

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

ORIGINAL APPLICATION No. 636 OF 2022

**IN THE MATTER OF:**

ASHISH CHAUBEY

...APPLICANT

Versus

ACP TOLLWAYS PVT LTD & ORS

...RESPONDENTS

**I N D E X**

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**COMPILATION OF JUDGMENTS – RESPONDENT NO. 1 – ACP  
TOLLWAYS PRIVATE LTD & ORS**

SL NO.	JUDGEMENT	PROPOSITION	PARA	PG NO.
1.	The Auroville Foundation vs Navroz Kersasp Mody, 2025 SCC OnLine SC 557	Hon'ble Supreme Court held that the National Green Tribunal (NGT) cannot intervene in projects that have obtained valid statutory approvals unless there is a clear and substantial question relating to the environment under a law listed in Schedule I of the NGT Act, 2010.	11, 12, 13 & 19	8-29
2.	Shakti Bhog Food Industries Vs. Central Bank of India, (2020) 17 SCC 260	Hon'ble Supreme Court held that a plaint that when only creates an illusion of a cause of action through clever drafting, without disclosing a real cause, is liable to be rejected under Order VII Rule 11 CPC.	8 & 9	30-53
3.	National Highways Authority of India Vs. Pandarinathan Govindarajulu & Anr (2021) 6 SCC 693	Hon'ble Supreme Court held that Toll plazas fall within the right of way on national highways and can be lawfully constructed on acquired land vested in the Central Government.	24 & 25	54-67
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NEW DELHI  
DATE:29.04.2025

RESPONDENT NO. 1

THROUGH



RAVI KRISHAN CHANDNA  
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CHAMBER NO 602, BLK – III,  
DELHI HIGH COURT,  
NEW DELHI 110003  
9711752002 / 9711754002

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**WRITTEN SUBMISSION ON BEHALF OF RESPONDENT NO. 1,  
i.e. ACP TOLLWAYS PVT LTD**

**MOST RESPECTFULLY SHOWETH:-**

1. The Petitioner have filed the present application on 23.08.2022 before this Hon'ble Tribunal alleging inter alia;
  - i. That the Respondent No. 1 has constructed a residential colony and offices of permanent nature on Eco Sensitive Area at Kaimoor Wildlife sanctuary at Sonabhadra, Uttar Pradesh.
  - ii. The Petitioner has further submitted / alleged that the Govt of Uttar Pradesh gave permission to construct the Toll Gate only and the company carried out the construction of the colony and office which is in violation of The Forest (Conservation) Act, 1980.
  - iii. The Petitioner has alleged that the Application is within limitation and the same has been filed within 6 months from the date application was sent to the authority and has invoked Section 14(3) of NGT Act.
2. The Respondent No. 1 as well as the user agency namely UPSHA – Uttar Pradesh State Highways Authority (Respondent No. 3 herein) have filed their detailed reply before this Hon'ble Tribunal, and Respondent No.1 craves leave to reply and rely on the same.

3. It is pertinent to mention that that the work of acquiring the land for the purpose of construction of the Highway is within the scope of the UPSHA and the land vests with the UPSHA. The Respondent No. 1 herein was merely a licensee for the purpose of implementation of the project as a concessionaire and after the completion of the concession period.
4. The above petition is liable to be rejected on various grounds. The present petition is hopelessly barred by the provisions of the Law of Limitation.

**A. LIMITATION**

5. It is submitted that section 14 (3) of the Act provides 60 days to file the Application from the time cause of action first arose. The section 14 of the Act reads as follows.

***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.*

6. The Respondent No. 1 submits that from bare reading of petition it is apparent that the Petition is bereft of any pleading as to when the cause of action first arose, for filing of present petition.
7. The Petitioner in order to avoid the rigours of Section 14 by clever drafting has averred that the application is filed withing 6 months from the date of application (under RTI Act) sent by him to the authority.

8. That from bare reading of (Pg 35) of the application, it is apparent that the fully constructed Toll Plaza was already existing prior to the filing of the said application. The Respondent No. 1 has placed on record the public notice (Pg 256) to show that toll Plaza No. 2 Commenced Operations w.e.f 31.10.2015 i.e. the construction of Toll Plaza / Structure in question was existing prior to the said date.
9. It is pertinent to mention that the project in question was conceived and implemented by UPSHA where for the construction of the said, the forest department had diverted certain portion of land and the Respondent No. 3 had handed over the non-forest land to the forest department in lieu of the forest land and apart from paying various amounts as and when demanded by the forest authorities. The said contentions have been raised without prejudice to the rights of Respondent No. 1 including the fact that the petition is barred by limitation. It is pertinent to mention that the land in question was handed over to the petitioner by UPSHA after complying with all requirements of land acquisition which has not been challenged by the forest department or any other authority in any point of time. The petitioner herein has no right in law or otherwise to raise the said question before this Hon'ble Tribunal or to challenge the Land acquisition process in the present proceedings.
10. It is pertinent to mention that UPSHA being Employer and User Agency had taken all the approval from appropriate authority which have been duly submitted before this Hon'ble Tribunal with all supplementary documents attached to the Reply and additional Reply of Respondent No. 3 (UPSHA). The Respondent No. 1 who relies on the sum and ours that present petition is not maintainable on various grounds mentioned in the said affidavit of Respondent No. 3.
11. That Respondent No. 3 who is the user agency has further confirmed that the last provisional commercial operation date (PCOD) was issued on 20.10.2016. From the bare perusal of the same it can be further inferred that from Public Notice and Gazette notification that the Highway was not only in operation but the Toll Plaza and the Administrative Building were also completely constructed and were operational prior to said date.
12. That neither the Petitioner nor any Authority has brought anything on record of document by way of pleading or otherwise which any manner dislodge or disprove the contention of Respondent No. 1 or Respondent No. 3 that the Toll

Plaza / Administrative Building was constructed and was fully operational prior to 31.10.2015.

13. The expression used u/s 14 (3) of the Act is for the purposes of commencement of litigation i.e. "Cause of action for such disputes first arose" and not when the Petitioner at his own sweet will and at his whims and fancies file an application under the RTI irrespective of the date when the structure was constructed. This is not only against the statutory provision but also contrary to various judgements passed by this Hon'ble Tribunal, Hon'ble High Court and Hon'ble Supreme Court of India. It is further submitted that the Petitioner has to stand on his own legs and to prove that how the Petition as filed is within limitation. The Petition as such merits dismissal on the ground of Limitation.
14. The petition does not raise any substantial question relating to environment or any question arisen at implementation of any enactment specified in Schedule 1 of the Act.

**B. WITHOUT PREJUDICE TO THE ABOVE, IT IS FURTHER SUBMITTED ;**

15. It is submitted that the project does not fall within the scope of notification dated 14.11.2006 as amended on 2011 and therefore there was no need to obtain any environmental clearance. The respondent No,3 had applied for environmental clearance and same was held to be not required by SEIAA (State Level Environment Impact Assessment Authority) as per the letter dated 05.07.2011 (Pg No. 30 of Reply)
16. Once it was held that no environment clearance is required, there is no requirement of any separate permission for eco sensitive zone. If EC is not required for the project in the question the application of Environmental Protection Act does not arise.
17. The contention of various authority alleging that the notification of 2017 is applicable on face of it is incorrect as project itself was completed much earlier to coming into force of said notification of 2017 and is contrary to the letter dated 05.07.2011 of SEIAA.
18. It is further submitted that the land on which toll plaza is constructed was diverted by Forest Authorities to Respondent No. 3. The said construction is

within the Right of Way as defined in the concession agreement. Admittedly there is no construction or any part thereof on any area other than the diverted land. The land was diverted for Right of Way / Toll Plaza and other amenities which were constructed prior to 21.10.2015. Various amounts as demanded from Respondent No. 3 and were duly deposited by Respondent No. 3 with Forest Authorities. (Pg 537 – 539)

19. Respondent No. 3 also handed over 19.050 hect of land to the Mirzapur Forest Dept on 31.08.2013, in lieu of diverted land. (Pg 537 – 539).

**C. THE RESPONDENT SUBMITS THAT THE FOREST LAND ONCE DIVERTED FOR NON FOREST PURPOSES. THE LEGAL STATUS OF THE SAID LAND CHANGES AND THE SAME IS NO LONGER FOREST LAND AND IS NOT GOVERNED BY THE FOREST (CONSERVATION) ACT 1980.**

20. The Toll Plaza and road have been constructed on the diverted land only and on non-forest land.

21. As submitted that in lieu of Diverted Land, the Forest Department has received the non-forest land from Respondent No. 3 apart from the various amounts levied for the same purpose. The question therefore of any right on any forest authority on such diverted land does not arise. As such the contention of the Respondent that no substantial question relating to the environment or implementation of any enactment as per the schedule 1 arises in the present case.

22. It is further submitted that no cause of action ever arose in the favour of the Petitioner to file the present petition before this Hon'ble Tribunal and the application merits dismissal on this ground alone.

23. That for the purpose of the implementation of the project, the land was demarcated, identified, acquired, and handed over to the concessionaire by the Respondent No. 3 for the purpose of construction of the State Highway and for the allied purposes in terms of the concession agreement.

24. That necessary clearance by the State Level Environment Impact Assessment Authority (SEIAA) and the Directorate of Environment Uttar Pradesh has also been duly granted to Uttar Pradesh State Highway Authority (UPSHA) vide letter dated 05.07.2011 wherein it is clearly mentioned that the aforesaid

project does not fall within the purview of EIA Notification 2006 as amended in April, 2011.

25. It is pertinent to mention that even in the report of the Joint committee no such averment has been made that the construction has been raised beyond the land allocated and handed over to the concessionaire. The entire area on both sides of the road was allocated and handed over to the concessionaire and merely the location has been shifted and that too after the approval of the Competent Authority.
26. It is submitted that the Construction has been raised in accordance with the sanctioned plan only and the allegations made in the petition are wrong and cannot be looked into. No construction has been raised on the protected area which comes under the Kaimoor Wildlife sanctuary or on the land declared forest reserve land as alleged.
27. That the cause of action if any arose in favour of the applicant on the date of raising of the said construction or issuance of the Provisional Completion Certificate by the competent authority / Independent Engineer. Neither any objection has been raised by any authority nor any action has been taken as the project as well as the building has been constructed in terms of the approval. Accordingly, the present application is barred by limitation and same shall be dismissed on this ground alone.
28. It is pertinent to mention here that the Respondent No. 3 was to appoint an independent engineer in accordance with the clause 23 of the concession agreement. The relevant portion is extracted below:-

***"23.1 Appointment of Independent Engineer***

*The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint*

*another firm from a fresh panel constituted pursuant to Schedule-P to be the Independent Engineer for a term of 3(three) years, and such procedure shall be repeated after expiry of each appointment.*

**23.2 Duties and Junctions**

*23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-Q.*

*23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-Q."*

29. The Independent Engineer is the competent authority under the Concession agreement and has duly approved the designs and drawings of the project. The location and the plan submitted for the construction of the administrative block was revised due to the feasibility of land for the purpose of raising construction and the revised plan was approved by the competent authority.

30. In view of the above, it is most respectfully submitted that the above petition is not maintainable in the eyes of law and on facts and is liable to be rejected with heavy cost.

NEW DELHI  
DATE: 29.04.2025

THROUGH

RESPONDENT NO. 1



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2J

(BEFORE BELA M. TRIVEDI AND PRASANNA B. VARALE, JJ.)

THE AUROVILLE FOUNDATION .. Appellant; a

*Versus*

NAVROZ KERSASP MODY AND OTHERS .. Respondents.

Civil Appeals Nos. 5781-82 of 2022<sup>†</sup>, decided on March 17, 2025

**A. Environment Law — National Green Tribunal Act, 2010 — S. 2(1)(m) — Term “substantial question relating to environment” as defined in S. 2(1)(m) — Meaning — Explained** b

— It would include, inter alia, question where there is a direct violation of a specific statutory environmental obligation by a person by which: (a) community at large other than individual or group of individuals is affected or likely to be affected by environmental consequences; or (b) gravity of damage to the environment or property is substantial; or (c) damage to public health is broadly measurable — Substantial question would also include environmental consequences relating to a specific activity or a point source of pollution c

— Every question or dispute raised by an applicant before Tribunal pertaining to environment cannot be treated as a substantial question — It has to be a substantial question relating to environment as contemplated in S. 2(1)(m), and such substantial question must arise out of implementation of any of enactment/enactments specified in Schedule I — Though strict law of evidence may not be applicable to cases filed before Tribunal, applicant has to raise substantial question in his application specifically alleging violation of a particular enactment specified in Schedule I of Act — Words and Phrases — “Substantial question relating to environment” d

**B. Environment Law — National Green Tribunal Act, 2010 — Ss. 14 and 2(1)(m) — National Green Tribunal — Jurisdiction of — Scope — Tribunal can exercise jurisdiction when a substantial question relating to environment including enforcement of any legal right relating to environment is involved and such question arises out of implementation of enactments specified in Schedule I to Act — When no substantial question relating to environment was shown to have arisen in implementation of any of enactments specified in Schedule I appended to the NGT Act, it was out of jurisdiction for NGT entering into restricted domain of judicial review under guise of applying “precautionary principle” in extraordinary circumstances, and in** e

<sup>†</sup> Arising from the Judgments and Orders in *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 5402 (National Green Tribunal, Southern Zone, Chennai Bench, Original Application No. 239 of 2021, dt. 28-4-2022) and *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 2934 (National Green Tribunal, Southern Zone, Chennai Bench, Misc. Application No. 6 of 2022 in Original Application No. 239 of 2021, dt. 27-7-2022) [Reversed] f

h

**interfering with implementation of Master Plan which was already approved by competent authority way back in year 2001**

- a* — In present case only grievance raised by respondents (original applicants) in their OA was with regard to appellant Foundation constructing roads as mentioned in Master Plan which was already approved by Governing Board of Foundation and by Ministry of Human Resource Development way back in 2001, and published in Official Gazette in 2010
- b* — Significantly, Tribunal specifically negated allegations raised by respondents by recording finding that said area cannot be treated as a forest, as in any of government documents produced, it was not treated as a forest and not even shown as a forest, and that admittedly, it was a man-made plantation of some species, and therefore, it will not come under definition of forest for purpose of obtaining clearance under the Forest (Conservation) Act, 1980
- c* — After having recorded finding that area in question could not be treated as a forest and that there was no clearance required under the Forest (Conservation) Act, Tribunal proceeded further applying “precautionary principle” and appointed a Joint Committee to inspect area in question and ascertain whether any modification could be made in width of road, and further
- d* directed appellant Foundation to prepare a proper Township plan in respect of area in their possession and in respect of area visualised by “Mother”
- Tribunal completely misdirected itself by entering into restricted domain of judicial review under guise of applying “precautionary principle” in extraordinary circumstances, and in interfering with implementation of Master
- e* Plan which was already approved by competent authority way back in year 2001, and issuing a number of other directions under guise of exceptional circumstances applying “precautionary principle”
- Further in view of overriding effect of the AF Act also impugned direction issued by Tribunal without any jurisdiction as circumscribed under
- f* S. 14 of the NGT Act, would not be tenable at law
- Such directions clearly fall outside purview of jurisdiction of Tribunal particularly when there was no substantial question relating to environment shown to have arisen in implementation of any of enactments specified in Schedule I appended to the NGT Act
- g* **C. Environment Law — Concept of sustainable development — Explained — Traditional concept that development and ecology are opposed to each other is no longer acceptable — “Sustainable development” has been accepted as a viable concept to eradicate poverty and improve quality of human life, while living within carrying capacity of supporting ecosystems — “Sustainable development” means “development that meets needs of present**
- h* **without compromising ability of future generations to meet their own needs**

**D. Environment Law — General Principles of Environmental Law — Precautionary Principle/Sustainable Development/Inter-Generational Equity Principle — Development and Environment — There need not necessarily be a deadlock between development on one hand and environment on other — Objective of all laws on environment should be to create harmony between two since neither one can be sacrificed at altar of other — There should not be development at cost of environment and vice versa, but there should be development while taking due care and ensuring protection of environment — Adherence to sustainable development principle is a sine qua non for maintenance of symbiotic balance between rights to environment and development — Right to environment is a fundamental right — On other hand, right to development is also one — Right to “sustainable development” cannot be singled out — Therefore, concept of “sustainable development” is to be treated as an integral part of “life” under Art. 21 of the Constitution**

Project Auroville was legally started as project of a charitable organisation and was planned to eventually accommodate 50,000 residents. Project of Auroville was formally inaugurated by “Mother” in 28-2-1968. Development of Auroville in initial few years showed good progress and it developed at a rapid pace. However, after “Mother” passed away in 1973, situation changed, and number of complaints came to be received by Government of India with regard to mismanagement in working of Sri Aurobindo Society. The Government of India created a unique status for Auroville by passing the Auroville Foundation Act, 1988. Original Galaxy Plan envisioned by “Mother” in 1968 was plan with four zones in Auroville, with centripetal force, being “Matrimandir”. The said Galaxy Plan was revised in 1972 as First Master Plan called “Town Plan”. As the AF Act required statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c) of said AF Act, Master Plan was approved by Governing Board and Residents’ Assembly of appellants’ Foundation in 1999. The said 1999 Master Plan was further approved by competent authority Town and Country Planning Organisation (“TCPO”), Ministry of Urban Development.

Respondents 1 and 2 (“original applicants”) filed an application in Green Tribunal, raising a grievance with regard to cutting of large number of trees by appellants’ Auroville Foundation, alleging inter alia that Master Plan for Auroville as envisaged by “Mother” was approved by Governing Board of Auroville Foundation in consultation with Residents’ Assembly, and it further led to preparation of Auroville Universal Township Master Plan-Perspective 2025, which was approved by Ministry of Human Resources Development in 2001. However, now appellants’ Foundation was focusing on manifestation of roads mentioned in Master Plan e.g. the Crown Road, a road encircling centre of Township, and outer ring road, and was intending to distract Darkali Forest by using huge machineries causing deterioration to environment. According to respondents original applicants, said lands covered under deemed Forest, were entitled to protection.

The Tribunal assuming jurisdiction recorded finding that a substantial question of alleged violation of environmental laws in implementation of project having been involved, application was maintainable. Disagreeing with stand taken by

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a MoEF&CC that Project would fall within exempted category of 2004 Notification and did not require environmental clearance, the Tribunal recorded finding that any further activity to be done by appellant Foundation can be permitted to be carried out only after obtaining necessary prior environmental clearance.

Thus the present appeals in the Supreme Court.

