhi Tourism and Transport Development Corporation (DTTDC) (Respondent No. 1) has commenced the project of construction of 'Signature Bridge' across River Yamuna at Wazirabad, Delhi, which is an un-symmetric cable-stayed bridge, with a main span of 251 meters and total length of 675 meters. The composite deck of the bridge carrying eight lanes (four on each side), is about 35 meters wide and is supported by lateral cables spaced at 13.5 meters intervals. The height of steel tower is approximately 150 meters. The total area of Signature Bridge Project is 1,55,260 sq. mtrs.

3. It is stated by the applicant that the Master Plan of NCT of Delhi, designates floodplains of River Yamuna in Zone 'O', expanding to an area of 9700 hectares or 97 sq. kms. The area bears special characteristics in terms of being an eco-sensitive area, consisting of natural features with large stretches of land between water course and existing bunds on the sides of River Yamuna. It is also averred that the whole expanse of these stretches are not to be used for development, therefore, need not be taken up under Section 8 (Zonal Development Plan) of Delhi Development Authority Act, 1957. As per the estimates, around 1600 hectares of land is under water (river extent) and 8100 hectares is dry land (flood plains). The reach from Wazirabad barrage to Okhla barrage is 4700 hectares. According to the applicant, the construction of the bridge is likely to impact River Yamuna and river hydrology adversely. The applicant relies upon a report prepared by Environics Trust, New Delhi and Peace Institute Charitable Trust, Delhi, on 'Impact Assessment of Bridges and Barrages on River Yamuna', which was published in the year 2009. The report intended to understand and assess the impacts due to rail/road bridges and barrages on the river's environment and hydrology on the whole. According to the applicant, considering this Report, it was necessary and prudent to conduct Environmental Impact Assessment of the Signature Bridge Project and its impacts on River Yamuna and its hydrology. As per the applicant, the impacts of the activities of the proposed bridge construction can occur during Planning and Designing Stage to Pre-construction Stage, Construction Stage and Operation Stage. The applicant has also stated certain impacts of such constructions, like, diversion of waterways, contamination of soil and impact on aquatic life, including the chances of ground water contamination, which may occur at the Pre-Construction and Construction stage. For these reasons, the applicant claims that it was necessary for the Project Proponent to obtain prior Environmental Clearance before starting the project in terms of the Regulations of 2006.

4. It is the specific case of the applicant, that, such projects are covered under the Regulations of 2006 and particularly under Entry 8(a) and 8(b) of the Schedule to the said Regulations.

5. In reply to these, Respondent No. 1 admits that it has commenced construction of the Signature Bridge over River Yamuna without obtaining any Environmental Clearance from the Regulatory Authority i.e. Ministry of Environment, Forest & Climate Change (for short 'MoEF')/State Level Environment Impact Assessment Authority (for short 'SEIAA'). According to the Respondent No. 1, since the existing two lanes Bridge at Wazirabad was unable to bear increased volume of road traffic, the Government of NCT of Delhi decided to construct a new eight lane bridge for high moving traffic. Thus, the construction work of the bridge was assigned to Respondent No. 1 by Government of NCT of Delhi in terms of MoU dated 27th August, 2004. A traffic study report was conducted by M/s Stup Consultants Pvt. Ltd. on behalf of Respondent No. 1, which recommended that considering the present traffic volume and the future traffic growth, a new link is badly required, as the existing infrastructure was insufficient in all respects. An Environmental Impact Assessment (for short, 'EIA') study was also conducted which summarized that there is likely to be no significant impact on the environment due to the proposed construction of the bridge. According to Respondent No. 1, Delhi Metro Rail Corporation gave 'No Objection' as per letter

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dated 1st December, 2004, similarly, the Ministry of Defense gave 'No Objection' on 23rd May, 2006, the Technical Committee of the Delhi Development Authority gave 'No Objection' on 14th June, 2006 and the Archeological Survey of India gave 'No Objection' on 7th August, 2006. The Yamuna Standing Committee considered the case in its 72nd meeting held on 7th January, 2007 and desired that the afflux of 18.20 cm should be further reduced by providing an additional water way beneath the approach road on the left bank of the river. Additional studies were carried out to reduce the afflux level as desired, to a level so as not to inhibit drainage of the city by providing additional openings.

6. When Respondent No. 1 applied to the MoEF for seeking Environmental Clearance for execution of the project, the MoEF, vide its letter dated 14th March, 2007 informed Respondent No. 1 that 'Bridges' are not covered under the Regulations of 2006 and as such Environmental Clearance is not required. The letter dated 14th March, 2007 reads as under:

> "Subject: Regarding Environmental Clearance for Construction of bridge on River Yamuna at Wazirabad Delhi: Your application dated 6.11.2006 This has reference to your application dated 6.11.2006 for Environmental Clearance for construction of proposed bridge on River Yamuna at Wazirabad, Delhi under New EIA Notification 2006.
>
> I am directed to inform you that 'Bridges' are not covered under EIA Notification 2006 and as such Environmental Clearance is not required."

7. In furtherance to the above, Respondent No. 1 did not pursue the matter any further and commenced the construction work which is even being carried on presently. It is also averred by this Respondent that the Central Water and Power Research Station (for short 'CWPRS'), Pune carried out further Hydraulic Studies and recommended the construction with certain technical parameters, which were duly adopted by Respondent No. 1 in order to take all precautionary measures in the interest of environment.

8. The NCT of Delhi and Delhi Pollution Control Committee (for short 'DPCC'), i.e., Respondent Nos. 2 & 4 respectively, have taken a stand that they are unable to say as to what is the proposed use of construction of this project in future. However, they also stated that "Bridge" is not covered under the Regulations of 2006. In their reply, they referred to Entry No. 7(f) i.e., 'Highways' - (both National Highways or State Highways) but have not made any specific averment as to whether the present project is covered under Entry 7(f) or not. MoEF, though, did not file any separate reply, but, they have taken a stand during the course of the arguments that, "Bridges" is an 'activity' or 'project' which is not covered under any of the Entries of the Schedule to the Regulations of 2006, and hence, does not require Environmental Clearance.

9. As is evident from the above narrated factual matrix of the case, the entire controversy revolves around the meaning and interpretation of Entries 8(a) and (b) and/or 7(f) respectively of the Schedule to the Regulations of 2006. Thus, it would be necessary for us to notice the Entries at this stage itself. The said Entries of the Schedule reads as under:

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
7		Physical Infrastructure including Environmental Services		
7 (f)	Highways	[(i) New National Highways; and ii) Expansion of	[(i) All new New State Highway Projects]	[General Condition shall apply. Note-Highways

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		National Highways greater than 30 km involving additional right of way greater than 20 in involving land acquisition.]	(ii) State Highway expansion projects in hilly terrain (above 1000 m AMSL) and or ecologically sensitive areas].	include expressways.]
8		Building/Construction projects/Area Development projects and Townships		
8 (a)	Building and Construction projects		≥ 20000 sq.mtrs and < 1,50,000 sq.mtrs. of built-up area#	[The built-up area for the purpose of this notification is defined as "the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects]
8 (b)	Townships and Area Development projects.		Covering an area ≥ 50 ha and or built up area ≥ 1,50,000 sq. mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

10. The present project, as per the affidavit filed by Respondent No. 1 relates to construction of an eight-lane wide bridge across River Yamuna, connecting Eastern and Western parts of Delhi. This was necessitated for the purpose of easing out the traffic congestion. The old bridge over River Yamuna at Wazirabad was to be retained for movement of slow traffic. This was primarily to feed fast developing areas of Yamuna Vihar, Gokul Puri, Nand Nagri and Inter-State Traffic from Ghaziabad, Sahibabad, Loni on Eastern side and Timarpur, Azadpur, Burari, Mukherjee Nagar, Mall Road etc. on the Western side. Development of this 'Signature Bridge' was imperative and in the interest of general public, in order to ease the traffic and meet the needs of the residents across.

11. First and foremost, the meaning and scope of the word 'bridge' has to be understood.

A bridge' is a building erected across a river, ridge, valley, or other place for common benefit of travellers. It is a structure that spans and provides a passage over a road, railway, river or some other obstacle (Ref: *Wharton's Law Lexicon* 15th Edn., 2012, *Collins English Dictionary and Thesaurus* 1st Edn., 1999).

Law Lexicon, 3rd Edition 2012 describes the word 'bridge' as follows:—

"A bridge is a structure of wood, iron, brick, or stone, ordinarily erected over a river, creek, pond or lake; or over a ravine, railroad, canal, or other obstruction in a highway, so as to make a continuous roadway, and afford to travelers a convenient passageway from one bank to the other. While a bridge is a part of the highway which passes over it, no definite rule can be laid down as to where one terminates and the other begins."

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12. Besides the above specific meaning that has been given to the expression 'bridge', even in common parlance, it is understood to be a structure that connects any two ends, for various activities like travelling, crossing a river, joining National or State Highways or roads and is intended to provide for natural or artificial link for commutation. A bridge can hardly be termed as a stand-alone project as it would normally be part of a major or a smaller development or allied activity. A bridge therefore, cannot be taken as an abstract term. It would, without exception, always be a part of a project, i.e., construction of a highway or even an ordinary road and/or to cross a river, canal, drain or even a rail road. To put it simply, the bridge would be a segment or part of a bigger project, activity or development. It can hardly be a final product in itself. Like even in the present case, it is meant to connect the Wazirabad Barrage and Okhla Barrage, to ease out traffic pressure and provide fast movement of traffic across River Yamuna, though the existing bridge would still be in existence. Thus, it would be a step in the final process and will not be equitable to a final product. A bridge cannot be made to stand on its own without connecting it with the roads on both ends. It is an integral part of an activity of development or area development that has to be seen wholly and from a holistic point of view.

13. Regulations of 2006 have been issued by the Central Government in exercise of its statutory powers conferred under sub-section (1) and clause (v) of sub Section (2) of Section 3 of the Environmental Protection Act, 1986 (for short 'Act of 1986') read with clause (d) of sub-rule 3 of Rule 5 of the Environmental (Protection) Rules, 1986 (for short 'Rules of 1986') in supersession of the previously issued notifications. This notification not only has the force of law, but is a paramount piece of legislation for controlling and preventing environmental pollution and degradation.

14. Clause 2 of Regulations of 2006 declares and prescribes that a 'project' or 'activity' shall require prior Environmental Clearance from the concerned Regulatory Authority under Category 'A' and 'B' as the case may be. This would equally apply to all new projects or activities, as well as expansion and modernization of existing projects or activities. Clause 2 also has an inbuilt restriction or limitation. It makes it obligatory upon the project proponent of any 'project' or 'activity' to take such Environmental Clearance before any construction work or preparation of land by the project management (except for securing the land), has started on the 'project' or 'activity'. In other words, obtaining of prior Environmental Clearance is a condition precedent before taking any steps in relation to the project or activity in terms of Clause 2. Schedule to the Regulations of 2006, then elaborates the projects and activities which would be covered under the said Clause 2. The heading of the Schedule also states 'List of Projects or Activities Requiring Prior Environmental Clearance'.

15. The significant expressions used by the framers in Clause 2 are 'projects and activities'. Obviously, when these two expressions have been used, they are neither interchangeable nor can be treated as synonymous. They have to have a distinct and different meaning with reference to the circumstances of a given project or activity. 'Project' even in common parlance is understood to mean, aim a planned undertaking; an individual or collaborative enterprise that is carefully planned to achieve a particular aim; a proposed or planned undertaking; any work taken up under a scheme for the purpose of providing employment etc. (Ref: *The Law Lexicon* 3rd Edn., 2012, *Oxford Dictionary of English* 3rd Edn. 2010, *Wharton's Law Lexicon* 15th Edn., 2012). The word 'Activity' could mean the combination of operations undertaken by the corporate body, whether or not they amount to a business, trade or profession in the ordinary sense. It could also mean the collective acts of one person or two or more people engaged in a common enterprise. It could even mean a condition in which things are happening or being done; busy or vigorous action or movement; a thing that a person or group does or has done (Ref: *The Law Lexicon* 3rd Edn., 2012, *Black's Law Dictionary* 9th Edn.,

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2009, *Oxford Dictionary of English* 3rd Edn., 2010). 'Project' is a term of wider connotation than an 'activity'. Normally every 'activity' would be part of a 'project' but not always. Both these expressions cannot be defined or explained in rigid and inelastic terms. But, the fact of the matter is that these expressions have to be given a wider meaning and a liberal construction with reference to the facts of a given case, involving a 'project' or an 'activity'.

16. Entry 7(f) of the Schedule to the Regulations of 2006 deals with projects and activities of 'Highways'. It includes New National Highways, all new State Highway Projects and expansion thereof. Subject to the qualifications stated in that Entry, the Highways would include 'Expressways'.

17. Entry 8(a) relates to Building and Construction projects of ≥ 20,000 sq. mtrs. and < 1,50,000 sq. mtrs. of built up area. Entry 8(b) relates to projects of Township and Area Development, covering an area which is ≥ 50 hectares and/or built up area which is ≥ 1,50,000 sq. mtrs. Such projects or activities under Entries 8(a) and 8(b) would be required to take Environmental Clearance and all such projects of Township and Area Development under Entry 8(b) satisfying the threshold area would be treated and appraised as category 'B1' Projects. Entries 8(a) and 8(b) are under Entry 8 which carries a heading 'Building/Construction projects/Area Development projects and Townships'. The legislature has worded heading of Entry 8 in very wide and expressive terms. Use of expression with such wide magnitude clearly indicates the legislative intent that they should be construed liberally. These expressions in fact, and as above referred, are incapable of being construed strictly. Entry 8(b) talks both of Township and Area Development projects. These expressions relate to same or identical 'project' or 'activity'. Besides developing township, development of the areas is also contemplated as an activity for a bigger project. If these projects of Township and Area Development are covering an area ≥ 50 hectares and/or the built up area in excess of 1,50,000 sq. mtrs., the project/activity would require prior Environmental Clearance.

18. Having deliberated upon the relevant provisions of the Regulations of 2006, now we would deal with the principles applicable to interpretations of such Entries. The Hon'ble Supreme Court in its various judgments has stressed upon the liberal interpretation of a statute, if it is a social welfare legislation. For instance, in the case of *The Authorised Officer, Thanjavur* v. *S. Naganatha Ayyar*, (1979) 3 SCC 466, the Court held that:

> "1. While dealing with welfare legislation of so fundamental a character as agrarian reform, the court must constantly remember that the statutory pilgrimage to 'destination social justice' should be helped, and not hampered, by judicial interpretation."

In the case of *Workmen of American Express International Banking Corporation* v. *Management of American Express International Banking Corporation*, (1985) 4 SCC 71, the Court held that:

> "4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes."

In the case of *Securities and Exchange Board of India* v. *Ajay Agarwal*, (2010) 3 SCC 765, the Court held that:

> "41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is

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to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."

