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BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

APPEAL NO. 217 OF 2025 (WZ)

SURTI MOHAMMAD IRFAN ...APPELLANT

VERSUS

STATE OF GUJARAT & ORS. ... RESPONDENTS

WRITTEN SUBMISSIONS/ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 2 – GPCB.

1. The present Appeal is has been filed by the Appellant under section 18(1) read with section 16(a) of the National Green Tribunal Act, 2010, challenging the legality and correctness of order no. ENV-10-2024-A0-06-T cell dated 06.06.2025 issued by the Appellate Authority i.e. the Respondent No. 3, constituted as per the provisions of section 28(1) of the water (prevention and control of Pollution) Act, by the state Government of Gujarat (hereinafter referred to as 'Appellate Authority').

2. The impugned order dated 06.06.2025 was passed in Appeal (F) No. 218740 of 2024 filed on 19.12.2024 by the Appellant against consent order No. AWH-138352 dated 16.11.2024 issued by the Gujarat Pollution control Board (GPCB) granting consolidated

consent and Authorization (CCA) to M/s N.H.H. Textile processors (project proponent)

3. Vide the said Impugned Order dated 06.06.2025, the Respondent No. 3 has inter alia observed as under:

“As per section 28(1) of Water [Pollution Prevention and Control) Act 1974 "any person aggrieved by an order made by a state board under this act may, within 30 days from the date on which the order is communicated to him prefer and appeal to such authority [herein after refer to as appealed authority) as the state government may think fit to constitute"

4. While holding so, the Respondent No. 3 has treated the Appeal of the Appellant as not maintainable.

5. For the said purpose, the Respondent No. 2, so as to interpret section 28 of the Act in its true and right spirit, would like to rely upon Section 28(4), which reads, as under:

“(4) On receipt of an appeal preferred under sub-section (l) the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.”

6. In the present case, it is submitted that a correct and contextual reading of Section 28(4) of the Water (Prevention and Control of Pollution) Act, 1974 is crucial. The provision expressly states that the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal expeditiously. The statutory use of the expression “appellant” is decisive and cannot be diluted, expanded or interpreted to include any entity other than the person to whom the impugned order was communicated and who is directly affected by such order.

7. When the provision is read harmoniously with Section 28(1)—which permits “any person aggrieved by an order made by the State Board under this Act” to prefer an appeal—it becomes clear that the Legislature contemplated only the person whose legal rights, obligations or compliance requirements are directly impacted by the impugned order, i.e., the project proponent or regulated entity, as the proper appellant.

8. To interpret the term “appellant” as including a third party or stranger to the proceedings would result in an anomalous and legally untenable situation where the Appellate Authority could decide matters affecting a project proponent without granting such affected person an opportunity of being heard—a result expressly prohibited by statute and violative of the principles of natural justice, particularly audi alteram partem.

9. Therefore, the word “appellant” under Section 28(4), when interpreted in its holistic statutory context, legislative intent, and constitutional framework, must mean and be restricted to the person to whom the order is communicated and against whom the regulatory consequence operates, namely, the project proponent. Any other interpretation would render the mandatory hearing requirement under Section 28(4) unworkable and contrary to the express statutory command.

10. It is respectfully submitted that the proceedings are fundamentally vitiated on account of a jurisdictional defect, namely, that the appeal before the Appellate Authority was filed without impleading the project proponent, i.e., M/s N.H.H. Textile Processors, against whom the original consent order was issued.

11. Under the statutory framework of Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, the remedy of appeal is available only to the person aggrieved by an order of the State Pollution Control Board, which necessarily refers to the regulated entity or project proponent to whom the subject regulatory order is communicated. The statutory scheme does not envisage or permit a third-party initiated appellate proceeding affecting rights, obligations, or compliances of the project proponent in its absence.