The issue for determination before the Supreme Court:

b Whether when there was no substantial question relating to environment was shown to have arisen in implementation of any of enactments specified in Schedule I appended to the NGT Act, it was out of jurisdiction for NGT or not, entering into restricted domain of judicial review under guise of applying “precautionary principle” in extraordinary circumstances, and in interfering with implementation of Master Plan which was already approved by competent authority way back in year 2001?

c Allowing the appeals, the Supreme Court

*Held :*

d The term “substantial question relating to environment” as defined in Section 2(1)(m) of the 2010 Act would include, inter alia, the question where there is a direct violation of a specific statutory environmental obligation by a person by which: (a) the community at large other than the 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. The substantial question would also include the environmental consequences relating to a specific activity or a point source of pollution. (Para 31)

e In view of the definition of “substantial question relating to environment” in Section 2(1)(m) of the NGT Act, the Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large. (Para 33)

f For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments. (Para 33)

*State of M.P. v. Centre for Environment Protection Research & Development*, (2020) 9 SCC 781; *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee*, (2021) 4 SCC 309, followed

g From the above, it is explicitly clear that every question or dispute raised by an applicant before the Tribunal pertaining to the environment cannot be treated as a substantial question. It has to be a substantial question relating to environment as contemplated in Section 2(1)(m), and such substantial question must arise out of the implementation of any of the enactment/enactments specified in Schedule I. Though strict law of evidence may not be applicable to the cases filed before the Tribunal, the applicant has to raise the substantial question in his application specifically alleging the violation of a particular enactment specified in Schedule I of the NGT Act. (Para 34)

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So far as the facts of the present appeal are concerned, the only grievance raised by the respondents (“original applicants”) in their OA was with regard to the appellant Foundation constructing the roads as mentioned in the Master Plan which was already approved by the Governing Board of the Foundation and by the Ministry of Human Resource Development way back in 2001, and published in the Official Gazette in 2010. The allegation made in the original application was that while constructing the said roads, the forest area known as Darkali Forest was being destructed. According to the respondents, the said area was required to be treated as a deemed forest and was required to be protected. (Para 35)

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

Significantly, the Tribunal specifically negated the said allegations raised by the respondents by recording finding that the said area cannot be treated as a Forest, as in any of the government documents produced, it was not treated as a Forest and not even shown as a Forest, and that admittedly, it was a man-made plantation of some species, and therefore, it will not come under the definition of Forest for the purpose of obtaining clearance under the Forest (Conservation) Act, 1980. (Para 36)

Curiously, after having held that the area in question could not be treated as a Forest and that there was no clearance required under the Forest (Conservation) Act, 1980, the Tribunal proceeded further applying the “precautionary principle” and appointed a Joint Committee to inspect the area in question and ascertain whether any modification could be made in the width of the road, and further directed the appellant Foundation to prepare a proper Township plan in respect of the area in their possession and in respect of the area visualised by the “Mother”. (Para 37)

The Tribunal has completely misdirected itself by entering into the restricted domain of judicial review under the guise of applying “precautionary principle” in extraordinary circumstances, and in interfering with the implementation of Master Plan which was already approved by the competent authority way back in the year 2001. (Para 38)

Thus, the said Master Plan having been approved by the competent authority as back as in 2001 had attained a statutory force and finality. There are about more than 2000 substantial constructions/developments, which have taken place in Auroville since then till this date. The construction of roads as mentioned in the said approved Master Plan including the Crown Road, a road encircling the centre of the Township and an outer ring road, being on the verge of completion, except few patches, which could not be completed because of the obstructions caused by the disgruntled residents like the respondents, the Tribunal thoroughly misdirected itself by directing the appellant to prepare a proper Township Plan. (Para 39)

In view of the overriding effect of the AF Act also the impugned direction issued by the Tribunal without any jurisdiction as circumscribed under Section 14 of the NGT Act, would not be tenable at law. (Para 41)

The Tribunal has also travelled beyond its jurisdiction in giving the impugned directions under the guise of exceptional circumstances applying the “precautionary principle”. Ministry of Environment, Forest and Climate Change in

a its affidavit filed before the Tribunal had made its stand very clear that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004 and therefore could not be considered as a new project under the said Notification of 2004. It was also made clear that there was no change in the scope of Township Project from the Original Master Plan and as such, the Township Project would not affect the provisions of EIA Notification, 2006 and its amendments for the grant of Environment Clearance. (Para 42)

b Again curiously, the Tribunal without any material on record, brushed aside the said stand taken by MoEF&CC in its affidavit, by holding that any further activity to be done by the appellant Foundation, could be permitted to be carried out only after obtaining necessary prior environmental clearance, and then proceeded to appoint the Joint Committee to inspect the area in question and to ascertain whether the width of the road at suitable places could be reduced so that the number of trees to be cut can be minimised. (Para 43)

c Such directions clearly fall outside the purview of the jurisdiction of the Tribunal particularly when there was no substantial question relating to the environment shown to have arisen in implementation of any of the enactments specified in Schedule I appended to the NGT Act. (Para 44)

***Law on the protection of environment***

d The traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable development” has been accepted as a viable concept to eradicate poverty and improve the quality of human life, while living within the carrying capacity of supporting ecosystems. “Sustainable development” as defined by Brundtland Report means “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. (Para 45)

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

e There need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. (Para 46)

f There should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. (Para 46)

*Essar Oil Ltd. v. Halar Utkarsh Samiti*, (2004) 2 SCC 392; *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281, followed

g The adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to “sustainable development” cannot be singled out. Therefore, the concept of “sustainable development” is to be treated as an integral part of “life” under Article 21 of the Constitution. (Para 48)

h *N.D. Jayal v. Union of India*, (2004) 9 SCC 362; *State of H.P. v. Ganesh Wood Products*, (1995) 6 SCC 363; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, followed

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As demonstrated earlier, in the instant case, no substantial question relating to environment had arisen, nor violation of any of the enactments specified in Schedule I of the NGT Act, was alleged. The Tribunal therefore had committed gross error in assuming the jurisdiction and giving directions untenable in law. (Para 49)

In that view of the matter, the impugned orders passed by the Tribunal being without jurisdiction and legally untenable deserve to be quashed and set aside. (Para 50)

*Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 5402; *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 2934; *Navroz Kersasp Mody v. Auroville Foundation*, 2021 SCC OnLine NGT 4505, *reversed*

*Auroville Foundation v. Navroz Kersasp Mody*, 2023 SCC OnLine SC 2353, *referred to*

Appeals stand allowed RM-D/72272/C

Advocates who appeared in this case :

Vaibhav Venkatesh and Balaji Srinivasan (Advocate-on-Record), Advocates, for the Appellant;

A. Yogeswaran, T.V.S. Raghavendra Sreyas (Advocate-on-Record), Gurmeet Singh Makker (Advocate-on-Record), Ajay Marwah (Advocate-on-Record), M.V. Swaroop and Vikas Mehta (Advocate-on-Record), Advocates, for the Respondents.

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

1. 2023 SCC OnLine SC 2353, *Auroville Foundation v. Navroz Kersasp Mody* 159a
2. 2022 SCC OnLine NGT 5402, *Navroz Kersasp Mody v. Auroville Foundation (reversed)* 157a-b, 157b, 158g-h, 159b, 164a, 167g, 171e
3. 2022 SCC OnLine NGT 2934, *Navroz Kersasp Mody v. Auroville Foundation (reversed)* 157a-b, 158g, 164a-b, 171e
4. (2021) 4 SCC 309, *H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee* 167b-c
5. 2021 SCC OnLine NGT 4505, *Navroz Kersasp Mody v. Auroville Foundation (reversed)* 162d
6. (2020) 9 SCC 781, *State of M.P. v. Centre for Environment Protection Research & Development* 166g-h
7. (2004) 9 SCC 362, *N.D. Jayal v. Union of India* 171b
8. (2004) 2 SCC 392, *Essar Oil Ltd. v. Halar Utikarsh Samiti* 169f-g
9. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India* 162a, 163g, 167f
10. (1997) 1 SCC 388, *M.C. Mehta v. Kamal Nath* 171d
11. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 169e, 171d
12. (1996) 5 SCC 281, *Indian Council for Enviro-Legal Action v. Union of India* 170f-g
13. (1995) 6 SCC 363, *State of H.P. v. Ganesh Wood Products* 171c-d

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The Judgment of the Court was delivered by

**BELA M. TRIVEDI, J.**— The present appeals stem from the final judgment and order dated 28-4-2022 passed by the National Green Tribunal, Chennai (hereinafter referred to as “the Tribunal”) in *Navroz Kersasp Mody v. Auroville Foundation*<sup>1</sup>, and from an interim order dated 27-7-2022 passed by the said Tribunal in *Navroz Kersasp Mody v. Auroville Foundation*<sup>2</sup>. The directions given by the Tribunal in the impugned judgment dated 28-4-2022<sup>1</sup> read as under:

**1.1. *Navroz Kersasp Mody case***<sup>1</sup>: (SCC OnLine NGT para 125)

“125. In the result, this original application is allowed in part and disposed of with the following directions:

(i) The 1st respondent is directed to prepare a proper township plan either in respect of 778 Ha which is in their possession now or in respect of 1963 Ha which was visualised by the MOTHER by identifying the locations where each zone will have to be located, where the roads will have to be laid showing the location of the ring roads with their width and further road, if any, to be constructed, the nature of industries and other activities which they are expected to establish in the township and if it is not going to be implemented as one phase, how many phases in which they are going to complete the project and then apply for environmental clearance (EC) as it will fall under Item 8(b) of the EIA Notification, 2006 as amended from time to time. Till then they are directed not to proceed with further construction in the project area.

(ii) Considering it as an exceptional circumstances, even before obtaining environmental clearance (EC) for further activity, we are permitting the 1st respondent to complete the Crown Road on the following conditions:

(a) The Joint Committee appointed by this Tribunal viz. (i) the District Collector who is the Chairman of the District Green Committee of the concerned district along with (ii) the Forest Officer not below the rank of Conservator of Forest, as deputed by the Principal Chief Conservator of Forests, (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu to inspect the area in question and ascertain whether by reducing the width of the road at suitable places or by slight realignment (if any) required, so that the number of trees to be cut can be minimised so that the vision of the MOTHER of creating a green cover in that area can be protected.

(b) The Joint Committee is also directed to ascertain as to whether there are any water bodies/streams exists in that area and

<sup>1</sup> 2022 SCC OnLine NGT 5402  
<sup>2</sup> 2022 SCC OnLine NGT 2934

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if the road passes through the water body, then what is the manner in which the road will have to be constructed by elevation without affecting the water body/water flow or a bed level causeway with box type of vents will suffice. If such a recommendation is made, that also will have to be implemented, and the 1st respondent is to undertake the construction as suggested by the committee. a

(c) The Joint Committee is directed to complete the process and submit the report to the 1st respondent within a period of two months and on receipt of the same, the 1st respondent is directed to carry out the Crown Road work, in the impugned area with tree cover, strictly in accordance with the recommendations made by the Joint Committee. b

(d) Till that exercise is completed, the 1st respondent is directed not to cut any further trees from the property. The 1st respondent is at liberty to undertake the Crown Road work in the remaining stretches where there are no trees. The 1st respondent is also at liberty to take action against unauthorised occupations, if any, strictly in accordance with the law in force. c

(iii) The 1st respondent is also directed to plant trees in the ratio of 1:10 for the number of trees to be cut, and the species to be recommended by the Joint Committee may be considered for planting either on the side of the road or other area identified by the Joint Committee, in order to protect environment and also to maintain the green cover in that area. d

(iv) Considering the circumstances, parties are directed to bear their respective costs in the application. e

(v) The Registry is directed to communicate this order to the members of the Joint Committee appointed by this Tribunal, the Principal Chief Conservator of Forests (Head of Forests Force) and Chief Wildlife Warden, State of Tamil Nadu, the Ministry of Environment, Forests & Climate Change (MoEF&CC) and the Additional Chief Secretary to Government, Department of Environment, Forests & Climate Change for their information and compliance of directions.” f

**1.2.** The following further directions were given by the Tribunal by passing the interim order dated 27-7-2022 in *Navroz Kersasp Mody v. Auroville Foundation*<sup>2</sup>: (SCC OnLine NGT para 7) g

“7. In the meantime, the Joint Committee appointed by this Tribunal vide judgment dated 28-4-2022<sup>1</sup> is also directed to file the report regarding

<sup>2</sup> 2022 SCC OnLine NGT 2934

<sup>1</sup> *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 5402

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the nature of work done and observations made by them at the time of inspection.”

a 2. This Court on 13-12-2023<sup>3</sup> passed the following interim order pending these appeals: (*Auroville Foundation case*<sup>3</sup>, SCC OnLine SC para 5)

b “5. Having regard to the said prayer which was sought by Respondent 1 (original applicant) and having regard to the final directions given by the Tribunal in the impugned order<sup>1</sup>, we are of the prima facie opinion that the direction contained in para 125(i) being outside the jurisdiction of the Tribunal, the same is required to be stayed till further orders, and is ordered accordingly.”

*Prelude on the history of Auroville*

c 3. Before appreciating the issues involved, it would be apt to peep into the history of Auroville. In 1965, the “Mother” (Mirra Alfassa, a French lady), a spiritual collaborator of Sri Aurobindo (a Spiritual reformer, Philosopher and Educationist), envisioned to launch the project of Auroville, with an aim to establish an international universal township, where men and women of all countries are able to live in peace and harmony, above all creeds, all politics and all nationalities and to realise human unity. The project of Auroville was formally inaugurated by the “Mother” in 28-2-1968.

d 4. The Charter of Auroville given by the “Mother” was the following:

e “1. Auroville belongs to nobody in particular. Auroville belongs to humanity as a whole. But to live in Auroville one must be a willing servitor of the Divine Consciousness.

2. Auroville will be the place of an unending education, of constant progress and a youth that never ages.

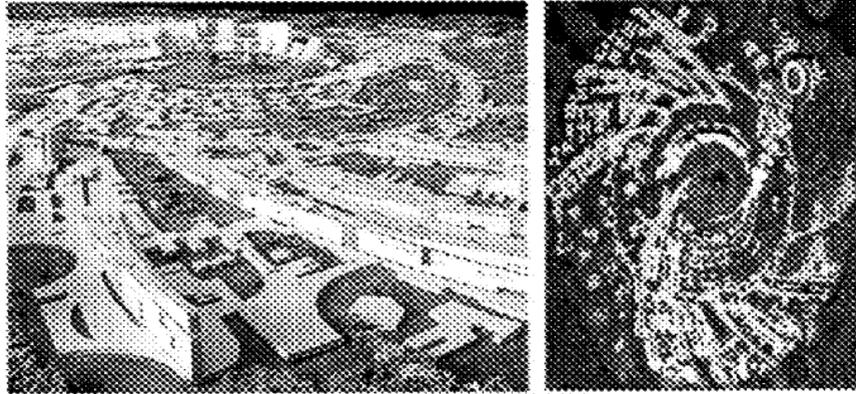
f 3. Auroville wants to be the bridge between the past and the future. Taking advantage of all discoveries from without and from within, Auroville will boldly spring towards future realisations.

4. Auroville will be a site of material and spiritual researches for a living embodiment of an actual Human Unity.”

g 5. The original Master Plan of the Auroville was conceptualised in galaxy shape, and was planned to eventually accommodate 50,000 residents, a number which the “Mother” considered sufficient to allow the experiment in human unity to take on a meaningful and significant dimension. Picture of Galaxy Model Plan conceptualised in 1968 is shown below:

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3 *Auroville Foundation v. Navroz Kersasp Mody*, 2023 SCC OnLine SC 2353  
1 *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 5402

The Galaxy model from 1968



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6. The project Auroville was legally started as the project of a charitable organisation, “The Sri Aurobindo Society” in Pondicherry, which was created to diffuse Sri Aurobindo’s thoughts. The development of Auroville in the initial few years showed good progress and it developed at a rapid pace. Number of Indians and foreigners settled down in Auroville and devoted themselves to various activities showing a remarkable harmony amongst the members of Auroville, which gave a promise to the Government of India of an early fulfilment of the ideals for which Auroville was established. It was also encouraged by UNESCO and other international organisations of the world.

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7. However, after the “Mother” passed away in 1973, the situation changed, and number of complaints came to be received by the Government of India with regard to the mismanagement in the working of Sri Aurobindo Society. Following the requests by majority of Auroville residents, the Government of India issued a Presidential Ordinance called the Auroville (Emergency Provisions) Ordinance, 1980, later replaced by the Auroville (Emergency Provisions) Act, 1980. Finally, the Government of India created a unique status for Auroville by passing the Auroville Foundation Act, 1988 (hereinafter referred to as “the AF Act”).

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***Constitution of Auroville Foundation and its Standing Orders***

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8. The Government of India notified the Constitution of Auroville Foundation as a statutory body on 29-1-1991 under the AF Act, and at present it is under the realm of Ministry of Human Resource Development (Department of Higher Education) as the Central Government undertaking.

9. As transpiring from the record, the original Galaxy Plan envisioned by the “Mother” in 1968 was the plan with four zones in Auroville, with the centripetal force, being the “Matrimandir”. The said Galaxy Plan was revised in 1972 as the First Master Plan called the “Town Plan”. As the AF Act required statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c) of the said AF Act, the Master Plan was approved by the Governing Board and the Residents’ Assembly of the appellant Foundation in 1999. The said 1999 Master Plan was further approved by the competent authority — the Town and Country Planning Organisation (“TCPO”), Ministry of Urban

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Development, on 15-2-2001 under the Model Town and Country Planning Act. The said Master Plan was notified on 16-8-2010 and published in the Official Gazette on 28-8-2010.

a **10.** In view of Section 11(3) of the AF Act, the Governing Board decided, that “Standing Orders” not inconsistent with the provisions of the AF Act and the Rules made thereunder, on the matters that the Governing Board may consider appropriate and necessary, shall be notified from time to time, by the Auroville Foundation. The said Resolution was notified in the Gazette of b India, Part III dated 5-3-2011 by the Ministry of Human Resource Development (Department of Higher Education).

c **11.** Since the said approved Master Plan prescribed the “Town Development Council” as the body for implementing the Master Plan with the organisational structure as in Appendix V of the Master Plan, the Governing Board in terms of the provisions of the Master Plan, constituted the Town d Development Council for the purpose of implementation of the Master Plan, vide Standing Order No. 6/2011 dated 1-5-2011, which was notified in the Government of India Gazette, Part III, dated 11-6-2011. The said Standing Order dated 1-5-2011 came to be replaced by Standing Order No. 1/2019 dated 4-6-2019.

d **12.** Again, the said Standing Order dated 4-6-2019 came to be replaced by Standing Order No. 1/2022 dated 1-6-2022, which was notified in the Gazette of India, Part III, on 15-7-2022. On 1-6-2022, the Auroville Foundation issued the office order for the reconstitution of the Auroville Town Development Council (“ATDC”). The appellant Foundation thereafter also issued a Corrigendum dated 7-12-2022, to Standing Order No. 1/2022 e dated 1-6-2022, in order to clarify and add the source of statutory power in the Preamble to the said original Standing Order dated 1-6-2022. The said corrigendum was also published in the Gazette of India, Part III, on 10-12-2022.

***Prefatory facts***

f **13.** Respondents 1 and 2 (“the original applicants”) had filed an application being OA No. 239/2021 before the Tribunal, raising a grievance with regard to cutting of large number of trees by the appellant Auroville Foundation, alleging inter alia that the Master Plan for Auroville as envisaged by the “Mother” was approved by the Governing Board of the Auroville Foundation in consultation with the Residents’ Assembly, and it further led to preparation of the Auroville g Universal Township Master Plan-Perspective 2025, which was approved by the Ministry of Human Resources Development in 2001. However, now the appellant Foundation was focusing on the manifestation of the roads mentioned in the Master Plan e.g. the Crown Road, a road encircling the centre of the Township, and the outer ring road, and was intending to distract Darkali Forest by using huge machineries causing deterioration to the environment. According h to the respondents — original applicants, the said lands covered under the

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deemed Forest, were entitled to the protection as mandated in *T.N. Godavarman Thirumulpad v. Union of India*<sup>4</sup> case.

14. The respondent applicants therefore had sought the following reliefs in the said OA No. 239/2021. a

“Interim relief

A. Injunct the 1st respondent from felling any tree or clearing undergrowth in the Darkali Forest or any area in Auroville for the proposed Crown Road project. b

B. Issue such other orders as it deems fit in the interest of the case and render justice.

Main prayer

A. Direct the 1st respondent to prepare a Detailed Development Plan including a mobility plan which is based on and respects the present day ground realities, to be approved as mandated in the Master Plan and implement projects based on such plan after necessary impact assessments and feasibility studies in an environmentally sustainable manner. c

B. Direct the respondent to pay costs to the applicant.

C. Issue such other orders as it deems fit in the interest of the case and render justice.” d

15. The Tribunal initially vide the order dated 10-12-2021<sup>5</sup> granted an interim order directing the appellant Foundation not to cut any further trees till the next date of hearing. The said interim order thereafter was extended till the final disposal of the case.

16. The appellant Foundation (1st respondent before the Tribunal) had filed a counter-affidavit raising various contentions including the maintainability of the application itself as also the jurisdiction of the Tribunal to entertain the application. It was specifically contended that neither the word “Forest” did appear in the Auroville Charter nor in the 1988 Act. Auroville or any part of it, was neither a forest nor a deemed forest requiring protection or clearance under the Forest (Conservation) Act, 1980. e

17. Respondent 3 Union of India through the Ministry of Environment, Forest and Climate Change (MoEF&CC Respondent 2 before the Tribunal) had also filed a counter-affidavit stating in detail the stand and role of the Ministry and contending inter alia that the requirement of prior environmental clearance for certain categories of construction and developmental activities (new construction projects and new industrial estates) in the country was inserted in Schedule I, after Item 30, through an amendment in EIA Notification, 1994 (operative at that time) vide the Notification dated 7-7-2004. The Central Government under the Environment (Protection) Act, 1986 had issued Environment Impact Assessment Notification dated 14-9-2006 superseding f  
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4 (1997) 2 SCC 267

5 *Navroz Kersasp Mody v. Auroville Foundation*, 2021 SCC OnLine NGT 4505 h

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Environment Impact Assessment Notification 1994, which required prior environmental clearance from the regulatory authority concerned.

- a **18.** It was further contended that the Auroville Project was examined by the said regulatory authority for the applicability of environmental clearance as directed by the Tribunal and it was found that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004, and substantial building work of Auroville Project was completed at various stages as far back as in 2001. Therefore, it could not
- b have been considered as a new project under the provisions of the Notification dated 7-7-2004. It was specifically contended that there was no change in the scope of Township project from the original Master Plan, and as such the Township project would not affect the provisions of the EIA Notification, 2006 and its amendments for grant of environmental clearance.

**19.** The Tribunal raised the following points for consideration:

- c “65. The points that arise for consideration are:
- (i) Whether the application is maintainable?
- (ii) Whether it was barred by limitation?
- (iii) Whether the intended activity of the 1st respondent requires
- d any prior environmental clearance or clearance under the Forest (Conservation) Act, 1980 as claimed by the applicant. Even if they are not required, is there any necessity to issue any directions applying the “*precautionary principle*” to protect environment and if so, what are the nature of directions to be issued?”