19. The Courts have also evoked the principle of purposive construction in relation to social welfare legislations. The statute and its provisions have to be given an expanded meaning that would tilt in favour of the object of the Act, curing or suppressing the evil by enforcing the law. While interpreting an Entry in a Schedule to an Act, the ordinary rule of construction requires to be applied to understand the Entries. There is a functional difference between a body of the statute on the one hand and the Schedule which is attached thereto on the other hand. The Sections in these Acts are enacting provisions. In contrast, the Schedule in an Act sets down things and objects and contains their names and descriptions. The sections of and the Schedule to the Act, have to be co-jointly read and construed, keeping in view the purpose and object of the Act while keeping a clear distinction between a fiscal and a social welfare legislation in mind. Social welfare programmes projected by the State and object of the statute are of paramount consideration while interpreting and construing such Entries. The law is always intended to serve the larger public purpose. In fact, welfare of the people is the supreme law and an enacted law should be administered lawfully, i.e., *salus populi est suprema lex*. It is not possible even for the legislature to comprehend and provide solution to all the evils or obstacles that are likely to arise in implementation of the enacted laws. Therefore, the Tribunal must adopt an approach for interpretation of these Entries which would further the cause of the Act and the intent of the legislation and be not unduly influenced by the rule of restricted interpretation.

20. In the case of *Regional Provident Fund Commissioner* v. *Shibu Metal Works*, AIR 1965 SC 1076, the Hon'ble Supreme Court was concerned with the question as to the true content of the entry "Electrical, Mechanical or general engineering products" included in Schedule 1 of the Employees' Provident Fund Act, 1952. The Hon'ble Supreme Court while dealing with this question and the principles that should be applied to find the true content of such entry held as under:

"13. Reverting then to the question of construing the relevant entry in Sch. I, it is necessary to bear in mind that this entry occurs in the Act which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

21. The Hon'ble Supreme Court while giving a wider meaning to the Entry, held that the manufacture of brass utensils can easily be regarded as an activity, the object of which is the manufacture of general engineering products. This was the balanced and proper interpretation which was neither narrow nor broad, but was one that fitted into the scheme of the Schedule and the Object of the Employees' Provident Fund Act, 1952.

22. As we have already noticed that the Regulations of 2006 have been enacted in furtherance to the powers of delegated legislation vested in the Central Government in terms of the provisions of the Act and Rules of 1986. The Act of 1986 was enacted

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while noticing the decline in environmental quality as evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. It also noticed the inadequate linkages in handling matters of industrial and environmental safety. The purpose was to provide for greater environmental safety. The Act of 1986 was intended to take appropriate steps for the protection and improvement of environment. Environment not only includes water, air and land, but, also the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. Section 3 of the Act of 1986 *inter alia*, but, specifically empowers the Central Government to take all such measures as it deems necessary for the purpose of protecting and improving the quality of environment. Clause (ii) and (iii) of Sub-Section 2 of Section 3, requires the Central Government to *inter alia*, but, specifically take measures as contemplated under sub-section 1 of Section 3, in relation to planning and execution of a nation-wide programme for prevention, control and abatement of environmental pollution, as well as for laying down standards for the quality of environment in its various aspects. Rule 5 of the Rules of 1986 further empowers the Central Government to place prohibition and restriction on the location of industries and the carrying on of processes and operations in different areas with reference to the environmental pollution. The object and purpose of the Act is to ensure prevention and control of environmental pollution, its abatement and particularly, degradation thereof.

23. Rivers are a very significant aspect of environment and ecology. The authorities concerned are not only expected to take steps for preventing pollution of water *per se* but, are also required to ensure that its biodiversity, ecology and floodplain is not unduly intruded or exploited to the disadvantage of the environment. That is the precise reason that the Act of 1986 not only refers to the pollution of air, water and land but even admits to protect its interrelationship with human beings and even other living creatures including plants etc. The legislature has left nothing to the imagination and has worded the Entry 8(b) very widely so as to cover within its ambit every facet of environment as contemplated under Section 2(a) of the Act of 1986. The aim and object of the Act of 1986 is to protect the environment, which certainly includes rivers.

24. Rivers can be polluted directly or its ecology, biodiversity or flow can be adversely affected by developmental activities, thus, causing environmental hazards. Structures like bridges can cause a series of impacts both in immediate time and extended over a long duration. Impact is not only limited to the specific physical development, but, it also gives rise to several other interlinked elements which can cumulatively impact the environment which replenishes the resources in long run. These environmental hazards may result from flooding, narrowing of embankments and endangering of aquatic life. Any development project or activity upon the floodplain, river bank or across the river is bound to have some impact upon the ecology and biodiversity of the river. It is an established fact that such projects, whether part of a comprehensive developmental activity or independently, would narrow the water course or environmental flow of the river. Such activity may have adverse impacts on aquatic flora and fauna. In some cases, it may adversely affect the floodplain and may amount to affecting the terrestrial ecology.

25. Thus, the assessment of such impact and degradation of environment resulting therefrom, is essential and is a matter which is of concern for the Expert Bodies appointed under the Act. Furthermore, Environmental Impact Assessment Guidance Manual for Building, Construction, Township and Area Development Project, 2010 provides that environmental facets which are to be considered in relation to township and area development are land, air, noise, water, biological, socio-economic and solid

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waste management. Thus, it is necessary to ascertain the baseline data of these environmental facets before a project or an activity may be permitted or carried out.

26. The Regulations of 2006 have been promulgated with the aim and object of assessing the impact that a project or an activity would have upon the environment and ecology. The expert body is expected to precisely visualise the extent of environmental degradation resulting from the project before granting approval. Normally, the projects having irretrievable and permanent impacts on nature are not permitted, and where permitted, very stringent, protective and precautionary conditions are imposed. Thus, it is relevant at this stage to understand the concept of EIA as contemplated under the Regulations of 2006 with reference to the provisions of the Act of 1986 for protection of ecology and biodiversity of the river and riverbed.

27. In order to understand the concept of EIA, one first needs to know what an 'Environmental Impact' is. An 'Environmental Impact' is any impact or effect (positive or negative) that an activity has on an environmental system, environmental quality or natural resources. It is also known as an environmental effect [*Oxford Dictionary of Environment and Conservation*, First Edn., 2007]. An 'Environmental Effect' is defined as a natural or artificial disturbance of the physical, chemical or biological components that make up environment [*Black's Law Dictionary*, 9th Edn., 2009]. Such activities may take the form of mining, oil and gas exploration, thermal, nuclear and hydraulic power plants, metallurgical industries, chemical fertilizers, storing of hazardous chemicals, industrial estates/parks/complexes/areas, waste treatment plants, etc.

28. EIA was first introduced in the USA in 1969 and has since been widely accepted. It is being adopted in one form or the other in an increasing number of countries as a basis for making informed and rational judgments about what sort of developments are environmentally acceptable. It even includes the concept of 'Strategic Environmental Assessment'. An EIA is defined as a formal statement of the environmental impacts that are likely to arise from major activities such as new legislation or a new policy, programme or project. The results of the assessment are reported in the 'Environment Impact Statement' (EIS) [*Oxford Dictionary of Environment and Conservation*, First Edn., 2007]. Thus, an EIA in general parlance does not confine itself only to projects but also to legislations and policies.

29. With expansion and modernization of economic and trade activities in India, there was a need felt to understand as well as regulate the potential environmental impacts that such activities may have. Thus, in order to impose certain restrictions and prohibitions on new projects or activities, or on expansion or modernization of existing projects or activities, the Central Government enacted the Environment Clearance Regulations, 2006, on 14th September, 2006 under Section 3(1) and 3(2)(v) of the Act of 1986 and Rule 5(2) of Rules of 1986. The objective of the Regulations of 2006 is to set procedures of environmental clearance before establishment of project of identified nature and size. It required the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification to be undertaken in any part in India only after prior Environmental Clearance is granted by the particular authority. These Regulations do not define an EIA or an EIS. However, it requires the Expert Appraisal Committees in case of category 'A' projects and the State Level Expert Appraisal Committees in case of category '*B-1*' projects or activities, including applications for expansion and modernization and/or change in product mix of existing projects or activities, to determine detailed and comprehensive ToR addressing all relevant environmental concerns for the preparation of an EIA. Categorization of projects/activities into category 'A' or 'B' is done on the basis of the potential hazards that it poses to the environment, location, the extent of area involved etc.

30. Thus, clearly, the mandate of the Regulations of 2006 is to ensure protection of

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environment and ecology in face of rapid developmental activities, which are even the need of the hour. Since the object of the Regulations of 2006 is to provide developmental activities while ensuring presence of a safer environment, it can be termed as welfare legislation. Thus, the rule of reasonable constructions in conjunction with the liberal construction would have to be applied.

Article 48A in Part-IV (Directive Principles) of the Indian Constitution enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes a duty on the State to improve public health as its primary duty. Article 51A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" which includes forests, lakes, rivers and wild life, and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. The State, in particular, has a duty in that behalf to shed its extravagant, unbridled sovereign power and to forge in its policy, to maintain ecological balance and hygienic environment. Article 21 protects 'Right to Life' as a fundamental right. Enjoyment of life and its attainment, including the right to live with human dignity, encompasses within its ambit, the protection and preservation of environment, ecological balance, free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, there is a constitutional imperative on the State authorities and bodies like the Pollution Control Board not only to ensure and safeguard proper environment, but also to take adequate measures to promote, protect and improve the environment, both, man-made and natural. Sections 3 and 5 of the Act of 1986, apart from other provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'Environment', which expression has been defined in very wide and expansive terms in Section 2(a) of the Act of 1986. [*Noyyal River Ayacutdars Protection Association rep. by its President, P.M. Govindaswamy Pappavalasu* v. *The Government of Tamil Nadu rep. by its Secretary, Public Works Department*, 2007-1-LW 275, *Indian Council for Enviro-Legal Action etc.* v. *Union of India*, (1996) 3 SCC 212].

The flood plains and river bed of Yamuna are under increasing pressure of alternative land use for various purposes, which are driven primarily by growth of economy at the cost of the river's integrity as an eco-system. [*Manoj Mishra* v. *Union of India*, Original Application No. 6 of 2012 and Original Application No. 300 of 2013, decided on 13th January, 2015]. The powers conferred on the Central Government by virtue of provisions contained in Section 3, 5 and 25 of the Act of 1986 and on the National Green Tribunal by virtue of Sections 14, 15 and 16 read with Section 18 of the National Green Tribunal Act, 2010, are wide enough to provide for protection, preservation and restitution of the environment and ecology of the river bed of River Yamuna.

31. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment [*Vellore Citizens Welfare Forum* v. *Union of India*, (1996) 5 SCC 647].

32. The applicability of 'Principle of Liberal Construction' to socio-welfare legislation like the Act of 1986, thus, could be justified either with reference to the 'doctrine of reasonable construction' and/or even on 'constructive intuition'. In the case of *Haat*

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Supreme Wastech Pvt Ltd. v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal, while dealing with interpretation of the Regulations of 2006 along with the Schedule and while deciding whether the bio-medical waste disposal plants required Environmental Clearance or not, answered the question in affirmative, that, such plants are covered under Entry 7(d) and while answering so, applied the doctrine of 'reasonable construction' as well as 'constructive intuition'. Doctrine of 'reasonable construction' is intended to provide a balance between development and the environment. The Tribunal held that there was no occasion for the Tribunal to take the scope of Entry 7(d) as unduly restrictive or limited and it gave the entry a wide meaning. It was also held that the Environmental Clearance would help in ensuring a critical analysis of the suitability of the location of the bio-medical waste disposal plant and its surroundings and a more stringent observation of parameters and standards by the project proponent on the one hand and limiting its impact on public health on the other.

33. 'Development' with all its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes re-development. It could also be an activity, action, or alteration that changes underdeveloped property into developed property (Ref: *Wharton's Law Lexicon*, 15th Edn., 2012, *Black's Law Dictionary* 9th Edn., 2009). Reading of Clause 2 of the Regulations of 2006 and the Schedule attached thereto, particularly in light of the above principles, clearly demonstrates that an expression of very wide magnitude has been deliberately used by the framers. They are intended to cover all projects and activities, in so far as they squarely fall within the ambit and scope of the Clause. There does not appear to be any interest for the Tribunal to give it a narrower or a restricted meaning or interpretation. In the case of *Kehar Singh* v. *State of Haryana*, 2013 ALL (I) NGT REPORTER (2) (DELHI) 140, the Tribunal had specifically held that there should exist a nexus between the act complained of and environment and that there could be departure from the rule of literal construction, so as to avoid the statute becoming meaningless or futile. In case of a social or beneficial legislation, the Tribunal should adopt a liberal or purposive construction as opposed to the rule of literal construction. The words used therein are required to be given a liberal and expanded meaning. The object and purpose of the Act of 1986 and the Schedule of Regulations of 2006 thereto was held to be of utmost relevance. In the case of present kind, if no checks and balances are provided and expert minds does not examine and assess the impacts of such projects or activities relating to development, consequences can be very devastating, particularly environmentally. Normally, the damage done to environment and ecology is very difficult to be redeemed or remedied. Thus, a safer approach has to be adopted to subject such projects to examination by Expert Bodies, by giving wider meaning to the expressions used, rather than to frustrate the object and purpose of the Regulations of 2006, causing irretrievable ecological and environmental damage.

34. There can hardly be any escape from the fact that Entries 8(a) and 8(b) are worded somewhat ambiguously. They lack certainty and definiteness. This was also noticed by the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (2011) 1 SCC 744, where the Court felt the need that the Entries could be described with greater precision and clarity and the definition of 'built-up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. Despite the above judgment of the Hon'ble Supreme Court, Entry 8(a) and 8(b) were neither amended nor altered to provide clarity or certainty. However, the expression 'built up area' under the head 'conditions if any' in column (5) of the Schedule to the Regulations of 2006, was amended vide Notification dated 4th April, 2011. *Dehors* the ambiguities in these

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Entries, an interpretation that would frustrate the object and implementation of the relevant laws, would not be permissible. 'Township and Area Development project' is an expression which would take within its ambit the projects which may be specific in relation to an activity or may be, they are general Area Development projects, which would include construction and allied activities. 'Area Development' project is distinct from 'Building and Construction' project, which by its very language, is specific and distinct. Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 have been a matter of adjudication and interpretation before the Hon'ble Supreme Court in the case of *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (supra). In that case, Hon'ble Supreme Court was concerned with the construction of a park in Noida near the Okhla Bird Sanctuary. The Hon'ble Supreme Court provided a distinction between a 'Township project' and 'Building and Construction project' and held that a 'Township project' was different, both quantitatively and qualitatively from a mere 'Building and Construction project'. Further, that an Area Development project may be connected with the Township Development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other *civic infrastructure*, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. The Hon'ble Supreme Court principally held that a zoological or botanical park or a recreational park etc. would fall within the category of Entry 8(b) but, if it does not specify the threshold marker of minimum area, then it may have to be excluded from operation of the mandatory condition of seeking prior Environmental Clearance. The Court held as under:

> "66. The illustration given by Mr. Bhushan may be correct to an extent. Constructions with built up area in excess of 1, 50,000 sq mtrs. would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. *To that limited extent* there may be a quantitative correlation between items 8(a) and 8(b). But it must be realized *that the converse of the illustration given by Mr. Bhushan may not be true*. For example, a project which is by its nature and character *an "Area Development project" would not become a "Building and Construction project"* simply because it falls short of the threshold mark under item 8(b) but comes within the area specified in item 8 (a). The essential difference between items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated there under.
>
> 67. In light of the above discussion it is difficult to see the project in question as a "Building and Construction project". Applying the test of 'Dominant Purpose or Dominant Nature' of the project or the *"Common Parlance" test, i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorized under item 8(b) of the schedule as a Township and Area Development project".* But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 hectares) is less than 50 hectares and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 square metres, i.e., much below the threshold marker of 1,50,000 square metres."