12. Further, Section 28(4) unequivocally mandates that before disposing of an appeal, the Appellate Authority must:“after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal…” The Legislature has deliberately and explicitly restricted the right of hearing at the appellate stage to only: the appellant, and the State Board, because the only permissible appellant under Section 28(1) is the project proponent to whom the order is communicated. This statutory language leaves no scope for expanding the category of eligible appellants to include strangers, third-party activists, or unrelated complainants. Allowing an appeal to proceed without impleading the project proponent results in a situation where the rights and obligations of the project proponent are adjudicated behind its back, compliance burden may be modified without notice, and statutory decisions affecting the project proponent are altered without affording an opportunity of hearing. Such a process is in direct violation of: Section 28(4) of the Water Act, Principles of Natural Justice (audi alteram partem), and Article 14 of the Constitution of India.

13. It is well settled that non-impleadment of a necessary and affected party goes to the root of maintainability, and is not a mere procedural irregularity capable of subsequent curing. The defect strikes at the jurisdiction of the appellate forum and renders the proceedings void ab initio. Once the appeal is instituted without impleading the person whose rights are affected, the proceedings are incurably defective and cannot be revived by amendment or impleadment at a later stage.

14. Accordingly, it is submitted that the appeal filed before Respondent No. 3 was not maintainable in the absence of the project proponent and such defect is substantive and incurable, and therefore not capable of rectification at any subsequent stage.

15. It is respectfully submitted that the present appeal has become infructuous and devoid of any surviving cause of action, in view of the subsequent renewal and supersession of the original Consent to Operate (CCA) order which was under challenge.

16. The undisputed factual position is as follows:

a. The original Consent Order bearing No. AWH-138352 dated 16.11.2024 issued to the project proponent was challenged before the Appellate Authority.

b. The said challenge came to be rejected by the Appellate Authority.

c. Against that rejection, the present appeal was filed before this Hon'ble Tribunal.

d. During the pendency of the present proceedings, a fresh/renewed Consent Order dated _____ has been issued to the project proponent, which expressly supersedes,

replaces, and substitutes the earlier Consent Order dated 16.11.2024.

17. Once the original order under challenge stands superseded by a subsequent statutory order, the original order ceases to exist in the eyes of law. The cause of action forming the basis of the appeal thus extinguishes, and adjudication of the present proceeding becomes an academic exercise. This principle has been consistently applied across environmental, administrative, regulatory, and quasi-judicial appellate proceedings, including under the NGT Act, 2010, Water Act, 1974, and Air Act, 1981, wherein appeals do not survive against orders that no longer remain operative.

18. Further, the jurisdiction of this Hon'ble Tribunal under Section 16 of the National Green Tribunal Act, 2010 is appellate in nature. Therefore, the Tribunal may only examine the validity, legality, or correctness of the order under challenge. Once the said order is superseded and substituted, there remains no operative order on record capable of judicial scrutiny.

19. Continuing the appeal in such circumstances would also prejudice the statutory functioning of the regulatory mechanism, as the fresh order dated _____ is the only subsisting consent governing the operations of the unit and is the only order capable of being challenged,Therefore, it is respectfully submitted that:

- The appeal does not survive for adjudication;

- The proceedings deserve to be disposed of as infructuous, leaving it open to the appellant to challenge the subsequent renewal order, if permissible in law and within limitation.

Date: 19.11.2025

neelkanth rajiv mehta.
Advocate for the Respondent No. 2

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4763-4764 OF 2013

TAMIL NADU POLLUTION CONTROL BOARD … APPELLANT(S)

VERSUS

STERLITE INDUSTRIES (I) LTD. & ORS. … RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 8773-8774 OF 2013

CIVIL APPEAL NOS. 9542-9543 OF 2013

CIVIL APPEAL NO. 5782 OF 2014

CIVIL APPEAL NOS. 1552-1554 OF 2019

CIVIL APPEAL NO. 23 OF 2019

CIVIL APPEAL NO. 1582 OF 2019

J U D G M E N T

R.F. NARIMAN, J.