- e **20.** The Tribunal assuming the jurisdiction observed that a substantial question of alleged violation of environmental laws in the implementation of the project having been involved, the application was maintainable. Disagreeing with the stand taken by the MoEF&CC that the Project would fall within the exempted category of 2004 Notification and did not require the environmental clearance, the Tribunal held that any further activity to be done by the appellant Foundation can be permitted to be carried out only after
- f obtaining the necessary prior environmental clearance.

**21.** As regards the disputed Crown Road, the Tribunal held inter alia that the major portion of Crown Road has already been completed and only a small portion has remained, and that if it was not allowed to be completed, there would be hardship caused to the appellant Foundation.

- g **22.** The Tribunal, on the question as to whether the area in question was a Forest as envisaged in *T.N. Godavarman case*<sup>4</sup>, held that it could not be treated as a Forest, as in none of the government documents produced, it was treated as Forest, and admittedly it was man-made plantation of some species. The Tribunal therefore held that it would not come under the definition of “Forest” for the purposes of obtaining clearance under the Forest (Conservation) Act, 1980.

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

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**23.** The Tribunal after recording such findings applied the “precautionary principle” and issued the directions as stated earlier, vide the impugned judgment and order dated 28-4-2022 in *Navroz Kersasp Mody v. Auroville Foundation*<sup>1</sup>, and the impugned order dated 27-7-2022 in *Navroz Kersasp Mody v. Auroville Foundation*<sup>2</sup>, which are assailed by the appellant Foundation in these appeals. a

**24.** It may be noted that one of the interveners before the Tribunal, Ms Natasha Storey had also filed a writ petition being No. 25882/2022 challenging the Notification dated 1-6-2022 containing Standing Order No. 1/2022 issued by the appellant Foundation, and Civil Appeal No. 13651 of 2024 arising out of the order passed in the said writ petition was also heard simultaneously with the present set of appeals. The said appeal is also being decided simultaneously by a separate judgment. b

***Statutory provisions of the NGT Act*** c

**25.** As the long title of the Act states, the National Green Tribunal Act, 2010 (for short “the NGT Act”) was enacted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for the matters connected therewith and incidental thereto. d

**26.** Section 2(1)(m) of the NGT Act defines “substantial question relating to environment” as under:

“**2. (1)(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— e

(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 f

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

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

**27.** Chapter III of the said Act pertains to the jurisdiction, powers and proceedings of the Tribunal. Section 14 and Section 15 thereof being relevant in respect of the jurisdiction of the Tribunal, the same are reproduced hereunder: g

“**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

<sup>1</sup> 2022 SCC OnLine NGT 5402

<sup>2</sup> 2022 SCC OnLine NGT 2934

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AUROVILLE FOUNDATION v. NAVROZ KERSASP MODY (*Bela M. Trivedi, J.*) 165 environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

a (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:

b 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—

c (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in 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.

d (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).

e (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.

f (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.”

g **28.** Section 19 of the NGT Act pertains to the procedure and powers of the Tribunal, which inter alia states that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principle of natural justice. It also states that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. Section 20 provides that the Tribunal shall, while passing any order or decision or award,

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apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

29. The enactments in respect of which the Tribunal has the jurisdiction to grant relief under Sections 14 and 15 are specified in Schedule I appended to the NGT Act, which reads as under:

“SCHEDULE I

[See Sections 14(1), 15(1), 17(1)(a), 17(2), 19(4)(j) and 34(1)]

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.”

**Analysis**

30. As transpiring from Section 14, the Tribunal has the jurisdiction over all civil cases where the 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. Therefore, for the exercise of jurisdiction by the Tribunal under Section 14, it has to be shown that (1) a substantial question relating to environment including enforcement of any legal right relating to environment is involved; and (2) such questions arise out of the implementation of the enactments specified in Schedule I.

31. The term “substantial question relating to environment” as defined in Section 2(1)(m) of the Act would include, inter alia, the question where there is a direct violation of a specific statutory environmental obligation by a person by which: (a) the community at large other than the 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. The substantial question would also include the environmental consequences relating to a specific activity or a point source of pollution.

32. In view of the said definition also the Tribunal before exercising the jurisdiction has to satisfy itself that a substantial question pertaining to the violation of or implementation of any specific statutory environmental obligations contained in any of the enactments specified in Schedule I, is involved.

33. Recently in *State of M.P. v. Centre for Environment Protection Research & Development*<sup>6</sup>, this Court held as follows: (SCC pp. 801-802, paras 42-44)

“42. In view of the definition of “substantial question relating to environment” in Section 2(1)(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory

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environmental obligation, which affects or is likely to affect a group of  
individuals, or the community at large.

a 43. For exercise of power under Section 14 of the NGT Act, a  
substantial question of law should be involved including any legal right to  
environment and such question should arise out of implementation of the  
specified enactments.

b 44. Violation of any specific statutory environmental obligation gives  
rise to a substantial question of law and not just statutory obligations  
under the enactments specified in Schedule I. However, the question must  
arise out of implementation of one or more of the enactments specified in  
Schedule I.”

Similar view is also taken in *H.P. Bus-Stand Management & Development  
Authority v. Central Empowered Committee*<sup>7</sup>.

c 34. From the above, it is explicitly clear that every question or dispute raised  
by an applicant before the Tribunal pertaining to the environment cannot be  
treated as a substantial question. It has to be a substantial question relating to  
environment as contemplated in Section 2(1)(m), and such substantial question  
must arise out of the implementation of any of the enactment/enactments  
specified in Schedule I. Though strict law of evidence may not be applicable  
d to the cases filed before the Tribunal, the applicant has to raise the substantial  
question in his application specifically alleging the violation of a particular  
enactment specified in Schedule I.

e 35. So far as the facts of the present appeal are concerned, as  
stated hereinabove, the only grievance raised by the respondents (“original  
applicants”) in their OA was with regard to the appellant Foundation  
constructing the roads as mentioned in the Master Plan which was already  
approved by the Governing Board of the Foundation and by the Ministry of  
Human Resource Development way back in 2001, and published in the Official  
Gazette in 2010. The allegation made in the original application was that while  
constructing the said roads particularly the Crown Road, or road encircling the  
centre of township, and an outer ring road, the forest area known as Darkali  
Forest was being destructed. According to the respondents, the said area was  
f required to be treated as a deemed forest and was required to be protected  
as mandated in *T.N. Godavarman case*<sup>4</sup>. Except the said bare allegations,  
there was no other allegation made with regard to any violation of any of the  
enactments specified in Schedule I.

g 36. Significantly, the Tribunal specifically negated the said allegations  
raised by the respondents by observing inter alia in para 118 of the impugned  
judgment<sup>1</sup> that the said area cannot be treated as a Forest, as in any of the  
government documents produced, it was not treated as a Forest and not even  
shown as a Forest, and that admittedly, it was a man-made plantation of some  
species, and therefore, it will not come under the definition of “Forest” for the  
purpose of obtaining clearance under the Forest (Conservation) Act, 1980.

h 7 (2021) 4 SCC 309

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

1 *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 5402

**37.** Curiously, after having held that the area in question could not be treated as a Forest and that there was no clearance required under the Forest (Conservation) Act, the Tribunal proceeded further applying the “precautionary principle” and appointed a Joint Committee to inspect the area in question and ascertain whether any modification could be made in the width of the road, and further directed the appellant Foundation to prepare a proper Township plan in respect of the area in their possession and in respect of the area visualised by the “Mother”.

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**38.** In our opinion, the Tribunal has completely misdirected itself by entering into the restricted domain of judicial review under the guise of applying “precautionary principle” in extraordinary circumstances, and in interfering with the implementation of Master Plan which was already approved by the competent authority way back in the year 2001. As stated earlier, the original Galaxy Plan envisaged by the “Mother” in 1968 was the structure with 4 zones in Auroville with the centripetal force, being “Matrimandir”. The said Galaxy Plan was revised in 1972 as the First Master Plan called the “Town Plan”. Since the Auroville Foundation Act required statutory Master Plan as contemplated in Section 17(e) read with Section 19(2)(c), the said Master Plan was approved by the Governing Board of the appellant Foundation in 1999, and was further approved by the competent authority—Town and Country Planning Organisation, Ministry of Urban Development on 15-2-2001. The said Master Plan was also notified on 16-8-2010 and published in the Official Gazette on 28-8-2010.

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**39.** Thus, the said Master Plan having been approved by the competent authority as back as in 2001 had attained a statutory force and a finality. There are about more than 2000 substantial constructions/developments, which have taken place in Auroville since then till this date. The construction of roads as mentioned in the said approved Master Plan including the Crown Road, a road encircling the centre of the Township and an outer ring road, being on the verge of completion, except few patches, which could not be completed because of the obstructions caused by the disgruntled residents like the respondents, the Tribunal thoroughly misdirected itself by directing the appellant to prepare a proper Township Plan.

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**40.** It is also significant to note that the Auroville Foundation Act is a Special Act enacted to provide for the Acquisition and Transfer of the Undertakings of Auroville and to vest such undertakings in a Foundation established for the purpose with a view to making long term arrangements for the better management and further development of Auroville in accordance with its original charter and for the purpose connected therewith and incidental thereto.

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**41.** As per Section 27 of the said Act, the provisions of the said Act have the effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other than the Act, or in any decree or order of any court, tribunal or other authority. Thus, in view of the overriding effect of the AF Act also the impugned direction issued by the Tribunal without any jurisdiction as circumscribed under Section 14 of the NGT Act, would not be tenable at law.

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a 42. The Tribunal has also travelled beyond its jurisdiction in giving the impugned directions under the guise of exceptional circumstances applying the “precautionary principle”. At this juncture, it is very pertinent to note that as stated earlier, the Ministry of Environment, Forest and Climate Change in its affidavit filed before the Tribunal had made its stand very clear that the Auroville Township Project was under construction much before the EIA Notification, 1994 and its amendment in 2004 and therefore could not be considered as a new project under the said Notification of 2004. It was also made clear that there was no change in the scope of Township Project from the Original Master Plan and as such, the Township Project would not affect the provisions of EIA Notification, 2006 and its amendments for the grant of environment clearance.

b 43. Again curiously, the Tribunal without any material on record, brushed aside the said stand taken by MoEF&CC in its affidavit, by holding that any further activity to be done by the appellant Foundation, could be permitted to be carried out only after obtaining necessary prior environmental clearance, and then proceeded to appoint the Joint Committee to inspect the area in question and to ascertain whether the width of the road at suitable places could be reduced so that the number of trees to be cut can be minimised.

c 44. Such directions clearly fall outside the purview of the jurisdiction of the Tribunal particularly when there was no substantial question relating to the environment was shown to have arisen in implementation of any of the enactments specified in Schedule I appended to the NGT Act. There is no whisper in the impugned order as to which of the provision and which of the enactment specified in Schedule I was violated.

d 45. It would not be out of place to regurgitate the law developed so far on the protection of environment. In the landmark judgment in *Vellore Citizens’ Welfare Forum v. Union of India*<sup>8</sup>, it was stated that the traditional concept that development and ecology are opposed to each other is no longer acceptable. “Sustainable development” has been accepted as a viable concept to eradicate poverty and improve the quality of human life, while living within the carrying capacity of supporting ecosystems. “Sustainable development” as defined by Brundtland Report means “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. The “sustainable development” therefore has been held to be a balancing concept between ecology and development as a part of the customary international law.

e 46. In *Essar Oil Ltd. v. Halar Utkarsh Samiti*<sup>9</sup>, this Court after referring to the principles enunciated in the Stockholm Declaration, made very apt observations in paras 26 and 27, which may be quoted hereunder: (SCC pp. 405-406)

f “26. Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides

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8 (1996) 5 SCC 647  
9 (2004) 2 SCC 392

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that the natural resources of the earth including air, water, land, flora and fauna especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the fourth principle says:

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‘man has special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must, therefore, receive importance in planning for economic developments.’

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These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that ‘economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life’. The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasised in Principle 11 which says:

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‘The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;’

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27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in *Indian Council for Enviro-Legal Action v. Union of India*<sup>10</sup>, where it was said: (SCC p. 296, para 31)

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‘31. ... While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.’ ”

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a 47. Though it is true that the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country, it is equally true that while the right to clean environment is a guaranteed fundamental right under Articles 14 and 21 of the Constitution of India, the right to development through industrialisation equally claims priority under fundamental rights particularly under Articles 14, 19 and 21 of the Constitution of India. There is therefore a need for “sustainable development” harmonising and striking a golden balance between the right to development and the right to clean environment.

b 48. In *N.D. Jayal v. Union of India*<sup>11</sup>, it is observed as under: (SCC p. 382, para 25)

c “25. Therefore, the adherence to sustainable development principle is a *sine qua non* for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to “sustainable development” cannot be singled out. Therefore, the concept of “sustainable development” is to be treated as an integral part of “life” under Article 21. Weighty concepts like intergenerational equity (*State of H.P. v. Ganesh Wood Products*<sup>12</sup>), public trust doctrine (*M.C. Mehta v. Kamal Nath*<sup>13</sup>) and precautionary principle (*Vellore Citizens*<sup>8</sup>), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.” (emphasis supplied)

d 49. As demonstrated earlier, in the instant case, no substantial question relating to environment had arisen, nor violation of any of the enactments specified in Schedule I was alleged. The Tribunal therefore had committed gross error in assuming the jurisdiction and giving directions untenable in law.

e 50. In that view of the matter, the impugned orders<sup>1, 2</sup> passed by the Tribunal being without jurisdiction and legally untenable deserve to be quashed and set aside, and are hereby set aside. The appeals stand allowed accordingly.

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11 (2004) 9 SCC 362

12 (1995) 6 SCC 363

13 (1997) 1 SCC 388

h 8 *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647

1 *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 5402

2 *Navroz Kersasp Mody v. Auroville Foundation*, 2022 SCC OnLine NGT 2934

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3J

(BEFORE A.M. KHANWILKAR, INDIRA BANERJEE AND DINESH MAHESHWARI, JJ.)  
SHAKTI BHOG FOOD INDUSTRIES LIMITED .. Appellant;

*Versus*

CENTRAL BANK OF INDIA AND ANOTHER .. Respondents.

Civil Appeals No. 2514 of 2020<sup>†</sup> with  
No. 2515 of 2020<sup>‡</sup>, decided on June 5, 2020

**A. Limitation Act, 1963 — Arts. 113 and 58 and S. 22 — Residuary clause under Art. 113, held, applicable when suit not covered by any specific article — “When right to sue accrues” — Art. 113 distinguished from Art. 58 which contains additional word “first” between words “sue” and “accrues”**

— In absence of word “first” in Art. 113, it would cover cases falling under S. 22 of the Limitation Act, including continuing breaches or torts — The distinction between Art. 58 and Art. 113 is that as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Art. 58 the period of limitation would be reckoned from the date on which the cause of action arose *first*, in terms of Art. 113 the period of limitation would be differently computed depending upon the last day when the cause of action arose

— In present case, view taken by the trial court, which was confirmed by first appellate court and then High Court in the second appeal, would inevitably entail in reading Art. 113 to mean: when the right to sue (first) accrues — This would be rewriting that provision and doing violence to the legislative intent, which is impermissible — Words and Phrases — “Right to sue accrues”, “right to sue first accrues”, “accrues”, “first accrues”

**B. Limitation Act, 1963 — Art. 113 and S. 9 — Reckoning of or extension of limitation period — Whether can be based on correspondence — Determination of, held, has to be made in the facts and circumstances of each case — Mere exchange of correspondence distinguished from situation where correspondence is carried out to vindicate right or redress grievance by a party, and clear refusal to do so by the opposite party concerned can be considered as the starting point of limitation**

**C. Civil Procedure Code, 1908 — Or. 7 R. 11(d) — Application for rejection of plaint — Whether suit barred by law of limitation — Court’s duty is to scrutinise averments contained in plaint as a whole on their face value to ascertain bar of limitation and to take decision on the application — If averments show that suit is barred by law of limitation or does not disclose any cause of action, court can exercise power under R. 11 to reject the plaint — However, averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint**

<sup>†</sup> Arising out of SLP (C) No. 30209 of 2017. Arising from the Judgment and Order in *Shakti Bhog Food Industries Ltd. v. Central Bank of India*, 2017 SCC OnLine Del 6395 (Delhi High Court, RSA No. 391 of 2016, dt. 2-1-2017)

<sup>‡</sup> Arising out of SLP (C) No. 30210 of 2017. Arising from the Judgment and Order in *Kumar Food Industries Ltd. v. Central Bank of India*, 2017 SCC OnLine Del 8528 (Delhi High Court, RSA No. 149 of 2017, dt. 24-5-2017)

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**D. Civil Procedure Code, 1908 — Or. 7 Rr. 11(a) & (d) — Cause of action — Meaning — Whether suit barred by law of limitation — Mixed questions of fact and law**

In Civil Appeal No. 2514 of 2020, appellant filed a suit on 23-2-2005 for a decree for rendition of true and correct accounts in respect of the interest/commission charged and deducted by the respondent Bank relating to the current amount of the appellant for the period between 1-4-1997 and 31-12-2000, and also for recovery of the excess amount charged by the respondent Bank consequent to rendition of accounts with interest @ 18% p.a. from the date of deduction including interest pendente lite realisation of the amount and future interest. From the averments in the plaint, if read as a whole, it appeared that the assertion of the appellant is that the respondents had extended financial facility with effect from 1-4-1997 till October 2007, but somewhere in the month of July 2000, the appellant noticed that the respondents were unilaterally charging interest/commission @ Rs 4 per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the appellant. Immediately thereafter, the appellant wrote to the respondent Bank vide letter dated 21-7-2000 for taking corrective steps in the matter.

Then correspondence ensued between the parties in that regard and the Assistant General Manager of the Regional Office of the Bank vide letter dated 9-7-2001 informed the appellant that comments from the branch office concerned have been invited and appropriate decision will be taken on its representation as early as possible. Thereafter, on 8-5-2002, the Senior Manager of the respondent Bank informed the appellant that the cheques were being purchased at the prevailing rates; which plea, according to the appellant, was to deviate from the position stated by the Assistant General Manager of Regional Office in his letter dated 9-7-2001. Resultantly, the appellant wrote to the officials of the respondent Bank vide letters dated 12-7-2002, 22-9-2002 and 24-3-2003. The Senior Manager of the respondent Bank vide letter dated 19-9-2002 had informed the appellant that everything was being done in accordance with the rules and the appellant need not pursue the matter any further. It is asserted that despite this intimation, the appellant continued to correspond with the respondent Bank with a sanguine hope that the issue will be resolved at the appropriate level by the Bank and finally issued a legal notice on 28-11-2003, which was duly responded to by the respondent Bank vide advocate's letter dated 23-12-2003. Nevertheless, the appellant gave another legal notice on 7-1-2005 and thereafter, proceeded to file the subject suit in February 2005.

The appellant relied on Articles 2, 3 and 22 of the Limitation Act, 1963 to urge that the suit filed in February 2005 was within limitation. But the trial court opined that in respect of the two reliefs sought by the plaintiff in the suit i.e. rendition of account and repayment of excess money, the Limitation Act, 1963 does not provide any specific article with regard to time period within which accounts can be sought by the party from its bank. As such, Article 113 of the Limitation Act would be applicable which provides a limitation period of three years from the date when right to sue accrues. It further took the view that "as per averments made by the plaintiff in his plaint, the facility was availed by the plaintiff from the defendants till October 2000. Further, as per averments made in the plaint, the alleged amount so charged by the defendant from the plaintiff, in excess of agreed amount, was till

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October 2000. As such, at best it can be said that right to sue accrues in favour of the plaintiff in October 2000". According to the trial court, therefore, the plaintiff could have filed the present suit i.e. for rendition of account and repayment of excess amount till October 2003.

After so observing, the trial court considered the submission of the appellant that the cause of action had accrued to the appellant only upon rejection of the representation by the respondent Bank entailing in refusal or denial of liability, communicated to the appellant vide letters dated 19-9-2002 and 3-6-2003 and after the final legal notice was served upon the respondents on 7-1-2005. That contention was rejected by adverting to the decision of the same High Court in *C.P. Kapur*, 2012 SCC OnLine Del 5465, wherein it is held that exchange of correspondence between the parties cannot extend the limitation period for institution of a suit, once the right to sue had accrued, which in this case had accrued in October 2000, as has been asserted even in the plaint. Whereas, the suit was filed in February 2005 beyond the period of three years from the date on which right to sue accrued to the appellant, as prescribed in Article 113 of the 1963 Act. Accordingly, the trial court rejected the plaint on the ground that it was barred by the law of limitation. The District Court in first appeal and the High Court in the second appeal affirmed the view taken by the trial court.

In Civil Appeal No. 2515 of 2020 the factual narration in the plaint is similar in material respects, if not identical to the plaint in the companion appeal arising from SLP (C) No. 30209 of 2017.