35. Besides dealing with the scope and dimensions of Entries 8(a) and 8(b) of the Schedule afore-stated, the Hon'ble Supreme Court, while referring to the findings given by the CEC in its report, that the Project was located at a distance of 50 mtrs. from the Okhla Bird Sanctuary and that in all probability, the project site would have fallen in the Eco-Sensitive Zone had a timely decision in this regard being taken by

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the State Government/MoEF, permitted continuation of the project, and held as under:

> "74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, views the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the Sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around Sanctuaries and National Parks to protect the sensitive and delicate ecological balance required for the sanctuaries.
>
> But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court Environment is not merely a statutory issue. Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution"

36. The above dictum of the Supreme Court clearly laid down a fine distinction between Entries 8(a) and 8(b) of the Schedule to the Regulations of 2006 on one hand, while on the other hand held that mere absence of law cannot be a ground for degrading the environment, as environment is one of the facets of 'Right to Life' as envisaged under Article 21 of the Constitution of India.

37. Thus, this Tribunal has to examine the ambit and scope of Entry 8(b) while keeping in mind the Scheme and Object of the Act of 1986, the Rules of 1986, the Regulations of 2006 along with its Schedule and most importantly right to clean environment as an integral concept of our Constitutional Scheme. The project in question is construction of a 'Signature Bridge' over River Yamuna, connecting eastern and western ends of the city of Delhi and to ensure fast and smooth flow of traffic in that part of the city. This certainly is an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. There is also no dispute that the total constructed area of the 'Signature Project' is 1,55,260 sq. mtrs., which is higher than the threshold marker of 1,50,000 sq. mtrs. This project cannot fall within Entry 7(f) of the Schedule to the Regulations of 2006, as it is neither a national nor a city highway and not even any part thereof.

38. Having held that the project in question is covered under Entry 8(b) of the Schedule to the Regulations of 2006, now we have to consider what relief can be granted to the applicant in the facts and circumstances of the case. Admittedly, particularly according to the Project Proponent, various other departments have granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14th March, 2007 had informed the Project Proponent that 'bridges' are not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It is in the backdrop of these circumstances that the construction of the project commenced in the year 2007. As of today, more than 80 per cent of the bridge has already been completed. Huge public funds have been spent on this project. It is intended to serve public purpose and is in public interest, namely free and fast flow of traffic between east and west Delhi. Apparently, we cannot attribute any fault or breach of legal duty to the Project Proponent (Respondent No. 1). We do not think it is a case where we should either direct stoppage of project work or direct demolition thereof.

39. In light of the peculiar facts and circumstances of the case and the reasons afore-recorded, we dispose of this application with the following directions:

1. We hold that construction of a 'bridge' or similar activity covering a build up area ≥ 1,50,000 sq. mtrs. and/or covering an area of ≥ 50 hectares, would be covered under Entry 8(b) of the Schedule to the Regulations of 2006.

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2. We direct Respondent No. 1 to obtain Environmental Clearance for the project in question. Such application would be submitted within a period of three weeks from the pronouncement of this Judgment.
3. The SEIAA shall consider the said application as Category 'B' project and would dispose it of by passing appropriate orders in accordance with law upon submission of Environmental Impact Assessment Report and in any case not later than six months from today.
4. Though the major part of the project has already been completed, we do not direct demolition thereof in public interest. However, we direct SEIAA to put such terms and conditions as may be necessary to ensure that there are no adverse impacts on environment, ecology, biodiversity and environmental flow of River Yamuna and its floodplain.
5. We also direct that the SEIAA may impose conditions containing remedial measures to be taken by the Project Proponent to ensure that there is no environmental degradation.
6. We direct MoEF to comply with the directions issued by the Hon'ble Supreme Court in para 84 of the case of *In Re: Construction of Park at NOIDA Near Okhla Bird Sanctuary* v. *Union of India (UOI)*, (2011) 1 SCC 744.

40. There shall be no order as to costs.

———

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EXHIBIT - L

Item No.1:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 239 of 2021 (SZ)

IN THE MATTER OF

Navroz Kersasp Mody
S/o Kersasp Mody,
Aged about 76
Aurodam, Auroville, Vanur Taluk,
Viluppuram- 605101 and Anr.

…Applicant(s)

Versus

The Auroville Foundation
Rep by its Secretary,
Auroville Foundation Bhavan
Auroville, Tamil Nadu- 605101 and Ors.

...Respondent(s)

For Applicant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. R. Sankaranarayanan, Addl. Solicitor General along with Mr. V. Chandrasekaran, Senior Panel Counsel – Union of India for R1.
Mr. G.M. Syed Nurullah Sheriff for R2.
Dr. D. Shanmuganathan for R3.
Mr. H. Rajaram along with
Mr. Nithyaesh for Intervenor (Supporting 1st Respondent)
Mr. M.V. Swaroop for Intervenor (Supporting Applicants)

Date of Judgment: 28th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

O R D E R

Judgment pronounced through Video Conference. The Original Application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.239/2021 (SZ)
28th April 2022. AM, Mn.

Item No.1:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 239 of 2021 (SZ)

IN THE MATTER OF

1. **Navroz Kersasp Mody**
   S/o Kersasp Mody,
   Aged about 76
   Aurodam, Auroville, Vanur Taluk,
   Viluppuram- 605101

2. **Sandeep Vinod Sarah**
   S/o Vinod Gopalan
   Panayoram, Fertile, Thelem Road,
   Auroville Tami Nadu- 605101

…Applicant(s)

Versus

1. **The Auroville Foundation**
   Rep by its Secretary,
   Auroville Foundation Bhavan
   Auroville, Tamil Nadu- 605101

2. **Union of India**
   Rep by its Secretary,
   The Ministry of Environment Forests and Climate Change,
   Jorbagh, New Delhi

3. **The State of Tamil Nadu**
   Rep by its Director,
   Department of Environment,
   No. 1, Jeenis Road, Panagal Building,
   Ground Floor, Saidapet, Chennai- 600 015

...Respondent(s)

ADDITIONAL PARTIES

1. **Ravindrakumar Solanki**
   S/o. Khatubhai, Vikas
   Community
   Auroville – 605 101
   Tamil Nadu

2. **Joy Chowdhury**
   D/o. Chowdhury
   Dana Community
   Auroville – 605 101
   Tamil Nadu

3. **Divya Karun**
   W/o. Manish Chaudhry
   Flat No.703, Jawahar Nagar
   Jaipur (Rajasthan) – 302 004.

4. **Alok Malick**
   S/o. Babaji Mallick
   138, Akka Samu Madam Street,
   Vazhaikulam Padmini Nagar
   Pondicherry – 605 012.

Intervenor – Supporting 1st Respondent

(Additional Parties No.1 to 4 are impleaded as Intervenor supporting the 1st Respondent as per order in I.A. No.206/2021 dated 21.12.2021.)

5. **Tejaswini Mistri**
   W/o. Ritesh Kapoor,
   Aged about 41
   House No.1, West Gate,
   Prarthana Community, Auroville
   Tamil Nadu – 605 101.

6. **Archana Saraf**
   W/o. Atul K Saraf
   Aged about 48
   Grace Community,
   Auroville, Villupuram
   Tamil Nadu – 605 101.

7. **Natasha Storey**
   D/o. Peter Patrao
   Aged about 49
   Evergreen, Auroville,
   Tamil Nadu – 605 101.

Intervenor – Supporting Applicants

8. **Sangeetha Sriram**
W/o. Rajeev Natarajan
Aged about 45
Pump House Community
Auroville, Villupuram
Tamil Nadu – 605 101.

9. **Swarna Lata**
W/o. Prashant Madhukar Hedao
Aged about 59
C-1 Ahana Complex
Kuruchikuppam,
Padmini Nagar,
Puducherry – 605 012.

Intervenor – Supporting Applicants

(Additional Parties No.5 to 9 are impleaded as Intervenor supporting applicants as per order in I.A. No.01/2022 dated 03.01.2022)

For Applicant(s): Mr. A. Yogeshwaran.

For Respondent(s): Mr. R. Sankaranarayanan, Addl. Solicitor General along with Mr. V. Chandrasekaran, Senior Panel Counsel – Union of India for R1.
Mr. G.M. Syed Nurullah Sheriff for R2.
Dr. D. Shanmuganathan for R3.
Mr. H. Rajaram along with
Mr. Nithyaesh for Intervenor *(Supporting 1st Respondent)*
Mr. M.V. Swaroop for Intervenor *(Supporting Applicants)*

Judgment Reserved on: 17th January 2022.

Judgment Pronounced on: 28th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet – Yes.

Whether the Judgement is to be published in the All India NGT Reporter – Yes.

JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The grievance in this application is regarding cutting of large number of trees by 1st respondent, namely, Auroville Foundation from Auroville forest area, which according to the applicant has its own biological diversity and eco-sensitiveness.

2. According to the applicant, the Auroville Foundation was established in the year 1968 as an autonomous body and they visualised a project for development of that area. The Auroville was born on 28 February 1968. Its founder, the MOTHER, created the Auroville Charter consisting of four main ideas which underpinned her vision for Auroville. The lands in question are owned by the Auroville Foundation, an autonomous organisation created by the Auroville Foundation Act 1988. Its nodal ministry is the Ministry of Education (earlier known as the Ministry of Human Resource Development).

3. Under the Auroville Foundation Act, 1988, a Master Plan of Auroville was made in 1999 by residents of Auroville and approved by the Residents' Assembly. However, the Governing Board felt that eminent town planners on the national and state level needed to become involved before approving it. This led to the Auroville Universal

Township Master Plan Perspective 2025, made in 2001, which was approved by the Ministry of Human Resource Development as well as the Governing Board. The plan was not again submitted for approval to the Residents' Assembly. For unknown reasons, the plan was only gazetted by the Auroville Foundation in part 3 of the Gazette of India in 2010.

4. The Auroville Universal Township Master Plan Perspective 2025 specifies in section 1.1.2 that it provides a policy framework which will serve as a guide in the preparation for Five Year Development Plans and Annual Plans. This was further specified in its Section 2.11.1, which states that Five Year Development Plans were to be made containing the priority items to be taken up for development, and that at the close of the first Five Year Development Plan, the progress would be assessed, after which second detailed development plan would be prepared, followed by further detailed development plans for subsequent 5 year periods. Section 2.11.2 then states that the Five-Year Development Plans would be reviewed, and that the review process will be the same as followed for the preparation of the Perspective Plan.

5. Since the approval of this Master Plan in 2001, neither Five-Year Development Plans nor Annual Plans have been made. Neither was the Master Plan ever adapted to the present and evolving ground realities, even though several experts and groups within and outside Auroville proposed to do so. Also, no "water plan", which all urban planning bodies now have to make as the basis of their development

proposal in accordance with the Amruth Operational guidelines 2.0 - Making Cities Water Secure, was made.

6. It was alleged that 1st respondent is now focusing on the manifestation of the roads mentioned in the Master Plan, e.g. the Crown road, a road encircling the centre of the township, and an Outer Ring Road. These roads have only been indicated by a sketch in the Master Plan on its page 59. They have failed to see that the Master Plan is only a Perspective Plan and is not a project report.

7. For implementation of specific activities mentioned in the master plan, each component has to be studied, assessed for its impact, the least deleterious alternative chosen for the implementation of the project in light of existing ground realities. According to the applicant, the master plan does not propose that forests with endangered flora and serving as habitat of several species of fauna be destroyed for the construction of a road envisaged in the Master plan. They have also failed to appreciate this fact and has blindly decided to implement the components mentioned in the master plan without any examination as to its siting and sustainability. The Master plan cannot be taken as a design document and the proposed road cannot be built in the exact shape specified therein. The diagrams in the master plan are indicative – they are not project designs.

8. The 1st Respondent has failed to consider the objections of a section of the Auroville residents to the manifestation of these roads and is not willing to follow the due process of dialogue, consultation and

adaptation of the Master Plan. They intended to destroy the forest area which was developed in 1970. The first tree nurseries were started in Success and Kottakarai and, with the help of grants from the Point Foundation, the Tamil Fund and friends abroad, large-scale tree planting began. In the next ten years, as part of a massive soil and water conservation programme, over a million trees - timbers, ornamentals, fencing, fruit and fodder trees, nut trees etc.- were planted here. As the trees grew, and micro-climates formed, many species of bird-life and animals returned, further accelerating the dissemination of seeds and enriching the environment. Endangered floral species were planted and thrived in these forests. These lands fit the dictionary meaning of forests and are entitled to protection as mandated in the *T.N. Godavarman's* case by the Hon'ble Supreme Court.

9. They are trying to distract Darkali forest by using huge machineries for carrying out the destructive process and causing deterioration to the environment especially developed forest in that area. Though lot of objections were raised and protest were conducted, the officials of the 1st respondent are proceeding with the project of destruction of the forest area that prompted the applicant to file this application seeking the interim as well as final reliefs:-

> *"**INTERIM RELIEF**:*
>
> *A. Injunct the 1st respondent from felling any tree or clearing undergrowth in the Darkali forest or any area in Auroville for the proposed crown road project.*
>
> *B. Issue such other orders as it deems fit in the interest of the case and render justice.*

MAIN PRAYER

A. Direct the 1st respondent to prepare a Detailed Development Plan including a mobility plan which is based on and respects the present day ground realities, to be approved as mandated in the Master Plan and implement projects based on such plan after necessary impact assessments and feasibility studies in an environmentally sustainable manner.

B. Direct the respondent to pay costs to the applicant.

C. Issue such other orders as it deems fit in the interest of the case and render justice."

10. As per order dated 10.12.2021, this Tribunal had admitted the matter and also granted an interim order directing the 1st Respondent not to cut any further trees till 17.12.2021 and directed the parties to appear and file their objections and posted the case to 17.12.2021 for this purpose.

11. The applicant has filed additional affidavit in the form of new grounds alleging that without conducting a proper impact study of the project, the work should not be proceeded with. They also reiterated the contention that the master plant is not a project document, it is only a vision document of the MOTHER and the document did not deal with the nature, alignment, impact and feasibility of the proposed infrastructure. Further this cannot be treated as a master plan as envisaged in Tamil Nadu Department of Town and Country Planning hand book and also under the Tamil Nadu Town and Country Planning Act.

12. Even the various clauses in the master plan which were approved only envisages the prospective plan of development without envisaging as to how it has to be implemented and without preparing a project on that basis. Unless such a project is framed, it cannot be said that it was properly executed. Further, though it was visualised by MOTHER in 1968, the project got approved only in 2001. Further, since there were some irregularities in managing the Auroville Foundation by the then office bearers, the Central Government thought of making a permanent solution for management of the same. Accordingly, the Auroville Foundation Act, 1988 was passed envisaging the manner in which the activities of the foundation will have to be managed by different bodies constituted under the Act.

13. Though the master plan was approved in 2001, the approval stated that it will come to effect only from its date of notification and it was really published in the year 2010. Though there was certain provisions made for constitution of town development council etc and the same has been constituted but there was no detailed development plan, zonal plan and local plan were made by the Town Development Council constituted. The responsibility of Town Development Council to implement the master plan is very important and as per the standing order of 06.05.2011, the council is tasked with framing rules, regulation for enforcing the master plan, obtaining endorsement and remuneration from appropriate States and Central Government for implementation of the master plan and also to secure the services of town planners, urban designers, consultants and experts in implementation of the master plan.