1. The present appeals arise out of orders that have been passed by the National Green Tribunal [“**NGT**”] dated 31.05.2013, 08.08.2013,

and 15.12.2018. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

2. The respondent, Sterlite Industries (India) Ltd. / Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 01.08.1994, the respondent received a No-Objection Certificate ["**NOC**"] from the Tamil Nadu Pollution Control Board ["**TNPCB**"] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change ["**MoEF**"] followed on 16.01.1995. On 17.05.1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 ["**Air Act**"] and Water (Prevention and Control of Pollution) Act, 1974 ["**Water Act**"] on 22.05.1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14.10.1996 by the TNPCB. Production commenced on 01.01.1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petition Nos.15501-15503/1996,

5769/1997, and 16961/1998. On 20.05.1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. On 21.09.2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19.04.2005, the TNPCB issued consent to operate, subject to fulfillment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24.03.2013 and directed closure of the unit under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT

on 31.05.2013, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeal Nos.4763-4764 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 08.08.2013, the NGT set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos. 8773-8774 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act / the National Green Tribunal Act, 2010 ["**NGT Act**"]. This ground of maintainability was decided against the appellants by the impugned order dated 08.08.2013.

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13.04.2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14.03.2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 06.09.2017, an inspection report by the TNPCB was

made, and an order passed on 07.09.2017, granting renewal of consent to operate only till 31.03.2018 subject to various conditions. Meanwhile, a protest had been organized in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No.7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This Writ Petition was disposed of by an order dated 04.04.2018 with a direction to consider the respondent's application. On 09.04.2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down under the Air Act and the Water Act. On 12.04.2018, the respondent filed Appeal Nos.36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 06.06.2018, the following order was passed:

> "APPLICATIONS 28 & 29 / 2018, APPLICATIONS 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:
>
> Heard.
>
> In view of the Government Order passed by the Government of Tamilnadu in G.O. Ms. No: 72, Environment & Forests (EC-3) Department Dated: 28.5.2018, directing the Tamilnadu Pollution Control Board to close the plant permanently, we feel it is not

appropriate to hear the Appeals and decide the issue at this juncture.

Hence the Appeals and applications are adjourned to 10.7.2018."

On 10.07.2018, the matter was further adjourned as follows:

"APPLICATIONS 28 & 29 / 2018, APPLICATIONS 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:

In view of the remarks made in the adjudication proceedings on 6.6.2018 and as the position is same now, the Appeals and Applications are adjourned to 21.8.2018."

Finally, on 18.12.2018, i.e., three days after the impugned order was passed by the NGT on 15.12.2018, an order passed by the appellate authority was as follows:

"APPLICATIONS 28, 29, 30 & 31 / 2018 AND APPEALS 36 & 37 / 2018:

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

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

In view of the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on 15.12.2018 in Appeal No. 87 of 2018 setting aside the impugned order dated 9.4.2018 which is subject matter of these appeals pending before this Appellate

> Authority, the Appeals have become infructuous and hence they are closed."

5. On 12.04.2018, an order was passed by the TNPCB under Section 33A of the Water Act and Section 31A of the Air Act directing that the respondent's unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23.05.2018, again issued under the same Sections, this time to close down the respondent's unit and disconnect power supply to it. Finally, on 28.05.2018, an order was issued by the Government of Tamil Nadu under Section 18(1)(b) of the Water Act stating:

> "It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s.Vedanta Limited, Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9.4.2018. Subsequently, on 23.5.2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24.5.2018.
>
> 2. Under Article 48-A of the Constitution,
>
> "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".
>
> 3. Under sections, 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution

> Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently."

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

7. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18.06.2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 09.07.2018.

8. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17.08.2018, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20.08.2018, the NGT constituted a Committee to go into the material produced by the parties to the Civil Appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board

["**CPCB**"] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10.09.2018, by stating:

> "By our order dated 17.08.2018, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.
>
> Since our order is not referred to in the order dated 20.08.2018 passed by the NGT, we need only to state that once the Committee's report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated 17.08.2018.
>
> xxx xxx xxx"

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

9. The Committee constituted by the NGT then inspected the site on various dates in September/October, 2018, and heard all concerned parties as well as intervenors. It then came out with a detailed Enquiry Report dated 20.11.2018, in which it concluded as follows:

> "On the basis of the site visit, public hearing and after hearing the appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the interveners and, upon consideration of the issues raised, the Committee is of the opinion:
>
> 1. The impugned orders cannot be sustained as it is against the principles of natural justice.

No notice or opportunity of hearing was given to the appellant.