Allowing the appeals, the Supreme Court

*Held :*

Order 7 Rule 11 CPC gives ample power to the court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. The relevant facts which need to be looked into for deciding an application under Rule 11 are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should reject the plaint. Order 7 Rule 11(d) makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is the bounden duty of the court to examine the plaint as a whole and not selected averments therein. The question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. (Paras 7, 9 and 10)

*Madanuri Sri Rama Chandra Murthy v. Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602; *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust*, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612; *Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557; *ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70; *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467; *Roop Lal Sathi v. Nachhattar Singh Gill*, (1982) 3 SCC 487; *Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7

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SCC 184; *Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137; *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*, (2006) 3 SCC 100, *affirmed*

a *Ram Prakash Gupta v. Rajiv Kumar Gupta*, (2007) 10 SCC 59, *affirmed on this point*

Keeping in mind the above legal position, the averments in the plaint had to be read as a whole and analysed to discern whether it was a fit case for rejection of the plaint under Order 7 Rule 11(d) CPC. The trial court did not make any attempt to analyse the plaint in the manner predicated above. Even the District Court dealing with the first appeal and the High Court with the second appeal omitted to do so. (Para 10)

b On reading the plaint as a whole, it is seen that the gravamen of the case made out in the plaint is that the appellant noticed the discrepancy in July 2000 and immediately took up the matter with the officials of the respondent Bank at different levels and in response, the Assistant General Manager of the Regional Office of the Bank had communicated in writing to the appellant vide letter dated 9-7-2001, that its representation was being examined and comments of the branch office have been invited and after receipt thereof the matter will be decided as early as possible. As no further communication was received by the appellant, it had to make a representation to the Finance Minister, Government of India, vide letter dated 31-10-2001 and presumably because of that, the appellant received a communication from the Senior Manager vide letter dated 8-5-2002 informing the appellant that the cheques were being purchased at the prevailing rates. This stand taken by the Senior Manager was to sidetrack the issue pending consideration before the Assistant General Manager, Regional Office referred to in his letter dated 9-7-2001. The case made out by the appellant is that no communication was received by the appellant from the Assistant General Manager, Regional Office and instead, for the first time it was informed vide letter dated 19-9-2002 sent by the Senior Manager of the respondent Bank, that all actions taken by the Bank are as per the rules and, therefore, the appellant need not correspond in this regard any further. This response of the Bank could also be regarded as a firm denial or refusal by the authorised official of the Bank, giving rise to cause of action to sue the Bank. (Para 15)

c Thus understood, the letter dated 8-5-2002 sent by the Senior Manager of the respondent Bank, at best, be reckoned as accrual of the cause of action to the appellant to sue the respondent Bank. It is then stated that the appellant received a communication dated 19-9-2002, informing the appellant that it should not carry on any further correspondence with the Bank relating to the subject-matter. Until then, the appellant was having a sanguine hope of favourable resolution of its claim including by the Regional Office of the respondents. The appellant, therefore, had to send a legal notice on 28-11-2003, to which the Bank responded on 23-12-2003. Reckoning these dates, the plaint filed on 23-2-2005 was within limitation, as stated in Para 28 of the plaint. Although Para 28 of the plaint opens with the expression “the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21-7-2000 was sent to the defendants to clarify as to how the interest was being calculated” but this averment cannot be read in isolation. Resultantly, the question of rejecting such a plaint under Order 7 Rule 11(d) CPC did not arise. (Paras 16 and 14)

d The expression used in Article 113 of the 1963 Act is “when the right to sue accrues”, which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to

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the happening of a specified event e.g. Article 58 (when the right to sue “first” accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded “first” become known to him) and Article 104 (when the plaintiff is “first” refused the enjoyment of the right). Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression “when the right to sue accrues” in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts. Article 113 being a residuary clause and which has been invoked by all the three courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue. “If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule”. (Paras 17, 18 and 20)

The view taken by the trial court, which commended to the first appellate court and the High Court in the second appeal, would inevitably entail in reading the expression in Article 113 as — when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose. (Paras 18 and 19)

*Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484; *Rukhmabai v. Lala Laxminarayan*, AIR 1960 SC 335, applied

*Union of India v. West Coast Paper Mills Ltd.*, (2004) 2 SCC 747, followed

*Bolo v. Koklan*, 1930 SCC OnLine PC 62 : (1929-30) 57 IA 325 : AIR 1930 PC 270; *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar*, 1930 SCC OnLine PC 75 : (1930-31) 58 IA 1 : ILR (1930) 8 Rang 645; *Gobinda Narayan Singh v. Sham Lal Singh*, 1931 SCC OnLine PC 6 : (1930-31) 58 IA 125, relied on

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*Ram Prakash Gupta v. Rajiv Kumar Gupta*, (2007) 10 SCC 59, distinguished on this point

The cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents. (Para 22)

Having noticed from the averments in the plaint that the right to sue accrued to the appellant on receiving letter from the Senior Manager, dated 8-5-2002, and in the particular letter dated 19-9-2002, and again on firm refusal by the respondents vide advocate’s letter dated 23-12-2003 in response to the legal notice sent by the appellant on 28-11-2003; and once again on the follow-up legal notice on 7-1-2005, the plaint filed in February 2005 would be well within limitation. Considering the

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a former events of firm response by the respondents on 8-5-2002 and in particular, 19-9-2002, the correspondence ensued thereafter, including the two legal notices sent by the appellant, even if disregarded, the plaint/suit filed on 23-2-2005 would be within limitation in terms of Article 113. (Para 23)

b Going by the averments in the plaint, the argument of the respondents that the appellant had placed reliance on the correspondence to get extension of the limitation period, and that exchange of letters or correspondence between the parties cannot be the basis to extend the period of limitation is untenable. The averments in the plaint, however, are very explicit to the effect that the grievance of the appellant about unilateral charging of interest/commission by the respondent Bank was firmly denied or refused by the Senior Manager of the respondent Bank vide letter dated 8-5-2002 and in the particular letter dated 19-9-2002 and again by Advocate's letter on 23-12-2003, giving rise to cause of action and accrual of right to sue. (Para 24)

c Therefore, the decisions of the trial court, the first appellate court and the High Court in the fact situation of the present case, rejecting the plaint in question under Order 7 Rule 11(d) CPC, cannot be sustained. As a result, the same are quashed and set aside. (Para 30)

*Shakti Bhog Food Industries Ltd. v. Central Bank of India*, 2017 SCC OnLine Del 6395; *Kumar Food Industries Ltd. v. Central Bank of India*, 2017 SCC OnLine Del 8528, *reversed*

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19.	(1982) 3 SCC 487, <i>Roop Lal Sathi v. Nachhattar Singh Gill</i>	269b	
20.	(1977) 4 SCC 467, <i>T. Arivandandam v. T.V. Satyapal</i>	269a-b, 270g, 271d	
21.	AIR 1962 SC 1716, <i>Boota Mal v. Union of India</i>	278h, 280b	
22.	AIR 1960 SC 1058, <i>East &amp; West Steamship Co. v. S.K. Ramalingam Chettiar</i>	280b	
23.	AIR 1960 SC 335, <i>Rukhmabai v. Lala Laxminarayan</i>	277e, 277e-f	
24.	1931 SCC OnLine PC 6 : (1930-31) 58 IA 125, <i>Gobinda Narayan Singh v. Sham Lal Singh</i>	277d-e	b
25.	1930 SCC OnLine PC 75 : (1930-31) 58 IA 1 : ILR (1930) 8 Rang 645, <i>Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar</i>	277d-e	
26.	1930 SCC OnLine PC 62 : (1929-30) 57 IA 325 : AIR 1930 PC 270, <i>Bolo v. Koklan</i>	277c-d	

The Judgment of the Court was delivered by

**A.M. KHANWILKAR, J.—**

*Civil Appeal No. 2514 of 2020 [arising out of SLP (C) No. 30209 of 2017]*

1. Leave granted. This appeal takes exception to the judgment and order dated 2-1-2017 passed by the High Court of Delhi at New Delhi (for short “the High Court”) in *Shakti Bhog Food Industries Ltd. v. Central Bank of India*<sup>1</sup>, whereby the High Court affirmed the decision of the Court of Civil Judge 05, Central District, Tis Hazari Courts, Delhi, dated 6-1-2016 in CS No. 950 of 2014 allowing the application filed by the respondent-defendants for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”), instituted by the appellant-plaintiff. The Additional District & Sessions Judge, Central District, Tis Hazari Courts, Delhi, vide order dated 23-7-2016 in RCA No. 61794 of 2016 had also affirmed the order of rejecting the plaint. The appellant had filed the stated suit on 23-2-2005 for a decree for rendition of true and correct accounts in respect of the interest/commission charged and deducted by the respondent Bank relating to Current Account No. CCM 20225 of the appellant for the period between 1-4-1997 and 31-12-2000, and also for recovery of the excess amount charged by the respondent Bank consequent to rendition of accounts with interest @ 18% p.a. from the date of deduction including interest pendente lite realisation of the amount and future interest.

2. The plaint came to be rejected by the trial court under Order 7 Rule 11(d) CPC on the ground that it was barred by the law of limitation, as it was filed beyond the period of three years prescribed in Article 113 of the Limitation Act, 1963 (for short “the 1963 Act”), as applicable to the present case, from the date when the right to sue accrued to the appellant in October 2000. The entire discussion of the trial court in that regard can be traced to paras 10 and 11, which read thus:

“10. As stated above, the plaintiff by way of the present suit has sought two reliefs i.e. rendition of account and repayment of excess money. The

<sup>1</sup> 2017 SCC OnLine Del 6395

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a Limitation Act, 1963 does not provide any specific article with regard to time period within which accounts can be sought by the party from its bank. As such, Article 113 of the Limitation Act came into picture which provides a limitation period of three years for suits for which no limitation period is provided, from the date when right to sue accrues.

b *11.* In the present case in hand, as per averments made by the plaintiff in his plaint, the facility was availed by the plaintiff from the defendants till October 2000. Further, as per averments made in the plaint, the alleged amount so charged by the defendant from the plaintiff, in excess of agreed amount, was till October 2000. As such, at best it can be said that right to sue accrues in favour of the plaintiff in October 2000. Considering the law as stated in the above paragraph, the plaintiff could have filed the present suit i.e. for rendition of account and repayment of excess amount till October 2003. ...”

c **3.** After so observing, the trial court considered the submission of the appellant that the cause of action had accrued to the appellant only upon rejection of the representation by the respondent Bank entailing in refusal or denial of liability, communicated to the appellant vide letters dated 19-9-2002 and 3-6-2003 and after the final legal notice was served upon the respondents on d 7-1-2005. That contention has been rejected by adverting to the decision of the same High Court in *C.P. Kapur v. Chairman*<sup>2</sup>, wherein it is held that exchange of correspondence between the parties cannot extend the limitation period for institution of a suit, once the right to sue had accrued, which in this case had accrued in October 2000, as has been asserted even in the plaint. Whereas, the suit was filed in February 2005 beyond the period of three years from the date e on which right to sue accrued to the appellant, as prescribed in Article 113 of the 1963 Act. The view so taken by the trial court commended to the District Court in the first appeal and also the High Court in the second appeal, which judgment is the subject-matter of challenge in the present appeal.

f **4.** We have heard Mr Nischal Kumar Neeraj, learned counsel for the appellant and Mr Anuj Jain, learned counsel for the respondents.

g **5.** Be it noted that the appellant had relied on Articles 2, 3 and 22 of the 1963 Act to urge that the suit filed in February 2005 was within limitation. This plea, however, did not impress the trial court, the first appellate court or the High Court. The courts proceeded on the basis that Article 113 is attracted in the facts of the present case, as the reliefs claimed by the appellant were not covered under any specific Article with regard to time period within which accounts can be sought by the party from its bank, as noted by the trial court in para 10 of its judgment reproduced above.

h **6.** The central question is: whether the plaint as filed by the appellant could have been rejected by invoking Order 7 Rule 11(d) CPC?

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7. Indeed, Order 7 Rule 11 CPC gives ample power to the court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more *res integra*. We may usefully refer to the decision of this Court in *Ram Prakash Gupta v. Rajiv Kumar Gupta*<sup>3</sup>. In paras 13 to 20, the Court observed as follows: (SCC pp. 65-66)

“13. As per Order 7 Rule 11, the plaint is liable to be rejected in the following cases:

‘(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9;’

14. In *Saleem Bhai v. State of Maharashtra*<sup>4</sup> it was held with reference to Order 7 Rule 11 of the Code that:

‘9. ... the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power ... at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....’ (SCC p. 560, para 9).

15. In *ITC Ltd. v. Debts Recovery Appellate Tribunal*<sup>5</sup> it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. “The trial court must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein

3 (2007) 10 SCC 59

4 (2003) 1 SCC 557

5 (1998) 2 SCC 70

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a is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first hearing by examining the party searchingly under Order 10 CPC.”

(See *T. Arivandandam v. T.V. Satyapal*<sup>6</sup>, SCC p. 468.)

b 17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill*<sup>7</sup>, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property*<sup>8</sup> it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order 7 was applicable.

c 19. In *Sopan Sukhdeo Sable v. Charity Commr.*<sup>9</sup> this Court held thus: (SCC pp. 146-47, para 15)

d ‘15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.’

e 20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order.”

f 8. On the same lines, this Court in *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust*<sup>10</sup>, observed as follows: (SCC pp. 713-15, paras 10-12)

h 6 (1977) 4 SCC 467  
7 (1982) 3 SCC 487  
8 (1998) 7 SCC 184  
9 (2004) 3 SCC 137  
10 (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612

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“10. ... It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in *Saleem Bhai v. State of Maharashtra*<sup>4</sup>, in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.’

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property*<sup>8</sup> and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*<sup>11</sup>.

12. It is also useful to refer the judgment in *T. Arivandandam v. T.V. Satyapa*<sup>6</sup>, wherein while considering the very same provision i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this

4 (2003) 1 SCC 557  
8 (1998) 7 SCC 184  
11 (2006) 3 SCC 100  
6 (1977) 4 SCC 467

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Court has reminded the trial Judges with the following observation: (SCC p. 470, para 5)

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‘5. ... The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them.’

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It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J. in the aboveresferred decision<sup>6</sup>, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code.”

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9. We may also advert to the exposition of this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal*<sup>12</sup>. In para 7 of the said decision, this Court has succinctly restated the legal position as follows: (SCC pp. 178-79)

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“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the

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<sup>6</sup> *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467  
<sup>12</sup> (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602

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plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

**10.** Keeping in mind the well-settled legal position, we may now proceed to analyse the averments in the plaint, as filed by the appellant, to discern whether it was a fit case for rejection of the plaint under Order 7 Rule 11(d) CPC. As noticed from the trial court judgment, it is evident that the trial court did not make any attempt to analyse the plaint in the manner predicated in the aforesaid decisions. Even the District Court dealing with the first appeal and the High Court with the second appeal omitted to do so. It is the bounden duty of the court to examine the plaint as a whole and not selected averments therein. For that, we need to advert to the averments in the plaint. Paras 8 to 15 of the plaint, which according to us, are the relevant averments, read as follows:

“8. That the facility as referred to in the foregoing paras was extended with effect from 1-4-1997 and somewhere in the month of July 2000, it was noticed by the plaintiff that the defendants were charging interest/ commission @ Rs 4 per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the plaintiff.

9. That after the detection of the above overcharging of interest/ commission, the plaintiff sent a letter to the defendants on 21-7-2000 complaining about the overcharging and thereafter, the interest/ commission was charged as per assurance given.

10. That the amount overcharged as commission/interest was not refunded to the plaintiff and the plaintiff sent the following letters addressed to the Bank i.e. General Manager and Senior Manager indicating therein that the amount overcharged should be refunded to the plaintiff with interest thereon:

Letters dated 12-10-2000, 24-10-2000, 30-10-2000, 7-11-2000, 24-12-2000, 1-3-2001, 28-3-2001, 22-5-2001 and 20-6-2001. In all the above letters requests were made to clarify as to how the commission were calculated and deducted from the plaintiff.

11. That the Assistant General Manager, Shri P.S. Bawa of Regional Office-B, Delhi vide letter dated 9-7-2001 informed the plaintiff that the comments of the branch office have been invited on the representation of the plaintiff in respect of the local cheques/DDs discounted during the relevant period and the matter will be decided as early as possible. No progress was made in the matter and the plaintiff had to submit the letter dated 31-10-2001 to the Hon’ble Finance Minister, Government of India, New Delhi.

12. That the defendants have charged interest for some time for the actual number of days for the defendants remained out of funds.

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a 13. *That vide letter dated 8-5-2002, the Senior Manager informed the plaintiff that the cheques were being purchased at the prevailing rates. That reply was given to sidetrack the real issue in respect of which the letter dated 9-7-2001 was received from Shri P.S. Bawa, Assistant General Manager of Regional Office as referred to in the foregoing paras.*

b 14. *That, thereafter, the plaintiff sent letters dated 12-7-2002, 22-9-2002, 24-3-2003 along with which the details of the proposed/estimated excess amount charged were given and it was requested that a sum of Rs 31,57,484 approximately appears to have been charged in excess of what should have been actually charged and the exact amount should be calculated and refunded to the plaintiff. No reply was given by the Bank to these letters.*

c 15. *That, the Senior Manager of Defendant 2 vide letter dated 19-9-2002 had informed that everything was done according to the rules and the matters need not be pursued any further, and thereafter, the plaintiff sent another letter dated 3-6-2003.” (emphasis supplied)*

11. Again, in para 28 of the plaint, it is stated as follows:

d “28. That the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and the letter dated 21-7-2000 was sent to the defendants to clarify as to how the interest was being calculated and recovered and on various other dates, when the letters were sent to the defendants with request for refund of the excess amounts charged, and on 9-7-2001 when assurance for proper calculation and refund was conveyed to the plaintiff and on 8-5-2002, e 12-7-2002 and 22-9-2002 when requests were again made to settle the matter on 19-9-2002, 3-6-2003 and the cause of action arose on 23-12-2003 when the legal notice was served upon the defendant and on 28-12-2003, when the reply to the notice was received and finally on 7-1-2005, when the legal notice for rendition of accounts was served upon the defendants and the cause of action still subsists as the accounts have not been rendered so far nor the excess amount charged has been refunded by the defendants.” f

g 12. From the averments in the plaint, if read as a whole, it would appear that the assertion of the appellant is that the respondents had extended financial facility with effect from 1-4-1997 till October 2007, but somewhere in the month of July 2000, the appellant noticed that the respondents were unilaterally charging interest/commission @ Rs 4 per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the appellant. Immediately thereafter, the appellant wrote to the respondent Bank h vide letter dated 21-7-2000 for taking corrective steps in the matter. Then correspondence ensued between the parties in that regard and the appellant was assured by the regional office of the respondent Bank that an appropriate decision will be taken at the earliest. The relevant assertion in that regard is found in Para 11 of the plaint, wherein it is mentioned that the Assistant General

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Manager Shri P.S. Bawa of Regional Office-B, Delhi, vide letter dated 9-7-2001 informed the appellant that comments from the branch office concerned have been invited and appropriate decision will be taken on its representation as early as possible. Thereafter, on 8-5-2002, the Senior Manager of the respondent Bank informed the appellant that the cheques were being purchased at the prevailing rates; which plea, according to the appellant, was to deviate from the position stated by the Assistant General Manager of Regional Office in his letter dated 9-7-2001 referred to earlier. Resultantly, the appellant wrote to the officials of the respondent Bank vide letters dated 12-7-2002, 22-9-2002 and 24-3-2003.

**13.** Notably, it is averred in Para 15 of the plaint that the Senior Manager of the respondent Bank vide letter dated 19-9-2002 had informed the appellant that everything was being done in accordance with the rules and the appellant need not pursue the matter any further. It is asserted that despite this intimation, the appellant continued to correspond with the respondent Bank with a sanguine hope that the issue will be resolved at the appropriate level by the Bank and finally issued a legal notice on 28-11-2003, which was duly responded to by the respondent Bank vide advocate's letter dated 23-12-2003. Nevertheless, the appellant gave another legal notice on 7-1-2005 and thereafter, proceeded to file the subject suit in February 2005.

**14.** All these events have been reiterated in Para 28 of the plaint, dealing with the cause of action for filing of the suit. Indeed, the said para opens with the expression "the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21-7-2000 was sent to the defendants to clarify as to how the interest was being calculated". This averment cannot be read in isolation.