14. Earlier tree plantation drive was conducted and that was also implemented making the entire area resembling the forest. It was also mentioned that all master plan deviations on land earmarked for crown road have to be cleared so that the circular crown road and related infrastructure can be built without delay. A similar exercise shall be implemented for 12 radial and outer ring where land ownership permits which was so envisaged in 2.8 of master plan. Further, this being a township plan, this will fall, under Item 8 (b) of Schedule to the EIA Notification, 2006 and they will have to obtain prior Environmental Clearance from the authorities and they will have to conduct a proper environmental impact assessment before proceeding with the project. Further, the extended dictionary meaning of forest will apply as envisaged by the Hon'ble Supreme Court in **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.,**[1] and as such cutting of trees without obtaining prior clearance from the Central Government under Forests (Conservation) Act, 1980 will be illegal one. Further whenever, they are having clear cut master plan, then the same can be assessed with its environment impact and piecemeal implementation and segmentation will only affect the entire area. Though, there was a proposal to have a green belt, the place where they will have the same is also not clear. The entire land required for the purpose has not been obtained so far. So under such circumstances, according to the applicant without conducting proper impact assessment, the same cannot be implemented as it will have greater impact on environment.

[1]**(1997) 2 SCC 267**

15. Certain interested persons, who wanted to come on record and to support the 1st Respondent as well as applicants were permitted to join as internevor as per order in I.A. No. 206 of 2021 (SZ) dated 21.12.2021 and I.A. No. 01 of 2022(SZ) dated 03.01.2022 respectively and accordingly, they were shown as intervenors in the cause title.

16. **This Tribunal had extended the interim order on various occasions and lastly till the disposal of the case.**

17. The first respondent filed counter affidavit contending that the application is not maintainable and the applicant has not approached this Tribunal with clean hands and suppressed material facts before this Tribunal and as such, he is guilty of *suppressio veri suggestio falsi*. It was further contended that from its inauguration in February, 1968 Auroville has been developed as an international cultural township and not as a forest. Auroville Foundation was established by an Act of Parliament (The Auroville Foundation Act, 1988 was wrongly shown as 1998 in the counter) for the purpose of realising the ideals of Auroville including the building of Auroville township with a population of 50,000. The Auroville Master Plan has been prepared and was approved under the authority of the Act of 1988. The Auroville Universal Township Master Plan (Perspective 2025) was approved by the Government of India, Ministry of HRD in the year 2001.

18. The Auroville Master Plan provides for a greenbelt that is planned to be three times the size of the city area. The city area of the township also has green corridors and parks. Trees have been planted in

Auroville in the greenbelt, in designated city green corridors and parks but also on land earmarked for roads and urban development to stop soil erosion along with bunding with the clear understanding that these trees will be removed when a particular area is ready for development.

19. The crown road is a master plan ring road with a length of 4.3 km. A major part of the crown right-of-way (RoW) area has been cleared and infrastructure (electricity, water, OFC) has been installed along it. Auroville Foundation is now clearing the last part of crown right-of-way with 16.07m. The land area of the crown right-of-way is only 0.36% of the total Auroville Master Plan area.

20. The clearing work must be completed soon so that infrastructure work can be completed and proper access can be provided to underground infrastructure services that have already been installed. Auroville Foundation is constructing the township including the crown road on its own land and this land is not designated as a forest. The Auroville Master plan area is not a deemed forest as envisaged by the Hon'ble Apex Court in the *T.N. Godvaraman's* case since it is not a statutorily recognised forest, whether designated as reserved, protected or otherwise for the purpose of Section 2 (1) of the Forest Conservation Act and is also not a forest in the government record. As per revenue records of the Government of Tamil Nadu, the lands situated at Auroville are not classified as forest lands. Hence the very premise of the assertion of the applicant is without any basis and liable to be rejected in liminie. If Auroville area was indeed a deemed forest as

claimed by the applicant, then the applicant's own house in Auroville and all the facilities that applicants use in Auroville could not have been constructed and will have to be demolished.

21. The claim that cutting of trees within the crown right-of-way will have great impact on environment is not maintainable on following grounds:

> *"i. The trees that are being removed for the last segments of the Crown Row represents an estimated 0.05% of the trees already planted.*
>
> *ii. New solar PV capacity installed in Auroville during the last two years alone, results in annual CO2 emission reduction equal to what 20,000 trees would absorb.*
>
> *iii. In the last 3-4 years alone more than approximately 10,000 trees have been planted all over Auroville.*
>
> *iv. There is a green belt and there are green corridors inside the city. Green work has taken place, and will continue to happen there.*
>
> *v. Trees alone cannot take care of emission reduction. Trees absorb CO2 and release it again when they die or are burnt. Auroville targets 100% renewable energy and that will avoid CO2 emission to start with.*
>
> *vi. Auroville has demonstrated the use of both stand - alone and grid connected solar energy. Auroville plans to have a network of solar energy generation and storage systems that are interconnected with an internal grid that is coupled with the State grid. This is the way forward for a sustainable energy future.*
>
> *vii. Auroville has made progress with the introduction of e - mobility that will replace the fossil fuel motorcycles and cars that are still used by many of its residents. The master plan road lay - out with a circular inner ring (the "Crown"), 12 radials and an outer ring, allow for sustainable mobility solutions and resilient infrastructure services."*

22. These are just of a few of the many measures that Auroville has already taken and will continue to take to ensure a sustainable future for all. Contrary to what the applicant claims, there is no negative environmental impact and in fact a net positive impact if the total picture is taken into account. The applicant approached this Tribunal

with misleading and incomplete facts which are contrary to record. The foundation has already decided to continue with Auroville's tree plantation drive to increase biodiversity.

23. There exists no Auroville forest area that needs to be protected against destruction. The argument of the applicant is misconceived. Auroville is a township under construction since 1968 where trees have been planted in designated green zones and also in areas that are earmarked for roads, community services, residential and other buildings. The trees were planted to stop soil erosion with the clear understanding that they would be removed if needed for development in a given area as stated above. It was not classified forest land or Auroville forest. Auroville is a township under construction and was inaugurated by the MOTHER on 28.02.1968 with following Auroville charter:

> *"i. Auroville belongs to nobody in particular. Auroville belongs to humanity as a whole. But to live in Auroville one must be a willing servitor of the Divine Consciousness.*
>
> *ii. Auroville will be the place of an unending education, of constant progress, and a youth that never ages.*
>
> *iii. Auroville wants to be the bridge between the past and the future. Taking advantage of all discoveries from without and from within, Auroville will boldly spring towards future realizations.*
>
> *iv. Auroville will be a site of material and spiritual researches for a living embodiment of an actual Human Unity."*

24. The word forest did not appear anywhere in the Auroville Charter and is also not found in the Act of 1988. They denied the allegation that it was a deemed forest and they require prior clearance under the Forest (Conservation) Act, 1980 etc., Voluntary planting of trees that were on Auroville Foundation's own land does not make Auroville or any part of it a forest or deemed forest. If that be the case, no person will be

interested in planting trees in an institution including educational campuses or government estates and voluntary tree planting initiatives would come to stand still. Auroville has presently a population of about 3,500. In the centre of Auroville is a Matrimandir, which the MOTHER referred to as a soul of Auroville. There were different township zones viz., residential, international, industrial and cultural and additionally, a green belt which is planned to be three times the size of the city area of which more than 50 per cent is open and green. In addition to the Matrimandir, developments have taken place in each of the township zones, some of which were listed as follows:

> *"i. The residential zone: various types of residential buildings, mainly in sector 1 and 2 and community services.*
>
> *ii. The international zone: Bharat Nivas the pavilion of India, various other pavilions, and spaces for cultural activities.*
>
> *iii. Industrial zone: various income - generating units, the Center for Scientific Research, an e - cycle service, guesthouses etc.*
>
> *iv. Cultural zone: Schools and other educational facilities, residential quarters.*
>
> *v. City Center: The Town Hall, various office buildings, the Auroville Archives building, a media center, various community services, residential buildings etc.*
>
> *vi. Crown: Community kitchen, library, health services, residential buildings etc.*
>
> *vii. Green corridors and parks inside the city area: Trees, landscaping.*
>
> *viii. The Green Belt: Trees, botanical garden, agriculture, some residences."*

25. Most of the above have been completed and functional. A small section of the residents were attempting to enjoy the lands of Auroville like Zamindars and as their own private fiefdoms and they were trying to obstruct the implementation of the master plan envisaged by the MOTHER.

26. In 1999, the Resident Assembly of Auroville approved the Auroville Universal Township Integrated Master Plan formulated by it. Thereafter, the Governing Board finalized and approved the Master Plan after taking expert advice from the Town and Country Planning Organisation (TCPO) of the Ministry of Urban Development, Government of India and resolved to implement the same vide minutes of meeting dated 15.02.2001. The said meeting was attended by the Chairman and members of the Governing Board, Auroville Foundation, Chief Planner and Additional Planner, TCPO, (Ministry Urban Development, Government of India), Special Commissioner, Town and Country Planning, Tamil Nadu Government, an architect-planner from Auroville and an educationist from Auroville. Further, post this meeting and approval from the Governing Board, the Ministry of Human Resource Development, Department of Secondary Education and Higher Education, Government of India issued a letter dated 26.02.2001 forwarding the minutes of the aforesaid meeting to the Ministry of Urban Development. Subsequently on 12.04.2001 a letter was sent by the Ministry of Human Resource Development to the Secretary of Auroville Foundation informing him that the master plan of Auroville has been approved. It is in pursuance to the aforementioned actions that on 16.08.2010, Auroville Foundation notified the Auroville Master Plan in Gazette of India. Till date, no one has challenged the notification dated neither 16.08.2010 nor the approval of the concerned Ministry in the year 2001.

27. There is no necessity in law for the decision of the Governing Board to be submitted to the Resident Assembly. They have not mentioned about the steps taken from 2001 till date for non-preparation of the approved master plan which was one of the ground alleged by them for implementation of the same. The master plan envisages the development of first five years which include the crown and outer ring road, which were specifically provided with an estimated cost. The work has already been started and major portion of the work has been completed and only a small portion has to be carried out. A drawing was also approved showing the manner in which it will have to be done. They have more or less repeated what was stated by them in the earlier paragraphs.

28. As per the Auroville Foundation Act, 1988, their activities will have to be governed by the Auroville Foundation Act, 1988 and the Tribunal has no jurisdiction to enquire into the same. The Secretary of Auroville Foundation is also the Estate Officer of Auroville Foundation under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and as such is empowered to ensure that Auroville Foundation lands are used strictly in accordance with the land use as stated in the Auroville Master Plan and the prayer of the applicant to stop the work of the crown road until detailed developments plans have been completed needs to be rejected. They were only following the statutory mandate in terms of Section 17 (e) of the Act of 1988.

29. The 2001 approved master plan has been notified as early as on 16.08.2010 and as such the application filed in 2021 is beyond limitation. Further even as per the applicants version, the Auroville was inaugurated on 28.02.1968 with a charter of Auroville and the Auroville galaxy plan approved by the MOTHER which forms the basis of the Auroville Master Plan. It was known to all including the applicant. There was no merit in the application and they prayed for dismissal of the application.

30. The applicant filed rejoinder to the counter filed by the 1st respondent, wherein they had reiterated their earlier contentions raised by them in the original application and also in the additional affidavit filed by them. According to the applicants, though the order of status quo restraining further felling of trees dated 10.12.2021 was extended on 17.12.2021 by directing the 1st respondent to maintain status quo, they continued to engage in that activity.

31. They denied the allegation that they have suppressed the material fact and made misrepresentation of facts. Further there was no proper project prepared on the basis of the conceptual township envisaged by MOTHER and even the township was approved in 2001 but it was specifically mentioned that it will come into force from the date of this publication in the gazette which was gazetted only in 2010 and by the time EIA Notification, 2006 has come into effect and as such for township project, they will have to obtain prior Environmental Clearance under item 8(b) of the EIA Notification, 2006. The crown road is only 0.36 per cent of the total area of Auroville Master Plan area

is relevant when considering the question of making the study in respect of impact of environment. They were only trying to implement the policy document without obtaining the statutory approvals required under the planning laws as well as under the Environmental laws. As per the master plan, they intend to develop a township of more than 1963 ha of which they have obtained only 778 Ha in their possession. They also propose to acquire 100 Ha per area over a period of 10 year period. Even the land consolidation process was not complete and even assuming that they are going to develop a township of 778 Ha within their possession, they will have to obtain Environmental Clearance for that purpose as if the entire construction is to be taken of the proposed project, then it will go beyond 1,50,000 Sq.m. and also if more 50 Ha of land is involved in township project, then it will fall under item 8 (b) of the EIA Notification, 2006. Further, even assuming that trees were planted for the purpose of avoiding soil erosion and it need not be a spontaneous growth of forest nature but when the area is having more than 5 Ha and the tree growth is more than 0.42 per cent, then the Forest (Conservation) Act, 1980 will apply.

32. Further, trees do not release carbon dioxide when they die and they release it only when it decomposes. The existence of forest like area was anticipated by the Hon'ble Apex Court while extending the dictionary meaning of forest. Further when the forest like area was created on the basis of tree plantation drive to protect environment, it will have to be treated as forest for all purposes.

33. It is for the authorities under EIA Notification, 2006 to consider as to whether what is the nature of impact that may be caused on account of the activities of the 1st respondent and it is not for the 1st respondent to unilaterally declare that it will not have any adverse impact on environment. They have not identified the area where the green belt is to be developed and all those things can be possible only if they have got a proper project document which has to be assessed by a proper authority regarding its impact on environment, especially when they are visualizing a large township project including several activities like cultural, religious, international, industrial, residential and occupational activities and the impact of each has to be considered while assessing the project as such and such a study has not been conducted by them. The Auroville Foundation Act, 1988 will not override the provisions of the Environment (Protection) Act, 1986 and also the EIA Notification and any improvement in that area will be subject to these environmental laws.

34. The study report submitted by the applicant will go to show the nature of flora and fauna in the forest area according to the applicant and the nature of trees that has been cut and removed and impact of those on environment. Further, when it constitute as a total project or township, even laying down roads which amount to preparation for the project, since as per the EIA Notification, 2006 only those things which are permitted for preparation, namely, fencing the area, putting temporary sheds for employees alone is permissible. No other activity is permissible in a case where prior Environmental Clearance is required. The attempt of the applicant is only to see that the 1st respondent

follows the environmental laws strictly and they were not against the establishment of the township. The averment in the counter statement that the applicant has come with malafides in order to safeguard his possession of the land is without any merit and he was not against the project and he wants only to comply with environmental laws by 1st respondent in implementing the project. So, he prayed for accepting their contentions in the rejoinder and allow the application.