2. The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.
3. Other issues raised also does not justify the closure of the factory even if the appellant was found to be violating the conditions/norms/directions.
4. In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the committee is of the opinion that the following directions may be issued.

a) As per condition No.44 of the Consent Order dated 19-04-2005, the appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCB.
b) The sampling of the above should be taken in the presence of an official from TNPCB.
c) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCB comprising a representative of the District Collector, an official of TNPCB, NGOs and academicians as per condition no.43 of Consent Order dated 19-04-2005.
d) Both the reports should be sent by TNPCB to CPCB for analysis. Recommendations made by CPCB should be followed.

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

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

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

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

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

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

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

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

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

n) The direction no. (iii) on “Source Apportionment Study” and direction no. (ix) on “conducting a study on health hazards” passed by the NGT in its judgment dated 8/8/2013 in Appeal 58 of 2013 should be carried out by the Tamil

Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.

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

p) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organization approved by the TNPCB as per condition No.15 of the Consent Order dated 19/04/2005.

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

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

s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of the Tuticorin with regard to emission of SO_2.

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

u) The transportation of copper ore concentrate from the port to the factory

premises should be done in a closed conveyance or through a pipe conveyor system.

v) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of Ambient Air Quality/ Stack emissions/ Fugitive emissions/ ground water quality/ surface water quality/ soil quality/ slag analysis through third party and report shall be furnished to the concerned regulatory agencies.

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

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

y) CPCB recommendations as contained in the order of NGT, dated 20.08.2018 to be complied with."

Both the respondent as well as the appellants made their detailed comments on the Committee's report. The NGT then heard final arguments and dictated the impugned order on 15.12.2018, in which it substantially accepted the Committee's recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as

the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15.12.2018 is without jurisdiction.

10. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22.01.2019, by which the respondent's application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

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

12. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 09.04.2018 was concerned, an appeal was pending before the appellate authority, as a result of

which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12.04.2018, 23.05.2018, and 28.05.2018, made under Section 33A of the Water Act and Section 31A of the Air Act, were composite orders issued. As orders under Section 31A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28.05.2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a Civil Court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some of our judgments as well as statutes and judgments of the English Courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme

of the Water Act, Air Act, and NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticize the order passed by the NGT dated 08.08.2013 on maintainability. According to him, no doctrine of necessity could be imported if an appellate tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second appellate tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

13. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the

relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 09.04.2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33A and 31A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33A of the Water Act, and even if there is no appeal provided under Section 31A of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31A of the Air Act is undoubtedly equivalent to an order made under Section 31 of the Air Act, and therefore, would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only

procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as the attack made upon the order dated 28.05.2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is *non est* and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that

this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in **L. Chandra Kumar v. Union of India and Ors.**, (1997) 3 SCC 261 ["**L. Chandra Kumar**"], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed under Section 18 of the Water Act.

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

15. The relevant Sections of the Water Act are as follows:

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

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

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

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

xxx xxx xxx"

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

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

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

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

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

the said period of three months, till the disposal of such application.

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

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

(4) The State Board may—

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

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

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

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

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry,

operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

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

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

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

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of

four months of the making of an application in this behalf complete in all respects to the State Board.

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

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

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

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

date as may be specified by the State Government by notification in this behalf in the Official Gazette."

"**27. Refusal or withdrawal of consent by State Board**.—(1) A State Board shall not grant its consent under sub-section (4) of Section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

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

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

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

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

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

appellate authority) as the State Government may think fit to constitute:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. The relevant Sections of the Air Act are as follows:

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

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

the said period of three months, till the disposal of such application.

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

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

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

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

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

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a

reasonable opportunity of being heard shall be given to the person concerned.