**15.** As aforesaid, on reading the plaint as a whole, it is seen that the gravamen of the case made out in the plaint is that the appellant noticed the discrepancy in July 2000 and immediately took up the matter with the officials of the respondent Bank at different levels and in response, the Assistant General Manager of the Regional Office of the Bank had communicated in writing to the appellant vide letter dated 9-7-2001, that its representation was being examined and comments of the branch office have been invited and after receipt thereof the matter will be decided as early as possible. As no further communication was received by the appellant, it had to make a representation to the Finance Minister, Government of India, vide letter dated 31-10-2001 and presumably because of that, the appellant received a communication from the Senior Manager vide letter dated 8-5-2002 informing the appellant that the cheques were being purchased at the prevailing rates. This stand taken by the Senior Manager was to sidetrack the issue pending consideration before the Assistant General Manager, Regional Office referred to in his letter dated 9-7-2001. The case made out by the appellant is that no communication was received by the appellant from the Assistant General Manager, Regional Office and instead, for the first time it was informed vide letter dated 19-9-2002 sent by the Senior

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a Manager of the respondent Bank, that all actions taken by the Bank are as per the rules and, therefore, the appellant need not correspond in this regard any further. This response of the Bank could also be regarded as a firm denial or refusal by the authorised official of the Bank, giving rise to cause of action to sue the Bank.

b **16.** Thus understood, the letter dated 8-5-2002 sent by the Senior Manager of the respondent Bank, at best, be reckoned as accrual of the cause of action to the appellant to sue the respondent Bank. It is then stated that the appellant received a communication dated 19-9-2002, informing the appellant that it should not carry on any further correspondence with the Bank relating to the subject-matter. Until then, the appellant was having a sanguine hope of favourable resolution of its claim including by the Regional Office of the respondents. The appellant, therefore, had to send a legal notice on 28-11-2003, to which the Bank responded on 23-12-2003. Reckoning these dates, the plaint c filed on 23-2-2005 was within limitation, as stated in Para 28 of the plaint. Resultantly, the question of rejecting such a plaint under Order 7 Rule 11(d) CPC did not arise.

d **17.** The expression used in Article 113 of the 1963 Act is “when the right to sue accrues”, which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue e would accrue.

f **18.** Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue “first” accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded “first” become known to him) and Article 104 (when the plaintiff is “first” refused the enjoyment of the right). The view taken by the trial court, which commended to the first appellate court and the High Court in the second appeal, would inevitably entail in reading the expression in Article 113 as — when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that Parliament was conscious of the distinction between the provisions referred g to above and had advisedly used generic expression “when the right to sue accrues” in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.

h **19.** We may usefully refer to the dictum of a three-Judge Bench of this Court in *Union of India v. West Coast Paper Mills Ltd.*<sup>13</sup>, which has had an occasion to examine the expression used in Article 58 in contradistinction to

<sup>13</sup> (2004) 2 SCC 747

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Article 113 of the 1963 Act. We may advert to paras 19 to 21 of the said decision, which read thus: (SCC p. 754)

“19. Articles 58 and 113 of the Limitation Act read thus:

	Description of suit	Period of limitation	Time from which period begins to run
	*	*	*
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.
	*	*	*
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when “the right to sue first accrues”, in terms of Article 113 thereof, the period of limitation would be counted from the date “when the right to sue accrues”. *The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose.* (emphasis supplied)

20. Similarly, in *Khatri Hotels (P) Ltd. v. Union of India*<sup>14</sup>, this Court considered the expression used in Article 58 in contradistinction to Article 120 of the old Limitation Act (the Limitation Act, 1908). In para 24, the Court noted thus: (SCC p. 138)

“24. The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time-limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. *If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.*” (emphasis supplied)

14 (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

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a 21. The distinction between the two Articles (Article 58 and Article 120) has been expounded in paras 27 to 30 of the decision, which read thus: [*Khatri Hotels (P) Ltd. case*<sup>14</sup>, SCC p. 139]

“27. The differences which are discernible from the language of the above reproduced two articles are:

b (i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) *Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.*

c 28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Koklan*<sup>15</sup> and it was held: (SCC OnLine PC : IA p. 331)

d ‘There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.’

The same view was reiterated in *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar*<sup>16</sup> and *Gobinda Narayan Singh v. Sham Lal Singh*<sup>17</sup>.

e 29. In *Rukhmabai v. Lala Laxminarayan*<sup>18</sup>, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case*<sup>18</sup>, AIR p. 349, para 33)

f ‘33. ... *The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardises the said right.*

g 30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and

h 14 *Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484  
15 1930 SCC OnLine PC 62 : (1929-30) 57 IA 325 : AIR 1930 PC 270  
16 1930 SCC OnLine PC 75 : (1930-31) 58 IA 1 : ILR (1930) 8 Rang 645  
17 1931 SCC OnLine PC 6 : (1930-31) 58 IA 125  
18 AIR 1960 SC 335

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“accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.” (emphasis supplied)

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Notably, the expression used in Article 113 is similar to that in Article 120, namely, “when the right to sue accrues”. Hence, the principle underlying this dictum must apply proprio vigore to Article 113.

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**22.** It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.

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**23.** Reverting to the argument that exchange of letters or correspondence between the parties cannot be the basis to extend the period of limitation, in our opinion, for the view taken by us hitherto, the same need not be dilated further. Inasmuch as, having noticed from the averments in the plaint that the right to sue accrued to the appellant on receiving letter from the Senior Manager, dated 8-5-2002, and in the particular letter dated 19-9-2002, and again on firm refusal by the respondents vide advocate’s letter dated 23-12-2003 in response to the legal notice sent by the appellant on 28-11-2003; and once again on the follow-up legal notice on 7-1-2005, the plaint filed in February 2005 would be well within limitation. Considering the former events of firm response by the respondents on 8-5-2002 and in particular, 19-9-2002, the correspondence ensued thereafter, including the two legal notices sent by the appellant, even if disregarded, the plaint/suit filed on 23-2-2005 would be within limitation in terms of Article 113.

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**24.** The respondents had relied on the exposition of this Court in *Boota Mal v. Union of India*<sup>19</sup>, *S.S. Rathore v. State of M.P.*<sup>20</sup>, *Venkappa Gurappa Hosur*

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<sup>19</sup> AIR 1962 SC 1716

<sup>20</sup> (1989) 4 SCC 582 : 1990 SCC (L&S) 50

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a v. *Kasawwa*<sup>21</sup> and *Kandimalla Raghavaiah & Co. v. National Insurance Co.*<sup>22</sup>  
and of the Delhi High Court in *C.P. Kapur*<sup>2</sup>, to buttress the above argument,  
which, as aforesaid, is unavailable in light of the averments in the plaint under  
consideration. Suffice it to observe that going by the averments in the plaint,  
the argument of the respondents that the appellant had placed reliance on  
the correspondence to get extension of the limitation period, is untenable.  
The averments in the plaint, however, are very explicit to the effect that the  
b grievance of the appellant about unilateral charging of interest/commission  
by the respondent Bank was firmly denied or refused by the Senior Manager  
of the respondent Bank vide letter dated 8-5-2002 and in the particular letter  
dated 19-9-2002 and again by Advocate's letter on 23-12-2003, giving rise to  
cause of action and accrual of right to sue.

c **25.** The respondents had also relied on the dictum of this Court in *Fatehji*  
& *Co. v. L.M. Nagpal*<sup>23</sup>. Indeed, in that case, this Court upheld the order of  
rejection of the plaint on the finding that the suit was barred by limitation  
under Article 54 of the 1963 Act, in the fact situation of that case. The Court  
was dealing with a suit for specific performance of a written agreement of  
sale dated 2-7-1973 and as per the terms, the performance of the contract was  
fixed for 2-12-1973. In that background, the Court noted that the subsequent  
d letters exchanged between the parties cannot be the basis to extend the period  
of limitation. Moreover, the Court dealt with the case governed by Article 54  
of the 1963 Act, which stipulates the timeline for commencement of period of  
limitation, being the date fixed for the performance, or, if no such date is fixed,  
when the plaintiff has notice that performance is refused. In cases governed by  
Article 113 of the 1963 Act, such as the present case, however, what is required  
e to be noted is — “when the right to sue accrues” (and not when the right to  
sue “first” accrues).

f **26.** Similarly, in *Hardesh Ores (P) Ltd. v. Hede & Co.*<sup>24</sup>, this Court upheld  
the order of rejection of the plaint under Order 7 Rule 11 CPC concerning a  
suit for injunction in reference to Article 58, which expressly postulates that  
time from which period begins to run is when the right to sue “first” accrues.  
The argument of the appellant therein to apply Article 113 of the 1963 Act has  
been noted in para 33 and rejected. In that view of the matter, the exposition in  
this decision will be of no avail to the respondents.

g **27.** Reverting to the decision in *Kandimalla Raghavaiah*<sup>22</sup>, the Court  
interpreted Section 24-A of the Consumer Protection Act, 1986, which defines  
the period of limitation to be within two years from the date on which the cause  
of action had arisen. In light of that provision, the Court noted that the cause  
of action in respect of subject insurance policy arose on 22-3-1988/23-3-1988,

21 (1997) 10 SCC 66

22 (2009) 7 SCC 768 : (2009) 3 SCC (Civ) 295

h 2 *C.P. Kapur v. Chairman*, 2012 SCC OnLine Del 5465 : (2013) 198 DLT 56

23 (2015) 8 SCC 390 : (2015) 4 SCC (Civ) 371

24 (2007) 5 SCC 614

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when fire in the godown took place, damaging the tobacco stocks hypothecated with the Bank in whose account the policy had been taken by the appellant therein. In other words, the stipulation in Section 24-A of the Consumer Protection Act, 1986 is analogous to the time-frame specified in other Articles covered under First Division of the Schedule to the 1963 Act regarding suits relating to accounts; and not similar to Article 113, which envisages three years' time from the period when the right to sue accrues (and not when the right to sue "first" accrues).

**28.** As regards *Boota Mal*<sup>19</sup> and *East & West Steamship Co. v. S.K. Ramalingam Chettiar*<sup>25</sup>, the Court was dealing with a case relating to Article 31 of the old Limitation Act, which provided that the time from which period begins to run, is when the goods are sought to be delivered. Even these decisions will be of no avail to the fact situation of the present case, which is governed by Article 113 of the 1963 Act and for the reasons already recorded hereinbefore.

**29.** Similarly, in *S.S. Rathore*<sup>20</sup>, the Court was dealing with a case governed by Article 58 of the 1963 Act, which specifically provides that time begins to run when the right to sue "first" accrues. In *Ram Prakash Gupta*<sup>3</sup>, the Court dealt with a case governed by Article 59 of the 1963 Act, which provides that the suit could be filed when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him. The Court opined that the knowledge mentioned in the plaint concerned could not be termed as inadequate and incomplete. The Court reversed the judgment of the Civil Judge and the High Court rejecting the plaint. This Court also noted that while deciding the application under Order 7 Rule 11 CPC, few lines or passage from the plaint should not be read in isolation and the pleadings ought to be read as a whole to ascertain its true import. Even in that case, the trial court and the High Court had failed to advert to the relevant averments, as stated in the plaint, which approach was disapproved by this Court. In the present case, as noticed earlier, the trial court had failed to advert to and analyse the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February 2005.

**30.** Taking overall view of the matter, therefore, we are of the considered opinion that the decisions of the trial court, the first appellate court and the High Court in the fact situation of the present case, rejecting the plaint in question under Order 7 Rule 11(d) CPC, cannot be sustained. As a result, the same are quashed and set aside.

**31.** In view of the above, this appeal succeeds and the plaint stands restored to the file of the trial court to its original number for being proceeded in accordance with law. All contentions available to both parties are kept open

19 *Boota Mal v. Union of India*, AIR 1962 SC 1716

25 AIR 1960 SC 1058

20 *S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50

3 *Ram Prakash Gupta v. Rajiv Kumar Gupta*, (2007) 10 SCC 59

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a including the issue of limitation to be decided along with other issues on the basis of plea taken in the written statement and the evidence produced by the parties in that behalf uninfluenced by the observations made in the present judgment on factual matters. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

*Civil Appeal No. 2515 of 2020 [arising out of SLP (C) No. 30210 of 2017]*

b **32.** Leave granted. In the present appeal, the factual narration in the plaint is similar in material respects, if not identical to the plaint in the companion appeal arising from SLP (C) No. 30209 of 2017. To wit, it is apposite to reproduce relevant averments from the plaint in question, which read as follows:

c “8. That the facility as referred to in the foregoing paras was extended with effect from the month of November 1997 to December 1999 and somewhere in the month of July 2000 it was noticed by the plaintiff that the defendants were charging interest/commission @ Rs 4 per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the plaintiff.

d 9. *That after the detection of the above overcharging the interest/commission the plaintiff sent a letter to the defendants on 21-7-2000 complaining about the overcharging and thereafter the interest/commission was charged as per assurance given.*

e 10. That the amount overcharged as commission/interest was not refunded to the plaintiff and the plaintiff sent the following letters addressed to the Bank i.e. General Manager and Senior Manager indicating therein that the amount overcharged should be refunded to the plaintiff with interest thereon:

Letters dated 12-10-2000, 24-10-2000, 30-10-2000, 7-11-2000, 24-12-2000, 1-3-2001, 28-3-2001, 22-5-2001 and 20-6-2001.

In all the above letters requests were made to clarify as to how the commission was calculated and deducted from the plaintiff.

f 11. *That the Assistant General Manager, Shri P.S. Bawa of Regional Office-B, Delhi vide letter dated 9-7-2001 informed the plaintiff that the comments of the branch office have been invited on the representation of the plaintiff in respect of the local cheques/DDs discounted during the relevant period and the matter will be decided as early as possible. No progress was made in the matter and the plaintiff had to submit the letter dated 31-10-2001 to the Hon’ble Finance Minister, Government of India, New Delhi.*

g 12. That the defendants have charged interest for some time for the actual number of days for the defendants remained out of funds.

h 13. *That vide letter dated 8-5-2002, the Senior Manager informed the plaintiff that the cheques were being purchased at the prevailing rates. That reply was given to sidetrack the real issue in respect of which letter*

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*dated 9-7-2001 was received from Shri P.S. Bawa, Assistant General Manager of Regional Office as referred to in the foregoing paras.*

14. That, thereafter, the plaintiff sent letters dated 12-7-2002, 22-7-2002, 24-3-2003 along with which the details of the proposed/estimated excess amount charged were given and it was requested that a sum of Rs 5,39,902 approximately appears to have been charged in excess of what should have been actually charged and the exact amount should be calculated and refunded to the plaintiff. No reply was given by the bank to these letters.

15. *That Senior Manager of Defendant 2 vide letter dated 19-9-2002 had informed that everything was done according to rules and the matters need not to be pursued any further and thereafter the plaintiff sent another letter dated 3-6-2003.*

16. That the excess amounts have been recovered/charged from the plaintiff in an arbitrary manner, in utter violation of the assurances, rules, regulations and established canons of business dealings; and in spite of the protracted correspondence made from 21-7-2000 to 3-6-2003, the defendants have failed to account for or to justify the recovery of amounts made in an arbitrary manner by citing any rules, regulations or any other authority.

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18. That, thereafter, the plaintiff got a legal notice served upon the defendant vide Registered Letter No. 6672 dated 3-12-2003 containing all the details relating to the transactions as could be gathered from the books of accounts of the plaintiff.

19. That reply to the abovenoted notice was sent by the defendants through Shri Sanjeev Kumar Gupta, Advocate, vide letter dated 23-12-2003, wherein averments relating to the excess charges were denied and it was stated that the interest was charged on DD/cheques as per Central Officer Circular No. C094-95; 233 up to 1-12-1999 and thereafter as per Circular No. CO/OPR/SCHGS/CIR/LET/2000-2001 dated 18-8-2000.” (emphasis supplied)

**33.** Again, in Para 28, it is stated as follows:

“28. That the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21-7-2000 was sent to the defendants to clarify as to how the interest was being calculated and recovered and on various other dates when the letters were sent to the defendants with request for refund of the excess amounts charged and on 9-7-2001 when assurance for proper calculation and refund was conveyed to the plaintiff and on 8-5-2002, 12-7-2002 and 22-9-2002 when requests were again made to settle the matter on 19-9-2002, 3-6-2003 and their cause of action arose on 28-12-2003 where the legal notice was served upon the defendant and on 23-12-2003 when the reply to the notice was received and finally on

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a 8-1-2005 when the legal notice for rendition of accounts was served upon the defendants and the cause of action still subsists as the accounts have not been rendered so far nor the excess amount charged has been refunded by the defendants.”

b 34. We have considered the factual position in the present case, which is similar to the facts in the companion appeal. Therefore, for the reasons stated in the judgment<sup>26</sup> in companion appeal arising from SLP (C) No. 30209 of 2017, even this appeal should succeed on the same terms. Accordingly, this appeal is also allowed and the impugned judgment<sup>27</sup> and order of the trial court, the first appellate court and the High Court in the second appeal are set aside and the plaint is restored to the file of the trial court to be disposed of on the same terms as indicated in the companion appeal [arising from SLP (C) No. 30209 of 2017]. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

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<sup>26</sup> Set out in paras 1 to 31, above.

<sup>27</sup> *Kumar Food Industries Ltd. v. Central Bank of India*, 2017 SCC OnLine Del 8528

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(BEFORE L. NAGESWARA RAO, HEMANT GUPTA AND AJAY RASTOGI, JJ.)

3J

a NATIONAL HIGHWAYS AUTHORITY OF INDIA . . . Appellant;

*Versus*

PANDARINATHAN GOVINDARAJULU AND ANOTHER . . . Respondents.

Civil Appeals Nos. 4035-37 of 2020<sup>†</sup>, decided on January 19, 2021

b **A. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment — Expansion of National Highway — Environmental clearance — When necessary — Interpretation of Notis. dt. 14-9-2006 and 22-8-2013 — Segmentation of project as a strategy to avoid environmental clearance — Held, not permissible — Project proponent, held, is obligated to obtain prior environmental clearance only if the additional right of way or land acquisition is greater than 40 m on existing alignments and 60 m on realignments or bypasses for a National Highway project which is greater than 100 km — Though, segmentation as a strategy is not permissible for evading environmental clearance as per Notis. dt. 14-9-2006 and 22-8-2013, question of permissibility of the segmentation of a National Highway beyond a distance of 100 km, held, is a matter to be considered by experts**

d — Environmental clearance for expansion of National Highway 45-A between Villuppuram to Nagapattinam — Considering entire materials, held, in present case, for said expansion of National Highway 45-A, there is no requirement for obtaining environmental clearances, because of land acquisition being not more than 40 m on existing alignments and 60 m on realignments or bypasses — Resultantly, appeal allowed with certain directions by setting aside impugned order of the High Court — Environment (Protection) Act, 1986 — S. 3(2)(v)(i) — Environment (Protection) Rules, 1986, R. 5(3)(b)

e **B. Administrative Law — Subordinate/Delegated Legislation — Principles of interpretation of subordinate legislation — Held, applicable to interpretation of statutory notifications — Thus, if the words of the statute or notification are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense — Words themselves do alone in such cases best declare the intent of the law giver — Hence, in absence of any ambiguity in the words, literal meaning has to be applied and words of the statute or notification must prima facie be given their ordinary meaning**

g — As per relevant Item 7(f) of the Noti. dt. 22-8-2013, if the project involves expansion of a National Highway greater than 100 km, prior environmental clearance would be required only if it involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses — On a plain reading of said relevant item, held, there is no ambiguity or scope for two interpretations — Thus, by applying golden rule of interpretation, held, there is no requirement of prior environmental clearance for expansion of a National Highway project merely because the distance is greater than 100 km

h <sup>†</sup> Arising from the Judgment and Order in *Pandarinathan Govindarajulu v. Union of India*, 2020 SCC OnLine Mad 809 (Madras High Court, WP No. 21883 of 2019, dt. 8-1-2020)

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**C. Administrative Law — Subordinate/Delegated Legislation — Interpretation of — In case of a doubt, the interpretation of the author of the notification has to be accepted**

**D. Environment Law — Environment (Protection) Act, 1986 — S. 3(2)(v)(i) r/w R. 5(3)(b) of Rules 1986 — Issuance of statutory rules and notifications under provisions of Act/Rules — Binding effect — Held, a statutory rule or notification is to be treated as a part of the statute and Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for all purposes of construction or obligation — Administrative Law — Subordinate/Delegated Legislation — Generally — Concept, Nature and Scope**

**E. Environment Law — Development vis-à-vis Ecology: National, Urban and Rural Development — Held, while economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development — There should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment — The traditional concept that development and ecology are opposed to each other is no longer acceptable**

**F. Roads and Highways — Planning Commission Manual of Specifications and Standards for Two-Laning of Highways through Public Private Partnership — S. 10 r/w Para 2.3 — Term “right of way” — Scope of — Toll plazas, held, are included in the “right of way” — There is no merit in the contention that amenities such as toll plazas and rest houses cannot be part of the “right of way” — Words and Phrases — “Right of way”**

The issues that arose before the Supreme Court were:

(i) Whether in the project pertaining to the expansion of NH 45-A between Villuppuram to Nagapattinam for a distance of 179.555 km as a part of the Bharatmala Pariyojana project, environmental clearance was not required as the additional right of way or land acquisition was not greater than the limits specified in the Notifications even if the expansion of the National Highways was beyond 100 km?

(ii) Whether segmentation of a project as a strategy to avoid environmental clearance is impermissible and in view of the bifurcation of NH 45-A into four packages and each package being less than 100 km, the Notifications were not applicable?