35. The second respondent filed counter affidavit contending that the application is not maintainable. This counter affidavit is being filed in compliance with the order passed by this Tribunal dated 21.12.2021 to indicate their stand and role of the Ministry in the case. The MoEFF&CC is anodal agency of the Central Government for planning promotion, coordination and overseeing the implementation of India's environment and forest policy. The primary concerns of the Ministry are implementation of policies and guidelines relating to conservation of country's forest, biodiversity, natural resources, wildlife. Most of the allegations in the application pertain to the State respondents and they have nothing to do with the same. The 2nd respondent had issued EIA Notification, 1994 S.O. 60(E) dated 27.01.1994 mandating requirement of Environmental Clearance for undertaking any new project in any part of India or the expansion or modernization of any industry or project listed in Schedule I evidenced by annexure-A1 produced along with the reply affidavit. The requirement of prior Environmental Clearance for certain categories of construction and development activities (new construction projects and new industrial estates) in the Country was inserted in Schedule I after Item 30 through an

amendment in EIA Notification, 1994 (operative at that time) vide notification no. S.O No. 801(E) dated 07.07.2004, the above said notification mention that new construction projects which were undertaken without obtaining the clearance required under this notification where the construction work has not come up to the plinth level shall require clearance under the notification with effect from 07.07.2004 and the said notification is produced as annexure A-2 along with the counter affidavit.

36. Under the Environment (Protection) Act, 1986 the Central Government issued Environment Impact Assessment Notification vide S.O. No. 1533(E) dated 14.09.2006, herein referred to as EIA Notification, 2006, superseding Environment Impact Assessment Notification, 1994. As per EIA Notification, 2006, the projects/activities listed in Schedule shall require prior Environmental Clearance from the concerned regulatory authority which shall herein refereed to Central Government in the Ministry of Environment and Forests for the matter falling under category A in the Schedule and at the State Level, the State Impact Assessment Authority for matter matters falling under Category B in the Schedule before any construction work or for preparation of land by the project management except for securing land is started in the project activity. All (1) new projects/activities listed in the Schedule to the notification, (2) expansion or modernization of existing projects or activities listed in the Schedule to the notification with addition of capacity beyond limit specified for concerned sector i.e. projects or activities which cross the threshold limits given in the Schedule after expansion or modernization, (3) any

change in product mix in an existing manufacturing unit included in Schedule beyond the specified range. As per EIA Notification, 2006 Environmental Clearance for building and construction projects and township and area development are covered under Entry 8(a) and (b) of Schedule to the notification. The Entry 8(a) and 8(b) of EIA Notification reads as follows:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
8		***Building or Construction projects or Area Development projects and Townships***		
8(a)	*Building and Construction projects*		*220000 sq.mtrs and <1,50,000sq.mtrs. of built-up area*	*The term "builtup area" for the purpose of this notification is the built-up or covered area on all floors put together, including its basement and other service areas, which are proposed in the building or construction projects.* ***Note 1.** The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials such as fly ash bricks.* ***Note 2.** "General Conditions" shall not apply.*

8(b)	*Townships and Area Development projects.*		*Covering an area 2 50 ha and or built up area >1,50,000 sq. mtrs*	*A project of Township and Area Development Projects covered under this item shall require an Environment Assessment Report and be appraised as Category '131' Project.* ***Note:*** *"General Conditions" shall not apply.*

37. The aforementioned entries in 8(a) and 8(b) are qualified as category B projects under EIA Notification, 2006 and the projects are appraised by State Level Expert Appraisal Committee and approved by the State Environmental Impact Assessment Authority. Further, as per EIA Notification, 2006 the absence of duly constituted SEIAA or SEAC, Category B will be considered at Central level as Category A project. The instant project has been examined by the respondents for applicability of Environmental Clearance as directed by this Tribunal, they had a meeting with the officers of 1st respondent and subsequent to the discussions the 1st respondent produced certain documents and made following submissions:

i. *"The Foundation has been developed as an international cultural township. It was established under the Auroville Foundation Act, 1988 (hereinafter referred to as the Act, 1988).*

ii. *The Galaxy Plan was prepared in 1968 which was the basis of Auroville Master Plan of 2001. The Master Plan of the Foundation was prepared and was approved by the Governing Body of the Foundation under the authority of the Act.*

iii. *Thereafter, The Auroville Master Plan was approved by the Ministry of Human Resource Development, (now known as Ministry of Education) Government of India in April 2001. The same has been notified in the Gazette of India on 16th August 2010.*

iv. *The Galaxy Plan as approved by the Mother was displayed during the Auroville inauguration on 28-02-1968 along with the Auroville Charter*

v. *The development of the Auroville Project has been put into execution on the basis of the Galaxy Plan which was also the basis of the Auroville Master Plan of 2001 and various components of the Main Auroville Project have already been completed*

vi. *The list below indicates township components arising from the Master Plan. It is pertinent to note that works in respect of these components were being executed as on 2001 when the Master Plan was approved*

a) *Peace Area:- Matrimandir, Matrimandir gardens, Matrimandir Lake, Amphitheatre*

b) *Residential Zone:- Housing, Community services, Health services*

c) *International Zone:- Bharat Nivas, Country Pavilions, Visitors Centre, SavitriBhavan, Unity Pavilion, Language Lab, Guesthouses, Residential quarters*

d) *Economic Zone:- Buildings for economic activities, Guesthouses, Earth Institute, Centre for Scientific Research, Residential quarters.*

e) *Cultural zone:- Schools, Other educational facilities, Residential quarters, Facilities for cultural programs*

f) *Green belt:- Tree plantation work, Agriculture, Botanical gardens*

g) *Township-wide:- Community services, Workshops, Restaurants and guesthouses, Roads and paths Infrastructure services (electricity, water, mobility, communication etc.*

vii. *The building of the Auroville Township began in 1968 on the basis of the galaxy plan and since that time, this is an on-going project of which a significant part has been completed. Therefore, it is seen that substantial work of the Auroville project has already been ongoing and completed at various stages even as far back as in 2001.*

viii. *All developments initiated by the Auroville Foundation have been taking place as per the approved Master Plan and there is no change in scope from the original approved master plan.*

True copy of the above mentioned Auroville Foundation Act, 1988 has been annexed as ANNEXURE A/3 and approval on the Master Plan has been annexed as ANNEXURE A/4."

38. In view of the information made available and submissions made by 1st respondent, it will have to be inferred that the instant township project in question has been under construction much before the EIA Notification, 1994 and its amendment dated 7th July, 2004 and

therefore, it could not have been considered as a new project under the provisions of the said notification as on 07.07.2004. There was no change in scope of township project from the original master plan as such. The township project may not attract the provisions of the EIA Notification, 2006 and its amendment for grant of Environmental Clearance. It is pertinent to mention that in case of any change in scope of the township project from the original approved master plan, prior Environmental Clearance may be required as per the provisions of the EIA Notification, 2006.

39. They have further mentioned that as adequate information is not available on the details of balance construction activities within different zones of township, namely, Residential Zone, International Zone, Industrial Zone and Cultural Zone with respect to their built up area and their construction status, all such individual project activities within such zone may require separate Environmental Clearance in case they fall under the Schedule of activities requiring prior Environmental Clearance as per provisions of EIA Notification, 2006. They prayed for liberty to file additional affidavit if further materials are obtained. They prayed for passing appropriate orders accepting their contentions.

40. The applicant also filed another rejoinder to the counter filed by the 2nd respondent contending that the 2nd respondent had only extracted the details and information collected from the 1st respondent for giving their opinion as to whether the EIA Notification will apply or not. They have not independently conducted any inspection or collected material

through their Regional Office before coming to such conclusion. These observation made by them without obtaining any details of the galaxy plan, total proposed construction in the township i.e. area/structural construction as on 2004 and other information and documents. Without getting the details of footprint, built up area of structure claimed to have been built already, the MoEF&CC should not have given their opinion on this aspect. The galaxy plan is only a conceptual plan and not a plan for development of township. It did not contain the details of the building to be built, road to be built, utility to be provided, it's built up area, footprints, impact etc.

41. The galaxy concept is not a township development plan based on which township has to be developed. The use of the word plan has to be seen in the context of word galaxy as envisioned by the MOTHER. Useful information will be available in the website of the 1st respondent which was produced as annexure A-1 along with the rejoinder which reads as follows:

> *"In interviews with Auroville Today in 1988 and in 1992, Roger Anger explained how this plan came into existence.*
>
> *"Mother had given a couple of parameters: the division of the city into four areas, or zones, and the number of people for whom the city is envisaged (50.000). The division into those four zones (industrial, residential, international and cultural) is unique, and has no precedent in town planning. On the basis of this scheme, we, the architects and town planners, started to make suggestions to her. This was done in several stages, and finally the Galaxy came out and was presented as a model to Mother, and accepted by her as a plan that answered to her parameters. She inspired and guided the work. When I talked to Mother one day about Auroville, she said that the city already exists in a subtle level, that it is already constructed, that it is only necessary to pull it down, to make it descend on earth."*
>
> *The galaxy plan shows the four zones, which are interconnected through the 'Crown', the second circular road around the Matrimandir. From the Crown, twelve roads radiate outwards as part of the infrastructure.*

Some of them are accompanied by a succession of high-rise buildings, which constitute the so-called 'Lines of Force', essential for the framework of the city and for the integration of all access to the city center. But the plan is not finished. On the contrary, the city is still to be invented, everything has still to be done through the daily experience and rhythm of the Aurovilians. Apart from these lines of force, everything is flexible, nothing is fixed."

42. Except the fact that it was divided into four zones, there was no material as to how it will have to be developed and what are all the things to be included in each zone etc. Further, the master plan said to have been approved has come into force in 2010 which was published on 16.08.2010 and prior to that there was no plan as such which can be implemented as per law.

43. The allegation that there was substantial construction of township as envisioned in the galaxy model is not correct. The following Google earth imagery has been produced to prove that there was not much construction.

"a. Google earth imagery of the subject city area – with the Matrimandir at the centre, marking the city area is filed herewith. The constructions that have come up in the city area till date can be seen on the satellite imagery.

b. On the same imagery, the galaxy model has been superimposed – this shows how the city area will appear if the city is built according to the galaxy model.

c. On the same satellite imagery, the galaxy model has been overlaid translucently – to show in context how the existing constructions and the ultimate galaxy model compare."

44. Further, certain constructions have been made without any master plan as envisaged in law. There are certain residential buildings, schools, office, cultural, social infrastructure buildings in the white area and also have certain number of floors associated with it for example lines

of force buildings are long buildings that stretch upto 1000+ meters in length and are at their highest point at about 18 to 20 stories height, lowest point being 2-3 stories. According to Roger Anger these Line of Force buildings is one of the main defining element of the Galaxy Master Plan when it is detailed out. So the shape that we see in the plan as a certain area but to get the built up area one has to multiply with the number of floors. The entire constructive area has not been completed and as such, it cannot be said that the substantial portion of the township has been reached the plinth area level so as to get the exemption under 2004 notification. They have given the details of the construction and the built up area as follows:

	Galaxy	**Master Plan 2001**	**2021 Built**	**% Built**
Building Footprint	15,16,436	No building Footprints	1,42,117	9.37%
Road Lengths	No Roads	20.1 Kms	2.4 Kms	12%

45. A comparison of the galaxy with the present existing development will go to show that they have completed only 9.37% of building footprint and 12% of the road and the remaining portion has not been completed so far. So according to the applicant, this will come under the purview of the amendment notification of 1994 which came into force from 07.07.2004.

46. Considering the fact that this is scattered, sporadic and ad-hoc development would not entitle the 1st respondent to go ahead with the development on several 100 ha without Environmental Clearance which will amount to mockery of law. They have reiterated that the application will have to be allowed after accepting their contentions.

47. The 3rd respondent has not filed any statement.

48. Intervening parties have filed their written submissions.

49. Heard Mr. A. Yogeshwaran, the learned counsel for the applicant, Mr. R. Sankaranarayanan, Additional Solicitor General of India along with Mr. V. Chandrasekaran, Senior Panel Counsel for 1st respondent, Mr. G.M. Syed Nurullah Sheriff for 2nd respondent, Dr. D. Shanmuganathan for 3rd respondent.

50. The Learned Counsel for the applicant argued that the video clippings and other material produced by the applicant would go to show that there was only a galaxy plan envisioned by the MOTHER to be developed in that area as Auroville Foundation Village and there was no proper plan prepared. It was only a conceptual plan envisaged by MOTHER to develop that area into township covering large extent of land to attract international people to make this area as an international cultural township providing various employment opportunities for the people who are likely to settle in that village. The conceptual plan is having an idea of development of 1963 ha. out of which, only they were in possession of 778 ha. only. Further area has not been acquired or purchased so far.

51. Further, even at the time when MOTHER was alive, as directed by the MOTHER a tree plantation drive was made as the entire area was dry land with some water bodies and in order to protect the water bodies and avoid soil erosion, large number of trees were planted which are having more biological value and it has become a forest area. If the

extended meaning of forest is made applicable to this area as observed by the Hon'ble Apex Court in *T.N. Godvaraman* case, then Forest (Conservation) Act, 1980 will apply and the prior clearance is required for this purpose. Even assuming that no prior clearance was required for this purpose, considering the impact of the destruction of large scale green cover area without conducting an impact of such activity, will have great adverse impact on the environment as trees play a great role in protection of the environment providing clean air by absorbing carbon dioxide in the atmosphere and releasing oxygen which is most required component for healthy life of the people.

52. Further, the master plan even according to the 1st respondent was approved in 2001 and it was mentioned therein that it will come into effect only from the date of its notification and it was notified only in 2010 by the time 2006 Notification has come into effect and development that will be made to be in tune with the master plan approved and came into force will have to abide by the provisions of the EIA Notification, 2006. Since, there was no approved master plan prepared prior to 1994, any construction made in scattered or sporadic manner will not make it a township project. Further, there are no details available before this Tribunal what are all buildings constructed and at what time so as to ascertain as to whether the subsequent constructions were made after 2004 or after 2006 after the coming into force of amendment as well as further notification under EIA Notification.

53. The 2nd respondent has also not conducted proper enquiry on this aspect and as such opinion given by them on this aspect cannot be relied for the purpose of coming to the conclusion that there was no prior Environmental Clearance required. So, he prayed for allowing the application directing the 1st respondent to conduct environment impact assessment even assuming not admitting that the Environmental Clearance not required as the construction was prior to 2004 Notification and there was no change in the scope of the project besides considering the nature of impact that is likely to be caused on account of cutting the large scale trees in that area.

54. The learned counsel appearing for the applicant had relied on the decisions reported in **Hanuman Laxman Aroskar Vs. Union of India & Ors.**[2], **Keystone realtors Private Limited Vs. Anil V. Tharthare & Ors.**[3]and **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.**[4] He had also relied on **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha and Ors.**[5], **Goa Foundation & Anr. Vs. Union of India & Ors.** order dated 18.07.2013 [6] and **M.J. Irani Vs. State of Madras**[7] and **Sushanta Tagore & Ors. Vs. Union of India & Ors.**[8] in support of their case.

55. The Learned Counsel appearing for the intervenor who are supporting the applicants supported the case of the Original Applicants and the arguments advanced by the learned counsel for the Original Applicants.

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[2] **(2019) 15 SCC 401**
[3] **(2020) 2 SCC 66**
[4] **(1997) 2 SCC 267**
[5] **(2021) SCC Online SC 897**
[6] **M.A. No. 49 of 2013 in O.A. No. 26 of 2012**
[7] **(1967) 2 MLJ 253**
[8] **(2005) 3 SCC 16**

56. On the other hand, Mr. R. Sankaranarayanan, the learned Additional Solicitor General of India appearing for 1st respondent submitted that the grievance of the applicants in the application was that they are going to cut the trees and remove the forest area without obtaining clearance under the Forest (Conservation) Act, 1980 as it is a deemed forest. Only subsequently when this Tribunal has raised the question whether it is a township project and it will come under the purview of EIA Notification, then only by way of filing additional affidavit, they raised the question of prior Environmental Clearance without making any proper amendment of the application incorporating those aspects giving an opportunity to the 1st respondent to answer the same.