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

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

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

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

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

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

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

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

Provided further that—

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

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

(*c*) after the erection or re-erection of any chimney under clause (*iv*),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

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

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

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

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

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

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

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

"**31A. Power to give directions**.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

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

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

17. The relevant Sections of the NGT Act are as follows:

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

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(*m*) "substantial question relating to environment" shall include an instance where,—

(*i*) there is a direct violation of a specific statutory environmental obligation by a person by which,—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(*ii*) the environmental consequences relate to a specific activity or a point source of pollution;

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"**14. Tribunal to settle disputes**.—(1) The Tribunal shall have the jurisdiction over all civil cases where a

substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

"**15. Relief, compensation and restitution**.—(1) The Tribunal may, by an order, provide,—

(*a*) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(*b*) for restitution of property damaged;

(*c*) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

"**16. Tribunal to have appellate jurisdiction**.—Any person aggrieved by,—

(*a*) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(*b*) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(*c*) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(*d*) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(*e*) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(*f*) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(*g*) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(*h*) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(*i*) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(*j*) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

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"**29. Bar of jurisdiction**.—(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken

> by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."
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> xxx xxx xxx
>
> "**33. Act to have overriding effect**.—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

18. It is important now to advert to both the orders dated 08.08.2013 and 15.12.2018, insofar as they deal with the maintainability of the appeals before them.

19. By the judgment of the NGT dated 08.08.2013, the NGT disposed of the plea on maintainability as follows:

> "**62.** Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant-company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant-company, particularly keeping in view the emergent

situation created by issuance of the order dated 29th March, 2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant-company had been directed to be shut down and the appellant-company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the appellant-company has also placed its reliance on Section 31B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant-company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal* v. *Union of India*, (2010) 11 SCC 557 where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in the case of *Manohar Lal* (supra).

63. We are unable to contribute ourselves to the contention raised that a direction passed under

> Section 31A of the Air Act is not covered under the expression 'order' used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. 'Direction' itself means an order; an instruction how to proceed, like the judge's direction to the jury, while 'Order' is defined as a command, direction or instruction. This is how the *Black's Law Dictionary*, 9th Edition, refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.
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> **64.** An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three Member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short 'the NGT Act') even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

20. Insofar as the judgment dated 15.12.2018 is concerned, the NGT, on maintainability, held as follows:

"**44.** It is undisputed that this Tribunal is an Appellate Authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12.04.2018, 23.05.2018 and 28.05.2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the Appellate Authority by this Tribunal. As already noted, the Appellate Authority has declined to proceed with the matter. The grounds in the impugned orders dated 09.04.2018, 12.04.2018, 23.05.2018 and 28.05.2018 are identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the Appellate Authority is also appealable before this Tribunal under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

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

46. The judgments relied upon by the respondents are distinguishable. Unlike Educanti Kistamma v. Deokar's Distillery [(2003) 5 SCC 669], this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

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48. The order of the Government of Tamil Nadu issued under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under

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

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

(I) RE: ORDER DATED 09.04.2018

21. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33B(a) of the said Act, if a person is aggrieved by an

order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31B of the Air Act and Section 16(f) of the NGT Act.

22. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeal Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22.06.2018 before the NGT *inter alia* against the order of refusal of consent to operate dated 09.04.2018. Shri Sundaram, however, argued before us that the order dated 06.06.2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28.05.2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the

appeals could not be decided at this juncture and were hence adjourned to 10.07.2018. The said appeals on 10.07.2018 were further adjourned, and it is only on 18.12.2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15.12.2018 in which it had set aside the order dated 09.04.2018.

23. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 09.04.2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negatived as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the

proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 09.04.2018.

24. At this point, it is important to advert to a few judgments of this Court. In **Kundur Rudrappa v. Mysore Revenue Appellate Tribunal and Ors.**, (1975) 2 SCC 411, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated:

> "**4.** The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(*a*) which is material for the purpose of this appeal:
>
> > "64. (1)(*a*) Any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him
> > . . .
> > may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final."
>
> We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

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

25. Similarly, in a concurring judgment of Sinha, J., in **Cellular Operators Association of India and Ors. v. Union of India and Ors.,** (2003) 3 SCC 186, the learned Judge observed:

> "**27.** TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as

> also the dispute made in an application under sub-section (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law."
>
> (emphasis supplied)

26. In **B. Himmatlal Agrawal v. Competition Commission of India**, Civil Appeal No. 5029/2018 [decided on 18.05.2018], this Court, while dealing with Section 53B of the Competition Act, 2002 held:

> "**7.** The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Subsection (3) of Section 53B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an

> opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself."
>
> (emphasis supplied)