While allowing the appeals, the Supreme Court

*Held :*

**Issue (i)**

The pivot of the controversy relates to the applicability of Notifications dated 14-9-2006 and 22-8-2013 to the project in question. Therefore, it is necessary to adjudicate on the interpretation of the said Notifications though the High Court did not consider the said point.

(Para 6)

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a A plain reading of Item 7(f) to the Notification dated 22-8-2013 would make it clear that expansion of a National Highway project needs prior environmental clearance in case (a) expansion of the National Highway project is greater than 100 km, and (b) it involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses. There is no ambiguity in the above provision as it gives no scope for any doubt. The distance of 100 km is important as expansion of National Highways below 100 km needs no prior environmental clearance. If the project involves expansion of a National Highway greater than 100 km, prior environmental clearance would be required only if it involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses. (Para 7)

b A statutory rule or notification is to be treated as a part of the statute. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory notifications. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver. (Para 8)

c *State of U.P. v. Babu Ram Upadhyaya*, (1961) 2 SCR 679 : AIR 1961 SC 751 : (1961) 1 Cri LJ 773, followed  
d *Sussex Peerage case*, (1844) 11 Cl & Fin 85 : 8 ER 1034 : (1843-60) All ER Rep 55 (HL), relied on  
*State of T.N. v. Hind Stone*, (1981) 2 SCC 205; *Bansal Wire Industries Ltd. v. State of U.P.*, (2011) 6 SCC 545, affirmed

e It has been repeatedly held that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning. (Para 9)  
*Dental Council of India v. Hari Prakash*, (2001) 8 SCC 61; *Harbhajan Singh v. Press Council of India*, (2002) 3 SCC 722, affirmed

f In the current case, there is no ambiguity or scope for two interpretations. On a plain reading of Item 7(f) of the Notification dated 22-8-2013, the golden rule of interpretation is adopted to hold that there is no requirement of prior environmental clearance for expansion of a National Highway project merely because the distance is greater than 100 km. The project proponent is obligated to obtain prior environmental clearance only if the additional right of way or land acquisition is greater than 40 m on existing alignments and 60 m on realignments or bypasses for a National Highway project which is greater than 100 km. (Para 10)

g It is a cardinal principle of interpretation that full effect has to be given to every word of the notification. Interpreting the Notification dated 22-8-2013 to mean that every expansion of National Highway which is greater than 100 km requires prior environmental clearance would be making the other words in Item 7(f) redundant and otiose. (Para 11)

*South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703; *Bansal Wire Industries Ltd. v. State of U.P.*, (2011) 6 SCC 545, affirmed

h There is force in the submissions of the Union of India that the word “involving” is of significance because in the absence of the requirement of an additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses, the expansion of National Highways

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which are greater than 100 km per se does not require prior environmental clearance. (Para 13)

*CIT v. Surat Art Silk Cloth Manufacturers' Assn.*, (1980) 2 SCC 31 : 1980 SCC (Tax) 170, relied on a

It is submitted on behalf of the Ministry of Environment, Forest and Climate Change, Government of India that environmental clearance is necessary only if the expansion project pertains to a National Highway which is greater than 100 km and involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses. In case of a doubt, the interpretation of the author of the notification has to be accepted. Ergo, the opinion of the author of the notification i.e. the Ministry of Environment, Forest and Climate Change deserves to be accepted. (Para 14) b

*Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489, affirmed

A conspectus of the above discussion leads to the unerring conclusion that there is no ambiguity in Item 7(f) of the Schedule to the Notification that prior environmental clearance is required for expansion of a National Highway project only if: c

(a) The National Highway is greater than 100 km.

(b) The additional right of way or land acquisition is greater than 40 m on existing alignments and 60 m on realignments and bypasses. (Para 15)

Para 2.3 of the Manual makes it clear that right of way is the total land width required for the project Highway to accommodate right of way, side drains, service roads, tree plantations, utilities, etc. toll plazas and rest houses should be included in the "right of way". For the sake of clarity, it is held that the "right of way" includes the existing National Highway and the additional right of way. To illustrate further, if the existing National Highway is 20 m then the right of way will be that 20 m and the land acquired for the additional right of way. (Paras 24 and 25) d

**Issue (ii)** e

While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. The traditional concept that development and ecology are opposed to each other is no longer acceptable. (Para 18) f

*Indian Council For Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, relied on

Apart from providing smooth flow of public goods and services which contribute to the economic growth, highways also benefit regional development in the country. In the normal course, impediments should not be created in the matter of National Highways which provide the much needed transportation infrastructure. At the same time, protection of environment is important. The Notification dated 22-8-2013 exempts a National Highway, the distance of which is less than 100 km from obtaining environmental clearance. If the project proponent is permitted to divide projects having a distance beyond 100 km into packages which are less than 100 km, the Notifications dated 14-9-2006 and 22-8-2013 will be rendered redundant. In that event, administrative exigencies and speedy g  
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a completion will be a ground taken for justifying the segmentation of every project. Therefore, this Court is in agreement with the High Court that segmentation as a strategy is not permissible for evading environmental clearance as per Notifications dated 14-9-2006 and 22-8-2013. (Para 19)

*Pandarinathan Govindarajulu v. Union of India*, 2020 SCC OnLine Mad 809, affirmed on this point

b Having held that adoption of segmentation of a project cannot be adopted as a strategy to avoid environmental clearance impact assessment, the question that arises is whether segmentation of a National Highway beyond 100 km is impermissible under any circumstance. As the Court lacks the expertise of deciding upon this issue, an expert committee should examine the permissibility of segregation. (Para 20)

c As the question of permissibility of the segmentation of a National Highway beyond a distance of 100 km is a matter to be considered by experts, it would be necessary for a committee to be constituted by the Government of India to decide whether segmentation of a National Highway project beyond a distance of 100 km is permissible. If it is permissible, the circumstances under which segmentation can be done also requires to be examined by the expert committee. (Para 21)

*Pandarinathan Govindarajulu v. Union of India*, 2020 SCC OnLine Mad 809, substantially reversed

d *Old Town Neighborhood Assn. v. Kauffman*, Case No. 1: 02-cv-1505-DFH, decided on 15-11-2002 (SD Ind); *Commission of the European Communities v. Kingdom of Spain*, Case C-227 of 2001, order dated 16-9-2004 : ECLI:EU:C:2004:528; *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629; *Citizens for Green Doon v. Union of India*, 2018 SCC OnLine NGT 1777, referred to

SK-D/67231/C

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e	2. 2020 SCC OnLine Mad 809, <i>Pandarinathan Govindarajulu v. Union of India (substantially reversed)</i>	698a, 698d-e, 706e
	3. 2018 SCC OnLine NGT 1777, <i>Citizens for Green Doon v. Union of India</i>	702f-g
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f	7. (2002) 3 SCC 722, <i>Harbhajan Singh v. Press Council of India</i>	701a
	8. Case No. 1: 02-cv-1505-DFH, decided on 15-11-2002 (SD Ind), <i>Old Town Neighborhood Assn. v. Kauffman</i>	702e-f
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g	12. (1996) 5 SCC 281, <i>Indian Council For Enviro-Legal Action v. Union of India</i>	703d
	13. (1981) 2 SCC 205, <i>State of T.N. v. Hind Stone</i>	700e-f
	14. (1980) 2 SCC 31 : 1980 SCC (Tax) 170, <i>CIT v. Surat Art Silk Cloth Manufacturers' Assn.</i>	701d
	15. (1961) 2 SCR 679 : AIR 1961 SC 751 : (1961) 1 Cri LJ 773, <i>State of U.P. v. Babu Ram Upadhyia</i>	700f-g
h	16. (1844) 11 Cl & Fin 85 : 8 ER 1034 : (1843-60) All ER Rep 55 (HL), <i>Sussex Peerage case</i>	700g

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The Judgment of the Court was delivered by

**L. NAGESWARA RAO, J.**— The dispute in these appeals pertains to the environmental clearance for expansion of National Highway 45-A between Villuppuram to Nagapattinam. The High Court held<sup>1</sup> that it is necessary. The appellant disagrees. Hence, these appeals. a

2. The project of widening and improvement of the existing 4-laning carriageway in the State of Tamil Nadu and the Union Territory of Puducherry, from Villuppuram to Nagapattinam was bifurcated into four packages, which are as follows: b

- (i) Villuppuram to Puducherry (29.000 km)—Package I.
- (ii) Puducherry to Poondiankuppam (38.00 km)—Package II.
- (iii) Poondiankuppam to Sattanathapuram (56.800 km)—Package III.
- (iv) Sattanathapuram to Nagapattinam (55.755 km)—Package IV. c

3. Approval was granted by the competent authority i.e. Special District Revenue Officer (Land Acquisition), National Highways No. 45-A in March 2018 and agreements were entered into between the appellant and the concessionaires. Process was initiated for acquisition of lands required for the project. Writ petitions were filed in the High Court of Madras by certain aggrieved farmers and public interest litigants questioning the commencement of the project without obtaining environmental clearance. The High Court allowed<sup>1</sup> the writ petitions and issued the following directions: d

“(a) The present project of expansion of NH 45-A covering a stretch of 179.555 km shall be put on hold, and the present status quo is directed to be maintained. e

(b) That the project proponent (NHAI) shall undertake an EIA study and obtain environmental clearance.

(c) The NHAI is also directed to obtain approval from CRZMA for CRZ clearance for two locations that it has indicated in its counter in WP No. 15217 of 2019.

(d) Once the necessary clearances are obtained as mentioned in (b) and (c) above, the project can proceed. If the EIA study to be undertaken provides any contra-indicators to the NHAI’s plan of development of NH 45-A, it will be at liberty to make necessary alterations and modifications to make the project environmentally viable. f

(e) If after ensuring the environmental viability of the project, its implementation resumes, the project proponent, and subject to the terms of the contract, the concessionaire, should first identify the places for planting the saplings of the same variety, preferably native trees, for every tree felled, and it must be grown first. Possibility of forming a Miyawaki forest has to be explored as well. g

h

1 *Pandarínathan Govindarajulu v. Union of India*, 2020 SCC OnLine Mad 809

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a (f) This Court proposes to form a committee to monitor the compliance of the direction given in (e) above, and hence, before resumption of the project, NHAI is required to approach this Court.”

b 4. Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to take all such measures for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. One of the measures provided in Section 3(2)(v) is restriction of areas in which any industries, operations or processes or class of industries shall not be carried out or shall be carried out subject to certain safeguards. The Environment (Protection) Rules, 1986 were made in exercise of power conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986. According to Rule 5, the Central Government may prohibit or restrict the location of industries and the carrying on of processes and operations in different areas.

c 5. In exercise of the power conferred on the Central Government by clause (i) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with clause (b) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Ministry of Environment and Forests, Government of India issued a Notification on 14-9-2006 directing that construction of new projects or activities or the expansion or modernisation of existing projects or activities listed under the Schedule to the Notification shall be undertaken only after prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority. Clause 2 of the said Notification provides that new projects or expansion and modernisation of existing projects listed under the Schedule to the Notification require prior environmental clearance from the regulatory authority concerned. The Schedule to the Notification includes Highways at Item 7(f). New National Highways and expansion of National Highways greater than 30 km involving additional right of way greater than 20 m or land acquisition and passing through more than one State, require prior environmental clearance. A High-  
d Level Committee headed by Member (Environment and Forests, Science and Technology), Planning Commission was constituted by the Ministry of Environment and Forests to review the provisions of the Environmental Impact Assessment Notification dated 14-9-2006 pertaining to environmental clearance for roads, buildings and Special Economic Zone projects. One of the terms of the reference for the Committee was to review the requirement  
e of environmental clearance for Highways expansion projects with a right of way up to 60 m and length of 200 km. The Committee submitted its report recommending that expansion of National Highways projects up to 100 km involving additional right of way or land acquisition up to 40 m on existing alignments and 60 m on realignments or bypasses may be exempted from the purview of the Notification. The report of the Committee was accepted and  
f Item 7(f) in column (3) to the Notification dated 14-9-2006 was substituted as follows: “expansion of National Highways greater than 100 km involving  
g  
h

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additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses”.

6. The project under consideration in this case pertains to the expansion of NH 45-A between Villuppuram to Nagapattinam for a distance of 179.555 km as a part of the Bharatmala Pariyojana project. Admittedly, no environmental impact assessment was undertaken. The appellant stated in the counter-affidavit filed before the High Court that environmental clearance is not required as the additional right of way or land acquisition was not greater than the limits specified in the Notification even if the expansion of the National Highways is beyond 100 km. Environmental clearance under the Notifications dated 14-9-2006 and 22-8-2013 is required only if the additional right of way or land acquisition is greater than 40 m on existing alignments and 60 m on realignments or bypasses. The pivot of the controversy relates to the applicability of Notifications dated 14-9-2006 and 22-8-2013 to the project in question. Therefore, we deem it necessary to adjudicate on the interpretation of the said Notifications though the High Court did not consider the said point.

7. A plain reading of Item 7(f) to the Notification dated 22-8-2013 would make it clear that expansion of a National Highway project needs prior environmental clearance in case (a) expansion of the National Highway project is greater than 100 km, and (b) it involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses. There is no ambiguity in the above provision as it gives no scope for any doubt. The distance of 100 km is important as expansion of National Highways below 100 km needs no prior environmental clearance. If the project involves expansion of a National Highway greater than 100 km, prior environmental clearance would be required only if it involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses.

8. A statutory rule or notification is to be treated as a part of the statute<sup>2</sup>. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for all purposes of construction or obligation<sup>3</sup>. The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory notifications<sup>4</sup>. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver<sup>5</sup>.

<sup>2</sup> *State of T.N. v. Hind Stone*, (1981) 2 SCC 205

<sup>3</sup> *State of U.P. v. Babu Ram Upadhyaya*, (1961) 2 SCR 679 : AIR 1961 SC 751 : (1961) 1 Cri LJ 773

<sup>4</sup> *Bansal Wire Industries Ltd. v. State of U.P.*, (2011) 6 SCC 545

<sup>5</sup> *Sussex Peerage case*, (1844) 11 Cl & Fin 85 : 8 ER 1034 : (1843-60) All ER Rep 55 (HL)

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a 9. It has been repeatedly held by this Court that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning<sup>6</sup>.

b 10. In the current case, there is no ambiguity or scope for two interpretations. On a plain reading of Item 7(f) of the Notification dated 22-8-2013, we adopt the golden rule of interpretation to hold that there is no requirement of prior environmental clearance for expansion of a National Highway project merely because the distance is greater than 100 km. The project proponent is obligated to obtain prior environmental clearance only if the additional right of way or land acquisition is greater than 40 m on existing alignments and 60 m on realignments or bypasses for a National Highway project which is greater than 100 km.

c 11. It is a cardinal principle of interpretation that full effect has to be given to every word of the notification<sup>7</sup>. Interpreting the Notification dated 22-8-2013 to mean that every expansion of National Highway which is greater than 100 km requires prior environmental clearance would be making the other words in Item 7(f) redundant and otiose.

d 12. The learned Attorney General for India relied upon a judgment of this Court in *CIT v. Surat Art Silk Cloth Manufacturers' Assn.*<sup>8</sup> to highlight the importance of the word “involving” in Item 7(f) of the Notification in which it was held as follows: (SCC pp. 51 & 60, paras 15 & 33)

e “15. We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity for profit. The word “involve” according to *Shorter Oxford Dictionary* means ‘to enwrap in anything, to enfold or envelop; to contain or imply’. The activity for profit must, therefore, be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose. ...

\* \* \*

g 33. ... The word “involving” in the restrictive clause is not without significance. An activity is involved in the advancement of an object when it is enwrapped or enveloped in the activity of advancement. In another

6 *Dental Council of India v. Hari Prakash*, (2001) 8 SCC 61 and *Harbhajan Singh v. Press Council of India*, (2002) 3 SCC 722

h 7 *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703 and *Bansal Wire Industries Ltd. v. State of U.P.*, (2011) 6 SCC 545

8 (1980) 2 SCC 31 : 1980 SCC (Tax) 170

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case, it may be interwoven into the activity of advancement, so that the resulting activity has a dual nature or is twin faceted.”

**13.** We find force in the submissions made by the learned Attorney General that the word “involving” is of significance because in the absence of the requirement of an additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses, the expansion of National Highways which are greater than 100 km per se does not require prior environmental clearance.

**14.** It is submitted on behalf of the Ministry of Environment, Forest and Climate Change, Government of India that environmental clearance is necessary only if the expansion project pertains to a National Highway which is greater than 100 km and involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses. In case of a doubt, the interpretation of the author of the notification has to be accepted<sup>9</sup>. Ergo, the opinion of the author of the notification i.e. the Ministry of Environment, Forest and Climate Change deserves to be accepted.

**15.** A conspectus of the above discussion leads to the unerring conclusion that there is no ambiguity in Item 7(f) of the Schedule to the Notification that prior environmental clearance is required for expansion of a National Highway project only if:

(a) The National Highway is greater than 100 km.

(b) The additional right of way or land acquisition is greater than 40 m on existing alignments and 60 m on realignments and bypasses.

**16.** In view of the bifurcation of NH 45-A into four packages and each package being less than 100 km, the appellant contended before the High Court that the Notifications dated 14-9-2006 and 22-8-2013 are not applicable. Seeking support from a judgment of the United States District Court for the Southern District of Indiana in *Old Town Neighborhood Assn. v. Kauffman*<sup>10</sup> and a judgment of the European Court of Justice in *Commission of the European Communities v. Kingdom of Spain*<sup>11</sup>, the High Court held that segmentation of a project as a strategy to avoid environmental clearance is impermissible. The High Court also relied upon a judgment of this Court in *Deepak Kumar v. State of Haryana*<sup>12</sup> and a judgment of the National Green Tribunal in *Citizens for Green Doon v. Union of India*<sup>13</sup> to reject the contention of the appellants that the division of the project into four packages is for administrative expediencies. According to the High Court, if segmentation of National Highway projects is permitted, the Notifications dated 14-9-2006 and 22-8-2013 would become

<sup>9</sup> *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489

<sup>10</sup> Case No. 1: 02-cv-1505-DFH, decided on 15-11-2002 (SD Ind)

<sup>11</sup> Case C-227 of 2001, order dated 16-9-2004 : ECLI:EU:C:2004:528

<sup>12</sup> (2012) 4 SCC 629

<sup>13</sup> 2018 SCC OnLine NGT 1777

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a a dead letter as every National Highway beyond 100 km can be divided into packages to avoid environmental clearance.

a **17.** It was submitted by the learned Attorney General that the division of the project was done by the Government of India and the National Highways Authority is only an executing agency. He stated that the proposed project is of great importance to the movement of public goods and services for which reason, speedy execution was required. It would be difficult to get one concessionaire with necessary finances to mobilise required machineries, construction material and human resources for the entire length of 179.555 km. He laid stress on the point that the project was divided into four packages in public interest.

b **18.** While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment<sup>14</sup>. The traditional concept that development and ecology are opposed to each other is no longer acceptable<sup>15</sup>.

c **19.** Apart from providing smooth flow of public goods and services which contribute to the economic growth, highways also benefit regional development in the country. In the normal course, impediments should not be created in the matter of National Highways which provide the much needed transportation infrastructure. At the same time, protection of environment is important. The Notification dated 22-8-2013 exempts a National Highway, the distance of which is less than 100 km from obtaining environmental clearance. If the project proponent is permitted to divide projects having a distance beyond 100 km into packages which are less than 100 km, the Notifications dated 14-9-2006 and 22-8-2013 will be rendered redundant. In that event, administrative exigencies and speedy completion will be a ground taken for justifying the segmentation of every project. Therefore, we are in agreement with the High Court that segmentation as a strategy is not permissible for evading environmental clearance as per Notifications dated 14-9-2006 and 22-8-2013.

d **20.** Having held that adoption of segmentation of a project cannot be adopted as a strategy to avoid environmental clearance impact assessment, the question that arises is whether segmentation of a National Highway beyond 100 km is impermissible under any circumstance. As we lack the expertise of deciding upon this issue, we are of the considered view that an expert committee should examine the permissibility of segregation. After the issuance of a Notification dated 14-9-2006 requiring environmental

h <sup>14</sup> *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281  
<sup>15</sup> *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647

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clearance for new projects and expansion of the existing projects, a High-Level Committee was constituted by the Government of India to review the environmental clearances for Highway expansion projects. As per the Notification dated 14-9-2006, environmental clearance was required for new National Highway and expansion of National Highways greater than 30 km involving additional right of way greater than 20 m and passing through more than one State. One of the terms of the reference to the High-Level Committee was to review the requirement of environmental clearance for Highway expansion projects beyond a distance of 200 km up to the right of way of 60 m. The High-Level Committee recommended that environmental clearance would be required for expansion of National Highway projects beyond a distance of 100 km and if the additional right of way or land acquisition is more than 40 m on existing alignments and 60 m on realignments or bypasses. The said recommendation was accepted by the Government of India and the Notification dated 22-8-2013 was issued, amending the Notification dated 14-9-2006.