57. Further, this cannot be treated as forest for the purpose of Forest (Conservation) Act, 1980 as it was not shown as forest in any of the revenue records and it was not a spontaneous growth on larger extent as envisaged by Hon'ble Apex Court in *T.N. Godvaraman* case, so as to attract the definition of deemed forest to bring within the ambit of Forest (Conservation) Act, 1980. Further, the master plan as envisioned by MOTHER was prepared in the year 1968 and mathrimandir was constructed long ago even prior to 1994. Certain constructions were also made including schools and residential buildings where people are residing and large scale green area was also developed along mathrimandir. Laying down roads for right of approach cannot be said to be development which requires any approval under Town and Country Planning Act. For construction of road, there is no necessity of Environmental Clearance as well.

58. Further, even as per the provisions of the Auroville Foundation Act, 1988 in view of the non-obstante clause area of activities of the Foundation are to be governed by the provisions of this Act and they are not governed by any other law for the time being in force and as such they are outside the purview of the Town and Country Planning Act and also the Environment (Protection) Act, 1986.

59. Further, crown roads and rings road were part of the master plan which was approved in 2001 and major portion of the road has been constructed which was not opposed by the applicants or any person from that area. Further, once the master plan has been approved by the Competent Authority, there is no necessity to place the same before the resident assembly constituted under Act of 1988 as that is required only prior to preparation of the master plan and recommendations will have to be collected and the management committee has to take a decision on that. Further this was placed before the Ministry and the Ministry with consultation with the Central Town and Country Planning Authority has approved the master plan and as such there is no necessity to obtain any other approval for the township or lay out permission under the local laws.

60. Further, whether any approval has to be obtained for the layout under the local law is not coming under the purview of this Tribunal as Town and County Planning Act is not one of the enactments provided under Schedule attached to National Green Tribunal Act, 2010. Further, most of the construction was made prior to 1994 even before coming into enforce of EIA Notification, 1994 and at the time of 2004 Notification

came, the most of the construction reached the stage mentioned in the notification coming within the exemption category of obtaining any Environmental Clearance. So according to the Learned Additional Solicitor General of India, none of the contention raised by the applicant are applicable to them and the application lacks merits and the same is liable to be dismissed. He had relied on the decision reported in **Bengaluru Development Authority Vs. Mr. Sudhakar Hegde & Ors** [9] , **P. Karthikeyan & Ors. Vs. Commissioner - Coimbatore Corporation, Coimbatore & Ors.**[10], **Noida Near Okhla Bird Sanctuary, Anand Arya & Anr. Vs. Union of India & Ors.**,**T.N. Godavarman Thirumulpad Vs. Union of India & Ors.**[11] and **Project Director, Project Implementation Unit Vs. P.V. Krishnamoorthy & Ors.**[12] in support of their case.

61. Learned Counsel appearing for the intervenor supporting the 1st Respondent also more or less argued in tune with the submissions made by the Learned Additional Solicitor General of India. Learned Counsel also argued that the conceptual plan of township as envisioned by MOTHER came in the year 1968 and mathrimandir was constructed in the year 1968 itself and large scale construction including schools and buildings were constructed and those things were not challenged by the applicants. When applicants made some illegal constructions which was about to be removed, at that time, the applicants projecting themselves as environmentalist filed this application with malafide intentions and the applicants being a

[9] **Civil Appeal No.2566 of 2019**
[10] **2021 SCC Online Mad 5488**
[11] **(2011) 1 SCC 744**
[12] **(2021) 3 SCC 572**

persons residing in the place where they have no right, unauthorisedly they cannot claim the benefits.

62. Further, the Auroville Foundation Act, 1988 was challenged before the Hon'ble Apex Court and same has been upheld. He had relied on the decision of the Principal Bench in **Society for Preservation of Kausali and its Environ vs. Birds View Resorts & Ors.**[13] dated 30.05.2017 which was approved by the Hon'ble Apex Court in **M/s Narayani Guest House Vs. Society for Preservation of Kausali and its Environ & Ors.**[14]

63. Mr. G.M. Syed Nurullah Sheriff, the learned counsel appearing for the MoEF&CC argued that as per the information collected from the 1st Respondent, the 2nd Respondent is of the opinion that the township project was started prior to 1994 Notification and at the time of 2004 amendment of the EIA Notification, 2006, it has reached the plinth area level and it fall under the exemption category. If further activity (if any) to be started which fall under any of the item in the schedule to the EIA Notification, then it can be started only after obtaining prior Environmental Clearance (EC).

64. We have considered the pleadings, submissions made by the Learned Counsel for all the parties and perused the documents and precedents produced.

[13] **O.A No. 69/2017 and other connected cases**
[14] **Civil Appeal No. 8343/2017 and Connected cases**

65. The points that arise for consideration are:-

(i) Whether the application is maintainable?

(ii) Whether it was barred by limitation?

(iii) Whether the intended activity of the 1st respondent requires any prior Environmental Clearance or clearance under the Forest (Conservation) Act, 1980 as claimed by the applicant. Even if they are not required, is there any necessity to issue any directions applying the *"Precautionary Principle"* to protect environment and if so, what are the nature of directions to be issued?

(iv) Relief and Costs.

POINTS:-

66. Before going into the merits of the case, let us discuss the precedents relied on by both sides.

67. In the decision reported in **Bengaluru Development Authority Vs. Sudhakar Hegde & ors.,**[15] the Hon'ble Apex Court observed that while Bengaluru Development Act, 1976 was enacted for the purpose of establishing a development authority for the development of Bengaluru City and adjacent area, 2006 notification embodies the notion that the development agenda of the Nation must be carried out

[15] **Civil Appeal No.2566 of 2019**

in compliance with the norms stipulated for protection of environment. BDA Act and 2006 Notification operating in different fields, it cannot be said that a site is deemed identified for the purpose of triggering the obligations of 2006 Notification upon the issuance of preliminary notification under Section 17 of BDA Act adopting a contrary interpretation would lead to absurd result where a project proponent is obligated to carry out the EIA process for scheme prior to grant of Government sanction and a final notification carrying the effect of proposed scheme. In this view of the matter, the prospective site is deemed to be identified only upon the final notification under Section 19 after the proposed scheme received the Government sanction under Section 18(3). The final notification under Section 19 (1) of the BDA Act was issued on 29.07.2007 following Government sanction for the acquisition of land. This being after coming into force of 2006 Notification, the contentions urged by the applicant (Bengaluru Development Authority) that the project commenced prior to coming into force of 2006 notification cannot be accepted. After considering all the aspects the Hon'ble Apex Court came to the conclusion that the project requires prior Environmental Clearance.

68. In the decision reported in **P. Karthikeyan and ors. Vs. Commissioner, Coimbatore Corporation, Coimbatore and Ors.**[16] the Full Bench of the Hon'ble Madras High Court, while considering the conflicting decision as to whether the micro compositing units can be set up in the parks, came to the conclusion that location of micro compost units or compost yard in a park or open recreational space can be held as permissible

[16] **2021 SCC Online Mad 5488**

deviation if it could be called as a deviation in the first place and the objection for its location, therefore have to be rejected as the same are out of tune with contemporary national thinking. As regards the upkeep and maintenance of compost yard is concerned, constitution of advisory committee is provided under Rule 23 and also the duties have been specified under various rules provisions. The rule also mandates the local authorities and village panchayats of census towns and urban agglomeration to frame bye-laws incorporating the same within one year from the date of the notification. Since no data was provided as to whether such rules have been framed, the Full Bench had issued following directions:

> *"DIRECTIONS:*
>
> *250. Accordingly, the following directions are given to the State Government: -*
>
> *(1) The Government is directed to form a Committee at the State, District, Municipal and Panchayat levels with the officials concerned at each level, monitoring the implementation of the SWM Rules, 2016.*
>
> *(2) The Committees, apart from chosen officials, may also include a concerned member, from the neighbourhood wherever such MCCS or the Compost Yard is to be located.*
>
> *(3) The Committees are responsible for monitoring the upkeep and maintenance of MCCS and the Compost Yards and any issues relating to improper upkeep and poor maintenance of MCCS, or Compost Yards, the Committees should be empowered to intervene and take immediate remedial action.*
>
> *(4) Once the site for location of an MCC or other Compost Yard is identified and set up, thereafter, the objections regarding the proper maintenance of the park / recreational area from being spoiled by the operation of MCC, if raised, shall be addressed, with all earnestness.*
>
> *(5) The officials who are incharge of MCCs and Compost Yards shall ensure that the disposal facility does not fall into disuse, resulting in the place becoming a dumping yard of garbage, leading to the degradation of the entire open space toxically detrimental to the citizens enjoyment of clean environment.*
>
> *(6) Any negligence of officials towards proper upkeep and maintenance of MCC or Compost Yards, stern disciplinary action to be initiated promptly*

against the officials concerned and if negligence is proved, appropriate punishment to be imposed on them.

(7) The Government is directed to issue a comprehensive Circular incorporating all necessary guidelines for the State / District / Panchayat Committees in implementation of the various facets of the SWM Rules, 2016, ensuring that the guidelines are strictly followed and implemented on the ground.

251. This Bench, in the conspectus of the above judicial discourse, answers the reference as follows.

252. Location of MCCs or the Compost Yard in the park / play field cannot be construed as Development in terms of the scheme of the Act, 1971 of the Combined. Development Rules, 2019, and therefore, any prohibition contemplated in the statutory rules and regulations does not apply to the implementation of the concept of solid waste management as envisaged in the SWM Rules, 2016.

253. The SWM Rules, 2016, are framed under the Central enactment, viz., the Environment [Protection] Act, 1986. The Rules thus prevail over the State laws to the solid waste extent of the implementation of the policies outlined towards management. Even otherwise, this Court does not see any palpable repugnancy between the SWM Rules, 2016 and the State laws.

CONCLUSION:

254. In the exact words of reference, implementation of SWM Rules, 2016, fall within the "permissible deviation" in larger public interest even in terms of the Tamil Nadu Town and Country Planning Act, 1971, read with the Development Control Rules framed thereunder.

255. The reference is answered accordingly."

69. In that decision, it was observed that Solid Waste Management Rules, 2016 are framed under Central enactment, namely, Environment (Protection) Act, 1986. The Rules thus prevail over the State laws to the extent of the implementation of the policies outlined towards Solid Waste management. Even otherwise, this Court does not see any palpable repugnancy between the Solid Waste Management Rules, 2016 and the State laws. It is also observed in the decisions that the implementation of the Solid Waste Management Rules, 2016 fall within the permissible deviation in larger public interest even in terms of the Tamil Nadu Town and Country Planning Act, 1971 read with the

Development Control Rules framed thereunder. This will not helpful to come to the conclusion that Auroville Foundation Act, 1988 will have any overriding effect on the provisions of Environment (Protection) Act, 1986 or other environmental laws.

70. The Auroville Foundation Act, 1988 was passed for the management of the properties of the foundation in an effective manner by the Governing body constituted under the said Act and Section 27 of the said Act says that the provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of law other than this Act or any decree or order of any Court, Tribunal or any Authority. Combined reading of the provisions of the Act will go to show that this is nothing but for management of the property and the implementation of provisions of this Act. As regards management or other activities connected with management are concerned, the provisions will have overriding effect, over any other provisions in any other law for the time being in force or any decree or order passed by the Court, Tribunal or Authority before coming into force of this Act. So, it cannot be said that this Act will have any overriding effect over the environmental laws, if any project or activity contemplated by the Foundation for the upliftment of the activities of the Foundation, if it attracts the prior Environmental Clearance, then EIA Notification, 2006 will prevail over the same as no Act will have any overriding effect on environmental laws which are intended for the purpose of protection of environment and the intention of the legislature while interpreting the non-obstante clause cannot be

extended for more than what was intended by the Act. So, under such circumstances, it is not possible to accept the contentions of the 1st respondent submitted through Learned Additional Solicitor General of India and the Learned Counsel for the intervenor who are supporting the 1st respondent that Auroville Foundation Act, 1988 will have overriding effect over environmental laws and the same will have to be rejected.

71. In the decision report in **In Re: Construction of Park at Noida near Okhla Bird Sanctuary, Anand Arya & Anr. Vs. Union of India & Ors. and T.N. Godavarman Thirumulpad Vs. Union of India and Ors.**[17] the Hon'ble Supreme Court had considered the question as to whether area in question can be treated as forest for the purpose of extended dictionary meaning of forest as envisaged in *T.N. Godavarman Thirumulpad's* case. The Hon'ble Apex Court observed that there was not even a single tree on any of the plots under acquisition. The records of the land acquisition proceedings, thus, complement the revenue record of 1952 in which the lands were shown as agricultural and not as jungle or forest. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.

72. The Hon'ble Apex Court observed that in the above decision the court mainly said three things: one, the provisions of the Forest (Conservation) Act, 1980 must apply to all forests irrespective of the nature of ownership or classification of the forest; two, the word

[17] **(2011) 1 SSC 744**

"forest" must be understood according to its dictionary meaning and three, the term "forest land", occurring in section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. It is further reiterated that the term forest land occurring in section 2, will not only include `forest' as understood in the dictionary sense, but also an area recorded as forest in the Government record irrespective of the ownership. The Hon'ble Apex Court also agreeing with the contention of the respondent that to an extent Mr. Bhushan is right in contending that a man made forest may equally be a forest as a naturally grown one. He is also right in contending that non forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.

73. But in the circumstances of the case mentioned therein, where it was not mentioned as forest in any of the records and it was only shown as agricultural land in revenue land since long time, the Hon'ble Apex Court came to the conclusion that certain man made plantation in that area cannot be treated as forest for the application of Forest (Conservation) Act, 1980. If certain trees were planted by a private party to raise a green cover in a private land which was neither shown as forest reserve or forest in the revenue records, do not notified, then provisions of Forest (Conservation) Act, 1980 will not be applicable to that case in such circumstances. Since, construction does not fall under item 8(a) and 8(b) of EIA Notification, the Hon'ble Apex Court also

came to the conclusion that it will not attract EIA Notification, 2006. It is further observed in that decision that planting of trees in agricultural/non-forest land being for the purpose of creating urban parks and not for the purpose of afforestation such trees being allowed to stand or grow for about 12 to 14 years when they were cut down to make the area clear for alleged project on forest land, then such plantation cannot be classified as forest land nor deemed forest and nor forest like area.

74. The Hon'ble Apex Court also observed that the satellite images tell us how things stand at the time the images were taken. We are not aware whether or not the satellite images can ascertain the different species of trees, their age and the girth of their trunks, etc. But what is on record does not give us all that information. What the satellite images tell us is that in October, 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted; the State Government admits felling of over 6000 trees in 2008. How and when the trees came up there we have just seen with reference to the revenue and land acquisition proceedings records. Now, we find it inconceivable that trees planted with the intent to set up an urban park would turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land.

75. In the decision reported in **Project Director Project Implementation Unit Vs. P.V. Krishnamoorthy & Ors.** [18] while considering the direction being issued under the National Highway Authority Act, the Hon'ble Apex Court held that the said being a Central Act, the Union has power to give directions to the States as may appear to Government of India as necessary for the purpose of implementation of the provisions of the National Highway Act, 1956.