27. In **Raja Soap Factory v. S.P. Shantharaj**, (1965) 2 SCR 800, the plaintiffs instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held:

> "The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction: it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of the Trade and Merchandise Marks Act

> 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute of under its constitution with that jurisdiction was incompetent to entertain a passing off action.
>
> But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a Court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes, e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance."
>
> (at page 802)

28. In **Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. and Ors.**, (1997) 4 SCC 452, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In

repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held:

> "**10.** …… The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. …… So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection……"
>
> xxx xxx xxx
>
> "**12.** …… But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication order of the Collector of Customs by way of appeals or revisions as per the aforesaid relevant statutory provisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT under Section 129-A(1) was clearly incompetent. It may be added that the Union of India

could have used the mode set out in Section 129-D, but it did not do so."

29. In **Manohar Lal v. Ugrasen**, (2010) 11 SCC 557, one of the questions involved, under sub-paragraph 2(a) of the judgment, was as follows:

> "**2.** In these appeals, three substantial questions of law for consideration of this Court are involved. They are, namely:
>
> (*a*) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?
>
> xxx xxx xxx"

After reviewing a number of cases, this Court then concluded:

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

30. In **Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner**, (2013) 16 SCC 1, appeals lay to the Tribunal constituted under the Employees' Provident Funds and Miscellaneous

Provisions Act, 1952, under Section 7-I of the Act. Whereas appeals lay against orders passed under Section 7-A of the Act, which provided for determination of monies due from employers, no appeal lay against orders made under Section 7-Q of the said Act, which spoke of interest payable by the employer. This Court held:

> "**20.** On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai* v. *Vijay Kumar* [(1974) 2 SCC 393], *Gujarat Agro Industries Co. Ltd.* v. *Municipal Corpn. of the City of Ahmedabad* [(1999) 4 SCC 468], *State of Haryana* v. *Maruti Udyog Ltd.* [(2000) 7 SCC 348], *Super Cassettes Industries Ltd.* v. *State of U.P.* [(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280], *Raj Kumar*

> *Shivhare* v. *Directorate of Enforcement* [(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712], *Competition Commission of India* v. *SAIL* [(2010) 10 SCC 744].)"

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

31. From the above authorities, it is clear that an appeal is a creature of statute and an appellate tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act

or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33B of the Water Act, read with Section 31B of the Air Act, read with Section 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 09.04.2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

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

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

(a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in subsection (3A) ("the alternative conditions") are satisfied in relation to those proceedings, and

(b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...

(c) . . . . . .

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

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

(a) proceedings before a single judge of the High Court (including a person acting as such a judge under section 3 of the Judicature Act 1925), or

(b) . . . . . .

(c) proceedings before a Divisional Court.

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

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

(b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the Supreme Court in previous proceedings, and was fully considered in the

> judgments given by the Court of Appeal or the Supreme Court (as the case may be) in those previous proceedings.
>
> xxx xxx xxx"

33. To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the U.K. are referred to as "leapfrog appeals" [*see* **S Franses Ltd. v. The Cavendish Hotel (London) Ltd.**, [2018] UKSC 62 (at paragraph 7)].

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

(II) RE: ORDERS PASSED UNDER SECTION 33A OF THE WATER ACT AND SECTION 31A OF THE AIR ACT

35. We have referred to the orders dated 12.04.2018, 23.05.2018, and 28.05.2018 passed by the TNPCB under Sections 33A and 31A of the Water Act and Air Act respectively. At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air

Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33A of the Water Act are appealable to the NGT, directions issued under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made both under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal

being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" under Section 31A of the Air Act is nothing but an "order", and would, therefore, be appealable as such under Section 31B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31A in Section 31B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under

the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, *inter alia*, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity *qua* any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to P. Ramanatha Aiyer's Law Lexicon and Black's Law Dictionary, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited **Kanhiya Lal Omar v. R.K. Trivedi**, (1985) 4 SCC 678, and relied upon

paragraph 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a "direction" may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

36. Shri Sundaram then cited **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**, (1984) 4 SCC 27. In this judgment, the High Court had struck down Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [*see* paragraph 27]. It is in this context that this Court held:

> "**29.** …… It is equally important that the Court should also, as far as possible, avoid any decision or

> interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. ……"

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

37. Shri Sundaram then relied upon this Court's judgments in **Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.**, (2016) 14 SCC 161 and **Allokam Peddabbayya v. Allahabad Bank**, (2017) 8 SCC 272 for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

38. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In **Garikapati Veeraya v. N. Subbiah Choudhury**, 1957 SCR 488, this Court held:

> "From the decisions cited above the following principles clearly emerge:
>
> (*i*) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
>
> (*ii*) The right of appeal is not a mere matter of procedure but is a substantive right.
>
> (*iii*) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
>
> (*iv*) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at *the* date of the filing of the appeal.
>
> (*v*) This vested right of appeal can be taken away only by a subsequent enactment, if it so

> provides expressly or by necessary intendment and not otherwise."
>
> (at pp. 514-515)

This argument must, therefore, be rejected.

(III) RE: ORDER PASSED UNDER SECTION 18 OF THE WATER ACT

39. So far as the order dated 28.05.2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the Sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a Civil Court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being *non est*. It is settled that an administrative order, when made, does not bear the brand of invalidity

on its forehead, as has been held in **Smith v. East Elloe Rural District Council**, [1956] 1 All E.R. 855 (at page 871), which has been followed by this Court in **State of Punjab v. Gurdev Singh**, (1991) 4 SCC 1 (at page 6); **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.**, (1997) 3 SCC 443 (at page 455); **Pune Municipal Corpn. v. State of Maharashtra**, (2007) 5 SCC 211 (at page 225); **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**, (2011) 3 SCC 363 (at page 369); and **Kandla Port v. Hargovind Jasraj**, (2013) 3 SCC 182 (at page 193). Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or

27 of the Water Act. This argument of despair, therefore, must also be rejected.

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

> "**14. Jurisdiction, powers and authority of the Central Administrative Tribunal**.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the

appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

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

(*b*) all service matters concerning—

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

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

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

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

(*c*) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (*ii*) or sub-clause (*iii*) of clause (*b*), being a person whose services have been placed by a State

Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

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

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

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

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

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

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

xxx xxx xxx

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

(*a*) the Supreme Court; or

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

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

Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by sub-clause (2) thereof. Suffice it to say that the NGT is not a Tribunal set up either under Article 323A or Article 323B of the Constitution, but is a statutory

Tribunal set up under the NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

41. It is in the context of Article 323A and the Administrative Tribunals Act, 1985 that this Court in **L. Chandra Kumar** (supra) has observed in paragraph 93 as follows:

> "**93.** Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be

> unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

42. In **Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors.**, (2014) 3 SCC 222 ["**BSNL**"], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in **L. Chandra Kumar** (supra), this Court held:

> "**108.** Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word

"orders", sub-sections (3) and (4) thereof used the word "decision". In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(*a*). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(*b*) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (*b*) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(*b*)."

xxx xxx xxx

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

include regulations framed under Section 36, which are in the nature of subordinate legislation."

xxx xxx xxx

"**123.** In *Union of India* v. *Madras Bar Assn.* [(2010) 11 SCC 1] and *State of Gujarat* v. *Gujarat Revenue Tribunal Bar Assn.* [(2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56 : (2012) 10 Scale 285], this Court applied the principles laid down in *L. Chandra Kumar case* [*L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

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

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a

High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in **Re: Special Reference**, (1965) 1 SCR 413, made in the following words:

> "We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "*Prima facie*", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, vol. 9, p. 349]".
>
> (at page 499)

For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in **BSNL** (supra), we are of the view that the NGT has no general power of

judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17.07.2014 in **Wilfred v. Ministry of Environment and Forests** must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

43. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a

writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

44. Equally, so far as the order dated 08.08.2013 is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us *supra*, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

45. In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 09.04.2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22.01.2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15.12.2018, and the order dated 29.03.2013, dealt with by the final judgment dated 08.08.2013, are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 09.04.2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the

case of challenge to the 09.04.2018 order of the TNPCB. The appeals are disposed of accordingly.

……J.
(R.F. Nariman)

……J.
(Navin Sinha)

New Delhi
February 18, 2019