76. Prior Environmental Clearance or Forest Clearance is required only at the stage where final notification issued under Section 3(D) of National Highway Act, 1956. The dictum laid down is not applicable to the facts of this case as the road that is laid as crown road in the Auroville Foundation area cannot be treated as a National Highway or State Highway but at the same time it will amount to part of the development of the township and if prior Environmental Clearance is required for this project, then it will amount to preparation of the project which cannot be undertaken without obtaining prior Environmental Clearance. The definition of development as envisaged under Town and Country Planning Act, 1971 as such will not be applicable to EIA Notification, 2006. Section 2(13) of Tamil Nadu Town and Country Planning Act, 1971 defines development means carrying all or any of the works contemplated in a regional plan, master plan , detailed development plan or new town development plan prepared under this Act and shall include the carrying out of building, engineering, mining or other operation in and over or under the land or making any of the material changes in the use of any building or

[18] **(2021) 3 SCC 572**

land provided that for the purpose of this Act the following operations or users of land shall not be deemed to involve development of the land that is to say a) carrying out of any temporary work for maintenance, improvement or other alterations of any buildings being works which do not materially affects the external appearance of the building, b) carrying out by any local authority or the temporary works required for the maintenance of improvement of the road or works carried out on land within the boundaries of the road, c) the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repair or renewal of any sewer, mains pipe, cable or other apparatus including breaking up of any other land for that purpose, d) the use of any building or other land within the cartilage of any dwelling house for any purpose incidental to employment of dwelling house as such and e) use of any land for agricultural, gardening or forestry including afforestation and the use for any purpose specified in this class of this proviso of any building occupied together with the land so used.

77. In order to attract the exemption, there must be road in existence and improvement of road is required and if carrying out of that improvement will not amount to development which requires any permission under this Act. But in the EIA Notification, 2006, it was specifically mentioned that prior Environmental Clearance (EC) is required before any construction work or preparation of land by the project management, except for securing the land, is started on the project activity. Any other activity pertaining to the project cannot be carried out if it falls under any of the items provided under the

schedule without getting prior Environmental Clearance.

78. In the decision report in Hanuman **Laxman Aroskar Vs. Union of India &Ors.**[19] the Hon'ble Apex Court while considering the impact of the compliance of the provisions of the EIA Notification observed that any material suppression of fact will amount to violation of the statutory provisions and if there was no occasion for Expert Appraisal Committee or the issuing authority to consider those aspects which will have some impact on environment, then it cannot be said that there was proper appraisal of the project. The Hon'ble Apex Court also raised the necessity for evolving an environmental jurisprudence for the purpose of protecting environment. That was a case where the existence of certain forest area was not mentioned while applying for Environment Clearance by the project proponent for establishing an Airport in Goa and Environmental Clearance granted was challenged before the National Green Tribunal and National Green Tribunal approved the same which was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court set aside the Environmental Clearance granted and directed to conduct fresh appraisal.

79. In the decision reported in **Key Stone Realtors Private Limited Vs. Anil V. Tharthare & Ors.**[20]**,** the Hon'ble Apex Court has held that if the project proponent wanted to make any change in the earlier Environmental Clearance (EC) granted, even if he want to reduce the extent of construction than the earlier permission of construction, he cannot do the same, without obtaining prior Environmental Clearance

[19] **(2019) 15 SCC 401**
[20] **(2020) 2 SCC 66**

(EC), as it will amount to modification or expansion of the existing project and in that case, it was further observed that in such case, they will have to file a fresh and mere amendment without following the procedure under the EIA Notification, 2006 will not be sufficient.

80. In the decision reported in the **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha & Ors.**[21], the Hon'ble Apex Court while dealing with the powers of the National Green Tribunal, observed that "*Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties. Another distinguishing feature of the environmental forum is on the aspect of locus standi which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. The NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its*

[21] **2021 SCC Online SC 897**

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

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

82. It was also observed that the Tribunal has to apply the principles of *"Sustainable Development"*, *"Precautionary Principle"* and *"Polluter Pays"*. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation". Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out

preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non- adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, 'The Nature of the Judicial Process', stated thus, "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

83. It was also observed in the decision regarding the role of the NGT in promoting environmental justice and environmental equity. Further, the Hon'ble Apex Court also observed in that decision that how far the environment is important as part of Right to Life providing clean air and water as enshrined under Article 21 of the Constitution of India and it has become the duty of the NGT to ensure clean environment which is part of Right to Life and also part of human right to have healthy environment.

84. After discussing about the necessity of establishment of National Green Tribunal and its role in protecting environment as expected under the statute, came to the conclusion that it must be given the power of taking Suo Moto cases on the basis of the letter petition as well as media reports and exercising that right and achieve the purpose as provided under the Rules.

85. In the decision reported in **Goa Foundation & Anr. Vs. Union of India & Ors.** [22], the Principal Bench of National Green Tribunal after analyzing the provisions of the National Green Tribunal Act, 2010, observed that "*The very Preamble of this Act is a sufficient indicator of the jurisdiction that was to be vested in the Tribunal. The issue relating to environmental protection and conservation was one of the paramount pillars, amongst others, of the adjudicatory process by the Tribunal. It was expected to dispose of cases relating to above matters expeditiously*".

86. It was also observed in that decision that "*Under the scheme of the Act, an anticipated action will also fall within the ambit of the jurisdiction of the Tribunal. Section 20 of the NGT Act provides that, while deciding cases before it, the Tribunal shall take into consideration the three principles – principle of sustainable development, precautionary principle and the polluter pays principle. The precautionary principle would operate where actual injury has not occurred as on the date of institution of an application. In other words, an anticipated or likely injury to environment can be a sufficient cause of action, partially or wholly, for invoking the jurisdiction of the Tribunal in terms of Sub-sections (1) and (2) of Section 14 of the NGT Act. The language of*

[22]**M.A. No.49 of 2013 in O.A. No.26 of 2012**

Section 20 is referable to the jurisdiction of the Tribunal in terms of Sections 14 and 15 of the Act. The precautionary principle is permissible and is opposed to actual injury or damage. On the cogent reading of Section 14 with Section 2(m) and Section 20 of the 38 NGT Act, likely damage to environment would be covered under the precautionary principle, and therefore, provide jurisdiction to the Tribunal to entertain such a question."

87. The Tribunal need only to consider whether it is a case of civil nature and whether the allegations in the application raises a substantial question of environment and if these aspects are available, then Court will get jurisdiction to entertain the case.

88. While considering the question of forming a new road as part of Mylapore and Teynampet Area Town Planning Scheme and when a notification was issued under Section 12 of the Town and Country Planning Act, when the same was challenged before the Hon'ble High Court of Madras and the Hon'ble High Court of Madras in **M.J. Irani Vs. State of Madras**[23] observed that the purpose of Town Planning Act is to regulate the development of towns, so as to secure their present and future inhabitants sanitary conditions, amenity and convenience. One of the most important things for consideration in the preparation of a Town Planning Scheme is the formation of roads. There are three kinds of roads to be considered: 1) Main traffic roads, 2) the secondary roads and 3) the residential road. In the present case, the scheme envisages various roads to be formed mainly with a view to have inter communication with the existing roads, for the purpose of making it

[23] **(1967) 2 MLJ 253**

convenient for the residents to reach the main traffic road. But originally when the plan was prepared, there was real and proved need for the particular development proposal namely, the formation of EE Road to connect the BB Road. But thereafter, it went underwent lot of changes and on the facts of the case, the Hon'ble High Court came to the conclusion that formation of the road through the property of the applicant is not necessary and set aside the proposal for acquisition.

89. It was also observed that whenever there is a scheme approved and sanctioned and if there is any variation required, the subsequent scheme also should be published and sanctioned in accordance with provisions of the Act.

90. In the decision reported in **Sushantha Tagore & Ors. Vs. Union of India & Ors.**[24], while considering the question of certain construction of buildings of both residential and commercial complex in Visva – Bharati University, Santiniketan area, considering the scope of the Visva Bharati Act, 1951, the West Bengal Town and Country (Planning and Development) Act, 1979 and the West Bengal Estates Acquisition Act, 1953 and also after considering the scope of parliaments debates while enacting the Visva Bharati Act, the Hon'ble Apex Court had observed that "*The Parliamentary Debates, some of which we have noticed hereinbefore, clearly go to show that the Act was enacted with particular objectives in view. Such statutory objects could not have been given a go by. It is not suggested that the Santiniketan should remain as it was in 1921 but it cannot be permitted to become full of concrete jungles and industrial hub. For*

[24]**(2005) 3 SCC 16**

carrying out further constructional activities, it may not be necessary for a builder to apply to the University for seeking its permission but the local-self government which is responsible therefor must take into consideration the salutary principles laid down in the pollution control laws as well as the Act. The land use and future planning of Santiniketan must be done in such a manner so that the changes be brought about which would not be beyond the recognition of the poet as also the provisions of the Act. SSDA in that sense must distinguish itself from the other development authorities. It has an extra-burden to shoulder. It cannot shut its eyes to the provisions of the Act and the object and purport it seeks to achieve. It cannot ignore the environmental impact assessment made by the Board. It is one thing to say that the SSDA may permit small constructions to be made by the owners of the land or additions or allow alterations to the existing building for residential purposes but it is another thing to say that it would not consider the effect of the changes which may be brought about by turning Santiniketan into a commercial and industrial hub."

91. Further, in **Society for Preservation of Kasauli and its Environs Vs. Bird's View Resort and Ors.**[25] **(O.A. No.69 of 2017 and Other connected cases)** in respect of number of unauthorized constructions made in Kasuali area, the Principal Bench of National Green Tribunal, New Delhi came to the conclusion that any construction made in violation of environmental laws should not be permitted to continue and direction to demolish the buildings were ordered, apart from ordering the persons who made the unauthorized construction to pay compensation and certain other further directions were also issued.

[25] **MANU/GT/0053/2017**

92. One of the resort owners namely, **M/s. Narayani Guest House** have challenged the same by filing **Civil Appeal No.8343 of 2017 and other connected case**, the Hon'ble Apex Court confirmed the directions of the National Green Tribunal including imposition of compensation and granted time for payment of amount and also directed the appellants to obtain Consent to Operate before proceeding further. Further directions were also given to consider the application filed by the parties for Consent to Operate within a time frame provided in the order.

93. In the decision reported in **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.**[26], the Hon'ble Apex Court had extended the meaning of forest as understood in the dictionary meaning and any restrictive definition given, will have an adverse impact on environment. It was observed therein that the Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecologically imbalance and therefore, the provisions made therein for the conservation of Forest and for matters connected herewith must apply to all forest irrespective of nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it

[26] **(1997) 2 SCC 267**

has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

94. With the above principles in mind, the case in hand has to be considered.

95. As regards maintainability of the application is concerned, when a substantial question of environment arises for consideration and when the applicant points out certain alleged violations of environmental laws in implementing a project by the project proponent, then the Tribunal will be getting jurisdiction to entertain the application under Section 14 and 15 of the National Green Tribunal Act, 2010. In this case, the case of the applicant was that the 1st respondent is trying to cut large number of trees from the property without making any impact assessment for the purpose of laying the crown road as part of their project without complying with the provisions of Forest (Conservation) Act, 1980. Whether the provisions of the Forest (Conservation) Act, 1980 will apply or not is a matter to be considered after hearing both sides and it is for the judicial interpretation of the Tribunal as to whether this will come under the extended definition of forest as envisaged by the Hon'ble Apex Court in *T.N. Godvaraman's* case. Further during course of hearing, this Tribunal also raised a question as to whether, if it is treated as a township project without obtaining prior Environmental Clearance whether they can proceed with the

project and that is also a substantial question to be considered by the Tribunal, though such an issue was not raised by the applicant in the Original Application but by way of additional affidavit this point was also raised as additional ground.

96. In the case of environmental issues, it is not necessary that all points must be raised by the applicant. If during the course of hearing incidentally if those arise for consideration, then that can be considered by the Tribunal but that can be decided only after giving an opportunity to the other side to meet the issue and it should not be taken as a surprise for them and no decision can be taken behind their back. So in this case, the Tribunal has raised a question and the both sides were heard on the aspect and no prejudice will be caused to both the sides even if the Tribunal consider that aspect in the absence of pleadings in the Original Application but subsequently it was raised by way of additional affidavit by the applicant.

97. Further, it was argued by the learned Additional Solicitor General appearing for the 1st Respondent and the learned counsel appearing for the intervenor who is supporting the activity of the 1st Respondent that the vision project was envisaged in 1968 and various constructions were made in the property and the same was not challenged by the applicant. Further, the major portion of the crown road was constructed and only a small portion has to be constructed and since it was touching the property in the possession of the applicant, in order to protect his interest of unauthorized occupation that they have filed the application.

98. According to the learned counsel appearing for the 1st Respondent that the cause of action first arose long ago and they have not come within six months.

99. On the other hand, the learned counsel appearing for the applicant and the learned counsel appearing for the intervenor who are supporting the applicant argued that it was a continuous violation and if there is any violation of statutory rules and proceeding with the work without obtaining certain permissions, then it will be continuing and recurring cause of action and the application can be filed whenever the violations were repeated.

100. It may be mentioned here that though the vision statement of the MOTHER was envisaged in the year 1968, there was no proper layout plan prepared and it was not got approved either by the authorities or even by the foundation. They were relying on the galaxy plan that was envisioned by the MOTHER as a basic document for the purpose of proceeding with the township project.

101. Though the applicant had a case that the 1st Respondent had not prepared any proper layout of the proposed township project envisioned by the MOTHER and they have got a specific case that there was no blueprint for the proposed township project, the 1st Respondent has not produced any document to show that there was a proper layout made out for the purpose of proceeding with the proposed envisioned project of MOTHER of Auroville International Township. Even the so called township scheme said to have been

approved in 2001 and notified in 2010 also did not speak about any proper preparation of the plan. It only explains the project aspect and it was also mentioned in the document at several places, that proper annual plan will have to be prepared for the purpose of carrying out the project and every five year, the project will have to be reviewed and proper technical assistance will have to be obtained for the purpose of carrying out the project. There was no document produced by the 1st Respondent even to show these aspects that such an exercise has been done by the foundation.

102. It was also in a way admitted that when there was some dispute regarding mismanagement of foundation, the Central Government intervened in the matter and the management was taken over on the basis of the statute by name Auroville Foundation Act, 1988. Even, at that time, they have not prepared any plan on the basis of ground reality, but they were only anticipating the implementation of vision plan envisioned by the MOTHER. Further, when the environmental laws are violated and any constructions / activities are being done in violation of environmental laws, each violation will give raise to a fresh cause of action for the applicant who wants to protect the environment. Further, in this case, the application was filed at the time when they were about to cut more than 3,000 trees from the area, claiming to be a forest as per the extended dictionary meaning of forest directed by the Hon'ble Apex Court in **T.N. Godavarman's** case and any cutting of tree will have to be done only with the prior clearance under the Forest (Conservation) Act, 1980, as it will be deemed forest falling under the provisions of the Forest (Conservation) Act, 1980. Admittedly, when

certain actions were taken by the 1st Respondent to cut and remove certain trees, the present application has been filed, alleging violation of environmental laws. So under such circumstances, it cannot be said that the action of the applicant is barred by limitation and the contention of the contesting respondents that it is barred by limitation is rejected.

103. It is an admitted fact that MOTHER had envisioned a cultural township in a particular fashion as a dream of MOTHER, which MOTHER wanted to be implemented through her disciples. It is also an admitted fact that MOTHER had envisioned to develop a township of having an extent of 1963 ha which will have to be divided into four zones, namely, Residential Zone, International Zone, Industrial Zone and Cultural Zone. Though, a galaxy plan was prepared at the time when MOTHER was alive during 1968 and some construction like mathrimandir and some residential and school buildings were constructed as part of the project in a sporadic manner, it cannot be said that there was proper layout plan prepared for this purpose. It is true that the crown road, ring road etc. were envisioned in the galaxy plan and as such they have not prepared any scientific layout of the entire project area locating the places of each zone and nature of constructions and extent of constructions they are expected to make, width of the road etc. A reading of the entire the supposed Auroville Universal Township Master Plan relied on both sides said to be approved by the Central Government in 2001 and which was published in the gazette in 2010 the details extracted above were not mentioned in the document, though certain anticipated estimate of

expenditure was mentioned in crores. Unless these things were envisaged and proper master plan is prepared with lay out of the places locating the zones and the extent of construction, the plinth area of the construction that they are going to make in each zone, what is the nature of industrial activities that they are going to permit etc are required for the purpose of complete impact assessment of the township. There was no case for 1st respondent that they have made any impact assessment before envisaging the project and any study was conducted on that basis. So under such circumstances, the submission made by the Additional Solicitor General that the township was envisaged in 1968 and it was started long ago and as such the submission made by the Learned Counsel for the applicant that no impact assessment study conducted is without any basis cannot be accepted.

104. The regime of Environmental Clearance was brought for the first time in 1994 by way of EIA Notification 1994. The building concept was not there within the regime of Environmental Clearance notification. In view of the direction issued by the Hon'ble Apex Court in W.P (C) No. 725/1994 with I.A. No. 216 to 251 in W.P. No. 4677/1985 and also the decision of Hon'ble Madras High Court in W.P No. 33493/2003 and W.P. No.35205, 3317, 35961, 35692 and 35852 of 2005, the MoEF&CC had decided to amend the EIA Notification, 1994 and issued EIA Notification (amendment) of 2004 dated 07.07.2004 including certain projects intervals "(g) any construction project falling under Entry 31 of Schedule 1 including new township, industrial township, settlement colonies, commercial complexes, hotel complexes, hospital and office

complexes for 1000 persons or below or discharging sewage of 50,000 litres per day or below or with an investment of 50 crore or above and (h) the construction project were included in respect of any industrial estates following under Entry 32 of Schedule I including estate accommodating industries in an area of 50 ha or below but excluding the industrial estate irrespective of the area if the pollution potential is high."

105. An explanation was added to the same whereby the following were added "new construction projects which were undertaken without obtaining clearance required under this notification and where construction work has not come to the plinth level shall require clearance under this notification with effect from 07.07.2004. In case of industrial estate which were undertaken without obtaining the clearance required under this notification and where the construction work has not commenced or the expenditure does not exceed 25 per of total sanctioned cost shall require clearance under this notification with effect from 7th day of July, 2004."

106. Any project proponent intending to implement the proposed project under Sub-Section (g) and (h) in a phased manner or in a module shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification.

107. It is an admitted fact that it is a township project intended to extend for an area of more than 50 Ha. viz., 1963 Ha of land. Further, they want to have four zones viz., Residential, International, Industrial and

Cultural Zones. Admittedly, they have not obtained 1963 Ha of land, but they are in possession of 778 Ha. of land only. They have no idea as to when they are going to acquire the entire land and how they visualized to complete the project envisioned by the MOTHER for the total extent of land.

108. Further, it is also an admitted fact that for the first time, the building projects and township projects were brought under the regime of Environmental Clearance (EC) by way of amendment to the EIA Notification, 1994 in 2004 by Notification dated 07.07.2004. If certain township projects were started prior to 2004 and if it reached the plinth area level, then they need not obtain Environmental Clearance (EC), but they have not achieved the exemption level, then they will have to obtain Environmental Clearance (EC). Further, in 2006, EIA Notification, 1994 was superseded and by virtue of Item 8 (a) & (b), the building projects including the township project was brought under the regime of Environmental Clearance (EC). It is true that those entries also exempt certain activities which have already been completed and only for expansion of the project, they will have to obtain prior Environmental Clearance (EC).

109. The question in this case is whether it can be treated as a proper township project, for which, a project plan has prepared known to law and it has been put into action for the purpose of claiming the exemption. Admittedly, there was no approved layout plan prepared covering the entire township project of 1963 Ha or even the 778 Ha in their possession. Certain constructions were made on the basis of the

envisioned galaxy plan which was not even approved by the authorities, after the Auroville Foundation Act, 1988 was passed.

110. So under such circumstances, there is some force in the submission made by the learned counsel appearing for the applicant that it cannot be treated as a proper township project approved by the authorities known to law which has been put into action.

111. Admittedly, even the galaxy plan envisioned by the MOTHER was approved by the Central Government in the year 2001. But it was specifically mentioned in the Letter of Approval that it will come into force only after it was notified and it was notified only on 16.08.2010 by the time, 2004 and 2010 Notifications have come into effect. Even if it is treated as approved plan in 2001, they ought to have applied for Environmental Clearance (EC) as required under EIA Notification, 2004.

112. Further, in the decision reported in **Bengaluru Development Authority Vs. Sudhakar Hegde**[27], it was observed that only when the final notification was issued, it was said to be come into operation and only thereafter, they will have to apply for Environmental Clearance (EC). The Hon'ble Apex Court rejected the contention that even when the draft notification issued, the project was said to be started and as such, the EIA Notification is not applicable was not accepted by the Hon'ble Apex Court. If that analogy is applied, in this case, the plan was approved in 2001 and it was notified only in 2010 and at the time

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when it was notified, the EIA Notification, 2006 was in vogue and they ought to have obtained Environmental Clearance (EC) for this purpose. We do not want to demolish the constructions already made from 1968 onwards which was done on the basis of some broad idea of township on the basis of the galaxy plan which cannot be said to be an approved plan after taking into account all environmental impact and other aspects.

113. So under such circumstances, without disturbing the development already taken place, if any further development will have to be done in respect of construction or other development, the 1st Respondent is not entitled to proceed with the project and the 1st Respondent has to prepare a proper layout of the township showing the existing structures already made and also future constructions and its extent, plinth area of construction and nature of activities that they are expected to incorporate, the quantity of waste that is to be generated, the water requirement, how they are going to meet all those aspects and the facilities to be provided for disposal of the waste generated and in the industrial zone, what is the nature of industries to be intended for and how the waste likely to be generated including effluents, if any, are to be dealt with in an environment friendly manner, after preparing the EIA Report on these aspects. If they want to do the work in phased manner, dividing the activities, they must also mention in how many phases they are going to complete it and each phase, what is the nature of work that they are going to undertake, etc.

114. We are not in agreement with the stand taken by the MoEF&CC, as they came to the conclusion that the project was started even prior to 1994 Notification and that will fall within the exempted category of 2004 Notification, without ascertaining the ground reality and relying only on the information collected from the 1st Respondent. But at the same time, they also mentioned that if any other activities will have to be done and industrial or other zones will have to be established even within the township, then they will have to apply for Environmental Clearance (EC) for that purpose. If it is in exempted category as according to them, then there is no necessity for obtaining Environmental Clearance (EC), as the entire plan has been considered by them. But that was not the case here.

115. So under such circumstances, the stand taken by the MoEF&CC that no Environmental Clearance (EC) is required appears to be without considering the ground reality and also without considering the documentary evidence, if any, available in this regard. Even, they do not have a case that they have verified the documents and satisfied that there was approved township plan prepared in the practical sense which was put into action even prior to 1994 and prior to 2004 Notifications.

116. So under such circumstances, we hold that any further activity that will have to be done by the 1st Respondent can be permitted to be carried out only after obtaining necessary prior Environmental Clearance (EC).

117. As regards the disputed crown road is concerned, admittedly, a major portion of the crown road has been completed and only a small portion will have to be completed by them. If it is not allowed to be completed, then there will be some hardship caused. So, considering it as an exceptional circumstance, as some constructions have been made, for which, certain facilities has to be provided with right of way, this road will have to be permitted to be completed.

118. The question as to whether it is a forest as envisaged in **T.N. Godavarman's** case, on the basis of the subsequent decision of the Hon'ble Apex Court in **Okhla Bird Sanctuary's** case, it cannot be treated as forest, as in any of the Government documents produced, it was not treated as forest and not even shown as forest and admittedly, it was manmade plantation of some species. So, it will not come under the definition of forest for the purpose of obtaining Clearance under the Forest (Conservation) Act, 1980. But at the same time, one will have to visualize the vision of the MOTHER when they planted the trees of such a nature which are intended for the purpose of attracting large scale biological resources and also for the purpose of protecting soil erosion etc. Further, it is seen from the photographs produced by the applicant and also by the project proponent that even when the right of ways were provided through this densely vegetated area, care was taken for the purpose of protecting the green cover that has been developed on either side of the right of ways provided.

119. Further, the MOTHER never intended to destroy the green cover for the purpose of making the construction as well, as far as possible, as MOTHER was aware of impact of planting of trees on Earth and how it is playing a role in protecting environment. There was no impact assessment made by the authority viz., the 1st Respondent as to how many trees will have to be cut and what will be the impact of cutting of trees in the project area. They also did not consider the question as to whether cutting of trees can be minimized before proceeding with the construction of road.

120. So under such circumstances, we feel that some mechanism will have to be evolved to ascertain as to whether the number of trees can be minimized and whether taking into account the necessity of road or right of way, the width of the way/road can be reduced in such a way in those areas where large tree cover is there to minimize cutting of trees. For that purpose, we feel that a committee can be appointed by this Tribunal which can inspect the area and find out as to whether any small deviation or reducing the width of the proposed crown road can be made, so as to minimize the number of trees to be cut and what are the remedial measures to be taken, if the proposed tree cutting is essential considering the likely impact of cutting of trees etc.

121. So, in order to achieve the purpose of protecting environment and applying the "*Precautionary Principle*", we feel that Joint Committee can be constituted with the District Collector of the concerned area who is supposed to be the Chairman of the District Green Committee constituted by the Government of Tamil Nadu, based on the directions

issued by the Hon'ble High Court of Madras in one of the writ petition dealing with cutting of trees and granting permission in this regard for public purposes and other experts. Though it was said to be a private project of the foundation, but taking into the fact that the entire property was vested with the Central Government by virtue of the Auroville Foundation Act, 1988, then it will be of public character and nobody can claim any proprietary right over the same, as the entire management is being done on the basis of the provisions of Auroville Foundation Act, 1988 and prior approvals are also required for the purpose of carrying out certain aspects, for which, funds are also provided by the Central Government from the Ministry of Human Resources.

122. So under such circumstances, we feel it is necessary to appoint a Joint Committee comprising of **(i)** the District Collector who is the Chairman of the District Green Committee of the concerned district along with **(ii)** the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests (Head of Forests Force), State of Tamil Nadu to inspect the area in question and ascertain whether any modification can be made in the width of the road or by slight realignment (if any) required, so that the number of trees to be cut can be minimized, find out whether there is any water body existing within that area and if that be the case, how the road will have to be constructed without obstructing the water flow by providing elevated bridge or other methodology without affecting the water flow inside the project area and give their recommendations to the 1st Respondent who is directed to carry out the recommendations

and complete the construction of the crown road alone on the basis of the recommendations given by the committee appointed by this Tribunal. The Joint Committee is directed to submit a report to the 1st Respondent within a period of two months and thereafter, the 1st Respondent is directed to carry out the work in compliance with the recommendations made by the Committee. Till then they are directed not to cut any further trees from the property. However, the foundation can carry on its crown road work in stretches where there are no trees.

123. So under such circumstances, we feel that the matter can be disposed of by giving the following directions:-

a. The 1st Respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualized by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for Environmental Clearance (EC) as it will fall under Item 8 (b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area.

b. Considering it as an exceptional circumstances, even before obtaining Environmental Clearance (EC) for further activity, we are permitting the 1st Respondent to complete the crown road on the following conditions:-

- The Joint Committee appointed by this Tribunal viz., **(i)** the District Collector who is the Chairman of the District Green Committee of the concerned district along with **(ii)** the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimized so that the vision of the MOTHER of creating a green cover in that area can be protected.
- The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be

implemented, and the 1st Respondent is to undertake the construction as suggested by the committee.

- The Joint Committee is directed to complete the process and submit the report to the 1st Respondent **within a period of two months** and on receipt of the same, the 1st Respondent is directed to carry out the crown road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee.
- Till that exercise is completed, the 1st Respondent is directed not to cut any further trees from the property. The 1st Respondent is at liberty to undertake the crown road work in the remaining stretches where there are no trees. The 1st Respondent is also at liberty to take action against unauthorized occupations, if any, strictly in accordance with the law in force.

c. The 1st Respondent is also directed to plant trees in the **ratio of 1 : 10** for the number of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area.

124. The points are answered accordingly.

125. In the result, this Original Application is allowed in part and disposed of with the following directions:-

(i) The 1st Respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualized by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for Environmental Clearance (EC) as it will fall under Item 8 (b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area.

(ii) Considering it as an exceptional circumstances, even before obtaining Environmental Clearance (EC) for further activity, we are permitting the 1st Respondent to complete the crown road on the following conditions:-

a. The Joint Committee appointed by this Tribunal viz., **(i)** the District Collector who is the Chairman of the District Green Committee of the concerned district along with **(ii)** the

Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimized so that the vision of the MOTHER of creating a green cover in that area can be protected.

b. The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be implemented, and the 1st Respondent is to undertake the construction as suggested by the committee.

c. The Joint Committee is directed to complete the process and submit the report to the 1st Respondent **within a period of two months** and on receipt of the same, the 1st Respondent

is directed to carry out the crown road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee.

d. Till that exercise is completed, the 1st Respondent is directed not to cut any further trees from the property. The 1st Respondent is at liberty to undertake the crown road work in the remaining stretches where there are no trees. The 1st Respondent is also at liberty to take action against unauthorized occupations, if any, strictly in accordance with the law in force.

(iii) The 1st Respondent is also directed to plant trees in the **ratio of 1 : 10** for the number of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area.

(iv) Considering the circumstances, parties are directed to bear their respective costs in the application.

(v) The Registry is directed to communicate this order to the members of the Joint Committee appointed by this Tribunal, the Principal Chief Conservator of Forests (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu, the Ministry of Environment,

Forests & Climate Change (MoEF&CC) and the Additional Chief Secretary to Government, Department of Environment, Forests & Climate Change for their information and compliance of directions.

126. With the above observations and directions, this Original Application is disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.239/2021 (SZ)
28th April 2022. AM, Mn.

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONAL BENCH, PUNE

ORIGINAL APPLICATION NO. 41 (WZ) OF 2023

=== In the Matter of ===

Arun Nathuram Gaikwad

... Applicant

=== Versus ===

Secretary, Environment Department

Government of Maharashtra & Others

... Respondents

WRITTEN SUBMISSION OF THE APPLICANT IN RESPONSE TO QUERIES RAISED BY THE HON'BLE TRIBUNAL ALONG WITH RELEVANT RULINGS ON THE ISSUES RAISED.

Dated 25th February 2024

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