**21.** As the question of permissibility of the segmentation of a National Highway beyond a distance of 100 km is a matter to be considered by experts, it would be necessary for a committee to be constituted by the Government of India to decide whether segmentation of a National Highway project beyond a distance of 100 km is permissible. If it is permissible, the circumstances under which segmentation can be done also requires to be examined by the expert committee.

**22.** Mr A. Yogeshwaran, learned counsel appearing for the first respondent submitted that the toll plazas proposed to be erected on the National Highways should be within the permissible limits specified in the Notification dated 22-8-2013. In the note of submissions made by the learned Attorney General, reference has been made to the definition of “right of way” placing reliance on Para 2.3 of the Manual of Specifications and Standards for Two-Laning of Highways through Public Private Partnership issued by the Planning Commission of India. Right of way as per the said Manual is the total land width required for the project Highway to accommodate roadway (carriageway and shoulders) side drains, service roads, tree plantation, utilities, etc. In the written submissions filed on behalf of the appellant, it has been stated that the right of way not being greater than 40 m on existing alignments and 60 m on realignments or bypasses, applies only to construction of road and is not applicable for other road amenities or facilities such as toll plazas. However, the appellant has also stated in the written submissions that if this Court is not agreeable to the above proposition, it is willing to limit the construction of toll plazas and rest areas within the permissible limits.

**23.** Section 10 of the Manual of Specifications & Standards for Two-Laning of Highways through Public Private Partnership, issued by the Planning Commission of India deals with toll plazas. Figure 10.1 which shows the general layout of 2+2 lane toll plazas, is as follows:

TOLL PLAZAS

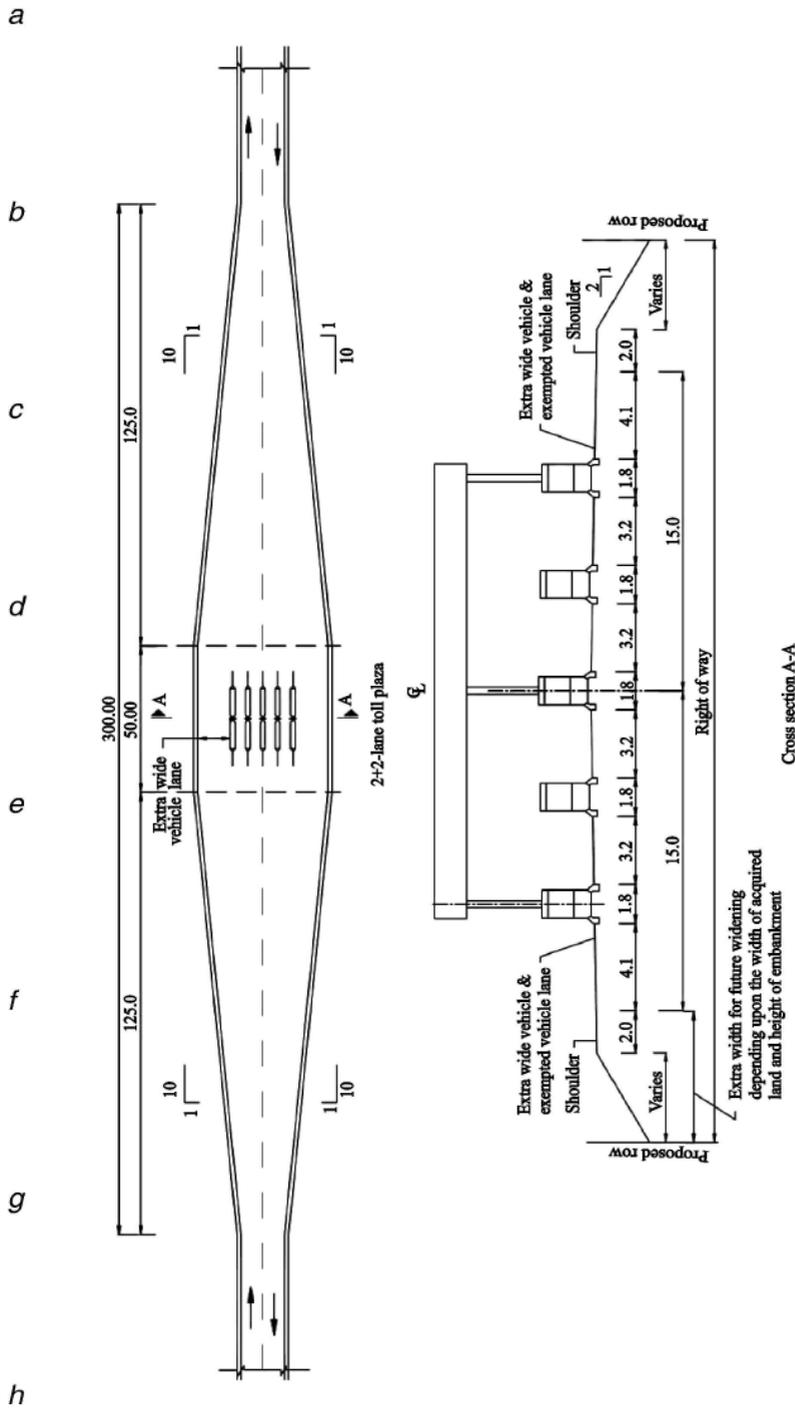


Fig. 10.1 : General layout 2+2-lane toll plaza

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**24.** A bare perusal of the above figure shows that toll plazas are included in the “right of way”. The aforementioned Manual issued by the Planning Commission of India has been relied upon by the appellant to highlight the definition of the expression “right of way”. However, it was contended on behalf of the appellant that amenities such as toll plazas and rest houses cannot be part of the right of way. In other words, the appellant contended that toll plazas and rest houses can be set up beyond the limit specified in the Notification dated 22-8-2013. We do not agree. As Para 2.3 of the aforementioned Manual makes it clear that right of way is the total land width required for the project Highway to accommodate right of way, side drains, service roads, tree plantations, utilities, etc. toll plazas and rest houses should be included in the “right of way”.

a

b

**25.** For the sake of clarity, we hold that the “right of way” includes the existing National Highway and the additional right of way. To illustrate further, if the existing National Highway is 20 m then the right of way will be that 20 m and the land acquired for the additional right of way.

c

**26.** The consternation of the High Court that the appellant had been remiss in not fulfilling the requirement of reforestation in spite of giving undertakings for the projects taken up earlier is to be noted. There is an obligation on the part of the appellant to plant ten trees for each felled tree. The High Court commented upon Coastal Regulation Zones (“CRZ”) clearances to be taken at certain points. The learned Attorney General submitted that the appellant has already obtained CRZ clearances, wherever it is required. We have not dealt with the issues relating to acquisition of land being in contravention of the National Highways Act, 1956 as no such submission was made either before the High Court or this Court.

d

**27.** On the basis of the above discussion, we set aside the judgment<sup>1</sup> of the High Court and issue the following directions:

e

**27.1.** There is no requirement for obtaining environmental clearances for NH 45-A Villuppuram-Nagapattinam Highway as land acquisition is not more than 40 m on existing alignments and 60 m on realignments or bypasses.

**27.2.** The appellant is directed to strictly conform to the Notification dated 14-9-2006 as amended by the Notification dated 22-8-2013 in the matter of acquisition of land being restricted to 40 m on the existing alignments and 60 m on realignments.

f

**27.3.** The Ministry of Environment, Forest and Climate Change, Government of India shall constitute an Expert Committee to examine whether segmentation is permissible for National Highway projects beyond a distance of 100 km and, if permissible, under what circumstances.

g

**27.4.** The appellant is directed to fulfil the requirement of reforestation in accordance with the existing legal regime.

**28.** The appeals are allowed accordingly.

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<sup>1</sup> *Pandarinathan Govindarajulu v. Union of India*, 2020 SCC OnLine Mad 809

Item No.08

Court No.02

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

Original Application No.881/2022

Rajinder Krishan Sharma &amp; Anr.

Applicant

Versus

Union of India &amp; Ors.

Respondent(s)

Date of hearing: 11.07.2024

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Rajinder Krishan Sharma and Mr. Pawan Bansal,  
Applicants in Person

Respondents: Mr. Sumit Arora, Advocate for respondent no. 1 (through  
VC)  
Mr. Srinivas Vishven, Advocate for respondent no. 2  
Mr. Rahul Khurana Advocate for respondents no. 3, 4, 6,  
7, 9 and 10 with Mr. Rajeev Tejyan, IFS and Mr. Satyender  
Singh, Patwari, Forest Department  
Ms. Noopur Singhal, Advocate for respondent no. 5  
(through VC)  
Mr. Pinaki Misra, Senior Advocate and Mr. Sanjeev Ralli  
Senior Advocate with Mr. Shubham Yadav and Mr.  
Ravikant Yadav, Advocates for respondent no. 8

**ORDER**

1. Applicant no. 1 in person; Shri Rahul Khurana, Learned Counsel is appearing for respondents 3, 4, 6, 7, 9 and 10 and Shri Pinaki Misra, Learned Senior Counsel along with Shri Sanjeev Ralli, Learned Senior Counsel assisted by Shri Shubham Yadav and Shri Ravikant Yadav, Learned Counsels appear for respondent 8.

2. This Original Application (hereinafter referred to as '**OA**') under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') has been preferred by two applicants- Rajinder Krishan Sharma and Pawan Kumar Bansal, alleging that Notified Protected Forest land of "Sikanderpur-Nathupur Bund" and "Nathupur Drain" has been illegally encroached upon by respondent 8 for raising commercial building project namely 'Ambience Island Lagoon Apartments' contrary to the provisions of Environment (Protection) Act, 1986, (hereinafter referred to as '**EP Act, 1986**'); Indian Forest Act, 1927 (hereinafter referred to as '**IF Act, 1927**'); and Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act, 1980**'). Applicants have sought a restrain order directing respondent 8 and its agents etc., from making any further construction activity and felling of trees on the above Notified Protected Forest land and further direction for removal of construction material and machinery from green belt and road laid down on the said land.

3. Facts in brief stated in OA are, that, applicant 1 is a retired Officer of Indian Forest Service and applicant 2 is a Journalist. They are basically working for protection of environment being environmentally conscious people and have visited this Tribunal by means of present application for protection of environment.

4. State Government of Haryana, vide Notification dated 02.12.1981 (page 25 of paper book), issued under Section 29 of IF Act, 1927, has declared certain land, mentioned in the Schedule, as 'Protected Forest' which included at item 67, 'Sikanderpur-Nathupur Bund' under the title 'Name of Bunds'. Further, by Notification dated 05.07.1985 (page 33 of paper book), earlier Notification dated 02.12.1981 was amended and certain further areas were included therein, as 'Protected Forest' and

under the heading “Name of Drains” at item no.17, ‘Nathupur Drain’ was included. It is thus contended that under above Notifications ‘Sikanderpur-Nathupur Bund’ and ‘Nathupur Drain’ both are ‘Protected Forest’.

5. Nathupur is a village situated in Aravali belt of District Gurgaon, State of Haryana. Area is prone for heavy floods during rainy seasons. To cope with heavy floods through Nathupur drain emanating from hills, the State Government constructed a flood protection bund which is called as “Sikanderpur Nathupur Bund”. It was constructed about more than 50 years ago across Nathupur drain covering “Sikander Nathupur land” upto Delhi border. Respondent 8 raised certain constructions on the land which is part of the above ‘Protected Forest’, hence, a Damage Report was prepared on 14.05.2008 by Forest Department alleging that behind “Ambience Mall”, “Ambience Island Lagoon Apartment” has encroached upon 380 meter × 16 meter bund area and constructed buildings etc., thereon. A total 6080 m<sup>2</sup> area of bund has been encroached, which is in violation of FC Act, 1980 and IF Act, 1927.

6. Prosecution Case No. 7G/08-09 was filed against Developer which was challenged in proceedings under Section 482 Cr.P.C., in CRM-M No. 34200 of 2012 filed in Punjab and Haryana High Court at Chandigarh. Later on, criminal proceedings were withdrawn by State Government but fact remain that respondent 8 has made construction of the above residential buildings on ‘Protected Forest’ land and violated environmental laws. The said violation is “continuing offence” hence applicants have approached this Tribunal, seeking relief as mentioned above.

7. This Tribunal took cognizance of the complaint on 19.12.2022 and issued notices to the parties.

8. Learned Counsel appearing for respondent 8 has seriously raised issue of limitation stating that the construction activities had started in 1996 and completed in 2000-2001. Occupancy Certificate was issued by Director, Town and Country Planning, and, residential accommodations were allotted to third parties and occupied in 2001 and 2002. No building activity has thereafter been undertaken for the last more than 20 years at the above premises. Therefore, 'cause of action' arose for the first time in 1996 and in any case completed in 2001, hence, present OA is hopelessly barred by limitation provided under Sections 14(3) and 15(3) of NGT Act, 2010.

9. He has further submitted that since application in question is hopelessly barred by limitation, it is not necessary to look into any other issue but in any case, it is also contended that in the Notifications dated 02.12.1981 and 05.07.1985, no land has been identified and demarcated which constitute part of 'Sikanderpur-Nathupur Bund' and 'Nathupur Drain'; construction has been raised by respondent 8 on the land which belongs to private parties and in any case, no construction has been raised on any land which is part of above two Notifications and there is nothing on record to show that land on which disputed construction has been raised is on a land which is declared as 'Protected Forest' and covered by Notifications dated 02.12.1981 and 05.07.1985.

10. Applicant, on the contrary, submitted that various subsequent proceedings initiated from 2008 and onwards show that 'Forest Land' was also included and mere fact that subsequently proceedings have been closed, would not make any difference or would absolve respondent 8 from its liability since it has raised construction on forest land which is declared to be 'Protected Forest' and it is a 'continuing cause of action' since damage

to forest land is continuing and, therefore, the issue of limitation will not arise under NGT Act, 2010.

11. We have heard applicant in person. Shri Pinaki Misra and Shri Sanjeev Ralli, Learned Senior Advocates assisted by Shri Shubham Yadav and Shri Ravi Kant Yadav, Advocate appearing for respondent 8 and other Learned Counsels appearing for respective respondents who have virtually adopted the submissions advanced by Shri Pinaki Misra, Learned Senior Counsel.

12. In our view, two questions have arisen in this OA for adjudication:

- (I) Whether the present OA is barred by limitation prescribed under Sections 14(3) and 15(3) of NGT Act, 2010?
- (II) Whether respondent 8 has raised any construction on a land identified and declared as 'Protected Forest' vide Notifications dated 02.12.1981 and 05.07.1985 constituting part of "Sikanderpur-Nathupur Bund" and "Nathupur Drain"?

13. We proceed to answer **question I** first.

14. Record shows that there is no denial of the fact that construction activities by respondent 8 commenced in 1996 and completed in 2000-2001. Occupancy Certificate was issued in December 2001 as a result whereof, accommodation was allotted to third parties in 2001 and onwards. These facts stated by respondent 8 have neither been denied nor controverted by applicant by placing any material otherwise on record.

15. On the contrary, respondent 8 has placed on record copy of Occupancy Certificate dated 31.12.2001 as annexure R-8/1 at page 156

which gives description of the building for which Completion Certificate was issued, as under:

<i>City Gurgaon Street</i>	<i>Building Blocks A, B, C, D, E, F, G, H, I, J, K, L, M, Basements and Club in Group Housing Scheme measuring 10.98 acres namely Lagoon at Ambience Island on National Highway-8, Gurgaon.</i>
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16. Applicant has chosen not to file any rejoinder to rebut the averments made by respondent 8 in this regard. Therefore, we have no option but to accept dates of initiation of the construction activities and completion as stated by respondent 8 to be correct.

17. The present OA has been filed by applicant on 15.11.2022 and after scrutiny on 15.12.2022 was placed before the Bench on 19.12.2022. For the purpose of limitation, therefore, we take the date of presentation of OA i.e., 15.11.2022.

18. It is after more than 20 years when Occupancy Certificate was issued by Directorate, Town and Country Planning, Haryana, Chandigarh to the Developer.

19. Period of limitation has been described in respect of the jurisdiction of Tribunal under Section 14 vide sub-section (3) and jurisdiction exercisable under Section 15 vide sub-section(3) thereof and the said sub-sections read as under:

***“14. Tribunal to settle disputes.-***

*xxx.....xxx.....xxx*

*(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.-**

xxx.....xxx.....xxx

(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.”*

20. Limitation under Section 14 is six months from the date the ‘cause of action first arose’ and under Section 15, it is five years from the date of ‘cause of action first arose’.

21. Applicant has not disclosed in OA as to when cause of action first arose but he said that since forest land is still being used for non-forest purposes, therefore, violation is of continuing nature and, therefore, OA is within the period of limitation under Sections 14(3) and 15(3) of NGT Act, 2010.

22. In the relief, he has sought a direction, restraining concerned respondent from further construction of the building without disclosing in OA that for the last 20 years, no construction has been carried out on the land in dispute. In fact, what has been stated by applicant is that first time on 14.05.2008, Damage Report was prepared by Area Forest Guard that proponent has constructed its buildings on the land of “Sikanderpur-Nathupur Bund”, measuring 380 meters in length and 16 meters width, total area 6080 m<sup>2</sup> which is a violation of FC Act, 1980 and IF Act, 1927.

Thereafter, respondent 8 moved an application for diversion of 0.4486 hectares of forest land for non-forestry purposes. Pursuant thereto, Forest Officer made inspection for the first time on 04.08.2015 and submitted Report that the protected forest/bund land measuring 0.4486 hectares has been acquired by the user agency and thereby, it has violated the provisions of FC Act, 1980. Prosecution Case No. 7G/0809 on the basis of Damage Report was initiated against M/s Ambience Developers and Infrastructure Pvt. Ltd. (hereinafter referred to as **'Builder and Developer'**) but after realising that no land of 'Protected Forest' was encumbered and there was no violation of FC Act, 1980, a representation was made by Builder and Developer on 17.09.2015 before Principal Chief Conservator of Forest, Haryana who vide order dated 16.10.2015 cancelled Damage Report dated 14.05.2008 and directed Division Forest Officer (T) to withdraw Prosecution Case with the permission of the concerned Environment Court, Faridabad.

23. All these facts show that construction was already completed and people were residing at the apartments developed by Builder and Developer. In para 37, reference has been made to Residents Welfare Associations of the land developed by Builder and Developer which shows that property was occupied by residents. Apparently, therefore, the present OA is barred by limitation prescribed in Section 14(3) and 15(3) of NGT Act, 2010.

24. However, since applicant has contended that 'cause of action' is continuing though Statute talks of the point of cause of action when it arose first, therefore, even if "continuing cause of action" as such is not recognised by the Statute but for the purpose of the present case, we are inclined to examine, whether there is any continuous cause of action in the present case which may entitle the applicant to have adjudication of

this OA on merits.

25. Cause of action as such has not been defined in NGT Act, 2010 or rules framed thereunder. However, it has been considered by Courts time and again. 'Cause of action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them, gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into. The pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. Intention of the party concerned is to be gathered, from the pleading taken as a whole.

26. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act, 2010. For the purposes of NGT Act, 2010, 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act, 2010. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed

as a 'cause of action' under provisions of Section 14 of NGT Act, 2010 unless it has a direct nexus to environment or gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of land acquisition laws would not be an event that would trigger the period of limitation under the provisions of NGT Act, 2010 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010.

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

28. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in

law. 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by Supreme Court in ***Bal Krishna Savalram Pujari & Others vs. Sh. Dayaneshwar Maharaj Sansthan & Others, AIR 1959 SC 798.***

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

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

***place when an act or omission is committed once and for all.”***

30. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of ‘continuing wrong or offence’. For instance, using the factory without registration and license was an offence committed every time the premises were used as a factory. Supreme Court in ***Maya Rani Punj vs. Commissioner of Income Tax, Delhi, (1986) 1 SCC 445***, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not. Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law.

31. High Court of Delhi in ***Mahavir Spinning Mills Ltd. vs. Hb Leasing And Finances Co. Ltd., 199 (2013) DLT 227***, while explaining Section 22 of Limitation Act, took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the ‘continuing cause of action’ once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

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

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

34. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of National Green Tribunal (Practice and Procedure) Rules, 2011 (hereinafter referred to as '**NGT Rules, 2011**'), shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and, therefore, there is exclusion of the concept of

the 'joinder of causes of action' under NGT Rules, 2011. Multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In later, it may give rise to cause of action or if the statutes so provide when 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may give rise to a fresh cause of action.

35. To this general rule, there could be exceptions. In particular, such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing environmental clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting environmental clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the environmental clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal

of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

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

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

*which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.*

*The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. **The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1.***

37. Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action.

38. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue

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

39. If we consider the present case in the light of observations and discussions made above, we find that as per own statement of applicant, the Notifications declaring 'Protected Forest' were issued on 02.12.1981 and 05.07.1985, therefore, when the construction was stated in 1996, as per the allegations made in the OA, the land was already a 'Protected Forest' and hence, the construction was commenced on a Forest land

which amounts to violation of Section 2 of FC Act, 1980 since the forest land was sought to be utilized for non-forest purposes. The cause of action therefore involving environmental issues in respect of the enactments mentioned in Schedule I of NGT Act, 2010 first arose in 1996. Even if we treat that every day's construction or continuing construction should have been treated a continuous cause of action, the same came to an end in 2001, on completion of the project, particularly when Occupancy Certificate was issued on 31.12.2001. Cause of action even if treated to that extent to be continuous cause of action, completed and attained finality in 2001. The present application has been filed on 15.11.2022. It cannot be said that merely because construction has continued to exist on the disputed land in alleged violation of FC Act, 1980, it must be treated to be a continuous cause of action since specific language of Statute 14(3) and 15(3) of NGT Act, 2010 is when "cause of action first arose" and we cannot divert or ignore the above provisions particularly, when this Tribunal is a body constituted under NGT Act, 2010, therefore, strictly governed by the provisions of NGT Act, 2010 which is a 'special Act'. It has been observed by a three Member Bench of this Tribunal in ***Appeal No. 18/2023, Hafed Sugar Mill vs. Haryana State Pollution Control Board & Anr.*** that NGT Act, 2010 is special law and the limitation provided under the Special Law must prevail over the general law of limitation especially when over-riding effect has been given to NGT Act, 2010 by the framers of law in terms of Section 33 of the Act.

40. In view thereof, we have no hesitation in holding that the present OA is barred by limitation prescribed in Section 14(3) and 15(3) of NGT Act, 2010.

41. **Issue I is answered accordingly.**

42. Now coming to **issue II**, it has to be demonstrated by applicant that the land over which disputed construction was raised, comprised part of 'Protected Forest' under Notifications dated 02.12.1981 and 05.07.1985. Strangely, we find that in both the above Notifications, no description of land mentioning khasra no. and area etc. has been given. Even GPS Co-ordinates have not been mentioned which normally are mentioned in such Notifications as we have come across during the course of various proceedings before us. Only name of area has been mentioned. There is nothing to show that any area was demarcated under the names of the areas which are included in the above two Notifications. Despite repeated query, applicant stated that since Forest Department initiated action against respondent 8 on the basis of Damage Report dated 14.05.2008 and Builder and Developer also took steps for regularization of the part of the forest area covered by it under the construction in question, which means that the land in dispute was part of 'Protected Forest' but could not dispute that those proceedings already stood terminated without recording any finding by any Competent Authority that any 'Protected Forest' area was occupied by respondent 8. So far as this Tribunal is concerned, we have no material before us to show that the disputed area in particular is covered by the 'Protected Forest' area named as "Sikanderpur-Nathupur Bund" and "Nathupur Drain" and in absence of any such material, we find it difficult to hold that there is any violation of FC Act, 1980 on the part of respondent 8.

43. **We accordingly answer issue II against applicant.**

44. In view of the above discussions, we find no substance in the allegations made by applicant so as to pass any direction interfering with the project of respondent 8 which has already been executed long back and operating.

45. Accordingly, this Original Application has no merit and is dismissed.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

July 11, 2024  
Original Application No.881/2022  
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**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

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**ORIGINAL APPLICATION NO.142/2022**

**(I.A. NO. 803/2023, I.A. NO. 593/2023, I.A. NO. 68/2022,  
I.A. NO. 17/2024, I.A. NO.269/2024 and I.A. NO. 270/2024)**

**IN THE MATTER OF:**

**1. JAYANT KUMAR**

S/o Ram Subhag  
R/o Village and Post - Arangpani, P.S. - Myourpur,  
Arangpani, Tahsil Dudhi, District - Sonbhadra  
Uttar Pradesh- 231208

...Applicant

Versus

**1. MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE  
Through its Joint Secretary,**

Government of India,  
Indira Paryavaran Bhawan,  
Jor Bagh Road,  
New Delhi-110003

**2. STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY  
Through its Member Secretary,**

Directorate of Environment,  
Government of Uttar Pradesh  
Dr. Bhimrao Ambedkar Paryavaran Parisar,  
Vineet Khand-1,  
Gomti Nagar, Lucknow  
Uttar Pradesh- 226010

**3. MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE  
Through its Deputy Director General of Forests (C),**

Integrated Regional Office, (Central Zone),  
Kendriya Bhawan, 5<sup>th</sup> Floor,  
Sector-H, Aliganj, Lucknow  
Uttar Pradesh-226020

**4. DISTRICT MAGISTRATE**

DM Office, Lorhi  
 Sonbhadra  
 Uttar Pradesh -231216

**5. M/S. SAI RAM ENTERPRISES**

Partner - Shri Chandra Bhushan Gupta,  
 Add. 2091, Near Ayappa Mandir, Sector-8,  
 Obra, Tehsil-Robertsganj,  
 District-Sonbhadra,  
 Uttar Pradesh - 231216

**6. M/S. C.S. INFRACONSTRUCTION LTD.**

Managing Director - Smt. Pushpa Singh  
 Add. - Village & Post Khanwar,  
 District-Ballia,  
 Uttar Pradesh-221711

...Respondent(s)

**COUNSELS FOR APPLICANT(S):**

Mr. Vikas Kumar Singh, Advocate

**COUNSELS FOR RESPONDENT(S):**

Ms. Suhasini Sen and Ms. Surbhi, Advocates for Respondent 1-MoEF&CC  
 Ms. Priyanka Swami and Ms. Simran Sehgal, Advocates for State of U.P.  
 and SEIAA  
 Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB  
 Mr. Pinaki Misra, Senior Advocate with Mr. Utkarsh Sharma and Mr.  
 Sharad Chauhan, Advocates for Respondents 5 and 6  
 Mr. Mukesh Kumar, Advocate for CPCB (through VC)

**CORAM:**

**HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER**  
**HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

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**RESERVED ON: MAY 22, 2024**  
**PRONOUNCED ON: AUGUST 08, 2024**

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**SYNOPSIS**

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**JUDGMENT****BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER**

1. This Original Application (hereinafter referred to as '**OA**') has been filed by Jayant Kumar S/o Ram Subhag, R/o Village and Post-Arangpani, P.S. – Myourpur, Dudhi, District-Sonbhadra, State of Uttar Pradesh, seeking cancellation of Environmental Clearance (hereinafter referred to as '**EC**') dated 23.10.2018 granted by District Environment Impact Assessment Authority (hereinafter referred to as '**DEIAA**') on the ground that it is in violation of Tribunal's judgment dated 13.09.2018 passed in **OA 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Another** and other connected matters. Applicant has also prayed that Tribunal may issue direction to the respondents authorities to cancel mining leases granted in favour of respondent 5 i.e., M/s. Sai Ram Enterprises and respondent 6 i.e., M/s. C.S. Infraconstruction Limited contrary to judgment of Tribunal dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)**. A further direction has been sought to respondents authorities to initiate proceedings for issue of EC only after procedure laid down in Notification dated 15.01.2016 amending Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**') is revised by Ministry of Environment, Forest and Climate Change (hereinafter referred to as '**MoEF&CC**') in terms of the directions and observations contained in the judgment dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)** and respondent authorities should assess environmental damage and recover environmental compensation for illegal mining in violation of Office Memorandum (hereinafter referred to as '**OM**') dated 12.12.2018 issued by MoEF&CC in compliance of Tribunal's judgment

dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)**, which has been enforced by State of UP on 05.02.2019.

2. Facts in brief, as borne out from the pleadings in OA, are that applicant is a social worker and committed to espouse the cause of general public at large. He has been performing several social and public interest activities throughout the District-Sonbhadra (State of UP) and specifically, relating to protection of forest and environment which is being adversely affected due to illegal mining activities permitted by the authorities concerned in collusion with mafias.

3. EIA 2006 initially made provisions for prior EC in respect of mining of minerals provided the lease area is more than 5 hectares. However, Supreme Court in **Deepak Kumar vs. State of Haryana, (2012) 4 SCC 629**, vide judgment dated 27.02.2012, held that prior EC would be mandatory for mining of minor minerals irrespective of the area of mining leases.

4. Consequently, an amendment Notification dated 15.01.2016 was issued by MoEF&CC, making amendment in EIA 2006. It was stated that since exclusion of size of area has resulted in increase of the cases where prior EC would be required subsequently, therefore, for appraisal of Environment Plan, an authority at District level is being constituted called as 'DEIAA'.

5. At District level, an Expert Appraisal Committee was also constituted, called as District Expert Appraisal Committee (hereinafter referred to as '**DEAC**').

6. Certain appendixes i.e., appendix VII, appendix VIII, appendix IX, appendix X, appendix XI and appendix XII were also inserted after appendix VI in the Schedule to EIA 2006.

7. The aforesaid amendments covered the mining leases irrespective of the area which would require prior EC before commencement of mining operations.

8. The amendment Notification dated 15.01.2016 introduced the requirement of preparation of District Survey Report (hereinafter referred to as 'DSR') for sand mining or river bed mining and mining of other minor mineral by inserting para 7(iii), as also included the procedure for EC for mining of minor mineral including cluster situation as per the procedure given in appendix XI.

9. An advertisement was published on 01.06.2018 through e-tender and e-auction for mining leases lying vacant in District Sonbhadra. The advertisement showed that consolidated/cluster mining block were carved out into smaller blocks for the purpose of grant of mining leases. The advertisement was in respect of six areas, details whereof were given as under:

क्र० सं०	उपखनिज का नाम	क्षेत्र का विवरण					नियमवली, 1963 अनुसूची 1 के अनुसार उपलब्ध उपखनिजों में से सर्वाधिक रॉयल्टी दर (रु० प्रति घन मी०)	10,000 घन हे० प्रतिवर्ष के आधार पर खनन योग्य उपखनिज की मात्रा (कॉलम 7 में अंकित क्षेत्रफल से गुण करने पर उपलब्ध मात्रा घन मी० में)	प्रथम वर्ष में आंकलित मात्रा की कुल रॉयल्टी रूपयों में (कॉलम 9 में अंकित घन मी० प्रतिवर्ष को कॉलम 8 में अंकित रॉयल्टी की दर से गुना करने पर उपलब्ध सकल धनराशि)	अर्नेस्ट मनी (कॉलम 10 में अंकित सकल धनराशि का 25 प्रतिशत)
		तहसील	ग्राम	गाटा संख्या	खण्ड संख्या	क्षेत्रफल (हे० में)				

1	2	3	4	5	6	7	8	9	10	11
1.	इमारती पत्थर (डोलो स्टोन) खण्डा गिड्डी, बोल्डर	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	01	4.970	160.00	49,700	79,52,000	19,88,000
2.	इमारती पत्थर (डोलो स्टोन) खण्डा गिड्डी	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	02	4.000	160.00	40,000	64,00,000	16,00,000
3.	इमारती पत्थर (डोलो स्टोन) खण्डा गिड्डी	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	03	4.000	160.00	40,000	64,00,000	16,00,000
4.	इमारती पत्थर (डोलो स्टोन) खण्डा गिड्डी	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	04	4.000	160.00	40,000	64,00,000	16,00,000
5.	इमारती पत्थर (डोलो स्टोन) खण्डा गिड्डी	राबर्ट्सगंज	बिल्ली मारकुण्डी	5593 क	08	4.230	160.00	42,300	67,68,000	16,92,000
6.	इमारती पत्थर (डोलो स्टोन) खण्डा गिड्डी	राबर्ट्सगंज	बिल्ली मारकुण्डी	5593 क	09	4.000	160.00	40,000	64,00,000	16,00,000

**English Translation by Tribunal:**

Sr. No.	Name of Sub-mineral	Details of Area					Highest royalty rate (Rs. per cubic meter) among the available minerals as per Schedule I of Rules	Quantity of sub-minerals on the basis of 10,000 cubic hectares per year (quantity available in cubic metres when multiplied by the area mentioned in column 7)	Total royalty in rupees for the estimated quantity in the first year (gross amount available after multiplying cubic meter per year mentioned in column 9 with the rate of royalty mentioned in column 8)	Earnest Money (25 per cent of the gross amount mentioned in column 10)
		Tehsil	Village	Gata No.	Division No.	Area (Hectares)				
1	2	3	4	5	6	7	8	9	10	11
1.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	01	4.970	160.00	49,700	79,52,000	19,88,000
2.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	02	4.000	160.00	40,000	64,00,000	16,00,000
3.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	03	4.000	160.00	40,000	64,00,000	16,00,000
4.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	04	4.000	160.00	40,000	64,00,000	16,00,000
5.	Dolo Stone,	Rober tsganj	Billi Markundi	5593 Ga Mi	08	4.230	160.00	42,300	67,68,000	16,92,000

	khanda Gitti, Bolder	tsganj		Ka						
6.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	5593 Ka	09	4.000	160.00	40,000	64,00,000	16,00,000

10. Respondents 5 and 6 were successful highest bidders and consequently Letters of Intent were issued by District Magistrate, Sonbhadra to respondents 5 and 6 on 20.08.2018.

11. Amendment Notification dated 15.01.2016 and two others namely Notifications dated 20.01.2016 and 01.07.2016 amending EIA 2006 were challenged in **Satendra Pandey vs. MoEF&CC & Another (supra)** and other connected matters. Notifications were assailed on the ground that procedure for obtaining prior EC in respect of mining of minor minerals for areas from 0 to 25 hectares has been diluted by bringing in within B2 category and granting exemption to such category from public consultation which is in violation of Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)**. Procedure of creation of B2 category and exemption from preparation of Environment Impact Assessment Report, Environment Management Plan and also appraisal by DEIAA and DEAC comprising the members who have no expertise and scientific knowledge to assess environmental implications was challenged in totality.

12. Vide judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, Tribunal found that the procedure prescribed for grant of prior EC to the projects falling in category B2 was

not consistent with Supreme Court's judgment in ***Deepak Kumar vs. State of Haryana (supra)***.

13. Tribunal ultimately directed MoEF&CC to bring the amendment Notification in consonance and in accord with the directions of Supreme Court given in ***Deepak Kumar vs. State of Haryana (supra)***.

14. Despite the above judgment rendered on 13.09.2018, prior ECs were granted to respondent 5 vide letter dated 23.10.2018 by DEIAA Sonbhadra for proposed mining of minor mineral at gata no. 7536Ga mi (khand 1) village- Billi Markundi, Tehsil- Robertsganj, District- Sonbhadra, leased area-4.970 hectares.

15. Similarly, prior EC was issued by DEIAA Sonbhadra to respondent 6 vide letter dated 23.10.2018 for proposed mining at gata no. 7536Ga mi (khand 3) village- Billi Markundi, Tehsil-Robertsganj, District-Sonbhadra, leased area 4.000 hectares.

16. In purported compliance of directions contained in the judgment dated 13.09.2018 in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, MoEF&CC issued an OM dated 12.12.2018 to various State Level Environment Impact Assessment Authorities (hereinafter referred to as '**SEIAAs**'), requesting for compliance and to inform the Ministry about the action taken. Paras 2 and 3 of OM dated 12.12.2018 are reproduced as under:

"2. The Hon'ble NGT vide order dated 13<sup>th</sup> September, 2018 in O.A No 186 of 2016 (*Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr*) has inter-alia directed as follows:-

"(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster

*situation wherever it is not provided;*

*(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;*

*(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;*

*(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, and 7 and 8 thereof,*

*(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;*

*(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.”*

3. *In view of the above, the **undersigned is directed to forward the copy of the aforementioned orders for necessary compliance and inform the Ministry about the action taken.** A copy of the same has been sent to the Chief Secretaries of all the states/UTs.”*

17. **OA 474/2019, Surendra Singh vs. MoEF&CC & Others** was filed, challenging ECs granted in favour of certain proponents impleaded as respondents 5 to 14 therein, on the ground that the same were in violation of Tribunal’s judgment dated 13.09.2018. **OA 474/2019 (supra)** came to be decided by Tribunal vide judgment dated 14.08.2019. Judgment is founded on the stand taken by authorities vide Report dated 02.08.2019, stating that mining activities were suspended till fresh EC is granted and SEIAA took a decision on 05.02.2019 that all mining leases of minor minerals having 0 to 5 hectares area will be appraised by SEIAA UP in

compliance of OM dated 12.12.2018 of MoEF&CC. Tribunal disposed of OA with the following directions:

**“i). Till environmental clearance is granted by SEIAA, the mining operations with regard to leases in question will remain suspended.**

**ii). The State of UP may recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019.”**

18. However without any reappraisal of EC granted to respondents 5 and 6, mining leases were executed in favour of respondent 5 vide lease deed dated 05.10.2020 for a period of 10 years commencing from 05.10.2020 to 04.10.2030 and respondent 6 was granted lease vide deed dated 06.11.2020 for a period of 10 years i.e., from 06.11.2020 to 05.11.2030.

19. Alleging that mining leases were granted for 20 years in violation of Supreme Court’s judgment in **Deepak Kumar vs. State of Haryana (supra)** and Tribunal’s judgment dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)** and the same are still continuing, another **OA 992/2019, Surendra Singh vs. MoEF&CC & Others** was filed impleading therein mining lease holders as respondents 5 to 7. District Magistrate, Mirzapur filed Report dated 17.02.2020, stating that mining activities of respondents 5 to 7 were closed w.e.f. 11.11.2019. Tribunal considered the Report dated 17.02.2020 in **OA 992/2019 (supra)** on 18.03.2020 and observed in para 2 to 5 thereof as under:

**“2. Accordingly a report has been filed by the District Magistrate, Mirzapur dated 17.02.2020 to the effect that mining activities of respondents Nos. 5 to 7 were closed w.e.f. 11.11.2019.**

3. Learned counsel for the applicant submits that **the report itself acknowledges that mining activity continued prior to 11.11.2019 which was illegal** in view of the order of this Tribunal dated 14.08.2019 in O.A. No. 474/2019, Surender Singh vs. Ministry of Environment, Forest & Climate Change & Ors. and a report filed before this Tribunal on 02.08.2019 by SEAC, UP and UPPCB as follows:

**“VI. As per order of NGT dated 11/12/2018 a joint meeting of SEIAA and SEAC was held on 05.02.2019 and following decision was taken:-**

**“In compliance of MoEF&CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 hectare area will be appraised by UP-SEIAA for Environment Clearance.** All concerned project proponent will apply to UP-SEIAA in Form – I with other required supporting documents on online MoEF&CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) to process the application for grant of prior environment clearance with immediate effect till further order.”

**IX. All mining activity remains suspended. So in this period procedure may be adopted for seeking fresh EC of the areas between 0-5 hectare as per NGT orders.** In this regard necessary order should be disbursed immediately to obey the procedure as per NGT order dated 13.09.2019.”

4. It is clear fact that even according to the stand of State of UP itself, as projected in paragraphs VI and IX of the report dated 02.08.2019, **the operation in mines in question in District Mirzapur till 11.11.2019 particularly after 02.08.2019 was illegally.** Relevant part of order dated 14.08.2019 in O.A. No. 474/2019, Surender Singh vs. Ministry of Environment, Forest & Climate Change & Ors. is as follows:

**“3. Accordingly, a report dated 02.08.2019 has been filed by the Director of Environment, Uttar Pradesh stating that the mining activities have been suspended till a fresh Environmental Clearance is granted. The SEIAA took a decision on 05.02.2019 that all mining leases of minor minerals having 0 to 5 ha area will be appraised by SEIAA.** This decision is based on decision of MoEF&CC dated 12.12.2018.

4. In view of above, we dispose of this application with following directions:

***i). Till environmental clearance is granted by SEIAA, the mining operations with regard to leases in question will remain suspended.***

*ii). The State of UP may recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019.”*

***5. In view of the above, the State of UP may take similar action for recovery of compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019. The UPPCB may coordinate further action and furnish a compliance report before the next date by e-mail at judicial-ngt@gov.in.”***

20. A further Report was filed on 08.12.2020 by Uttar Pradesh Pollution Control Board (hereinafter referred to as ‘**UPPCB**’) which was considered by Tribunal on 23.12.2020. Following observations were made in para 3 of the order:

“ xxx

xxx

xxx

***In compliance of above order passed by the Hon’ble NGT, the committee carried out field visit of all 16 mine project areas on dated 05.12.2020. The interaction during field visit with different mine proponents and officers of mine department was focused on compliance of Office Memorandum dated 12.12.2018 of MoEF&CC.***

***The detail compliance report of the Hon’ble NGT order dated 18.03.2020 about 16 mining projects is attached for your kind consideration please.”***

21. Tribunal disposed of the application by observing in para 4 that State PCB may take further remedial steps following due process of law.

22. Applicant in the present case, in his capacity as Secretary, Aadarsh Sewa Samiti sent a representation/letter dated 25.01.2022 to Member Secretary, SEIAA UP, requesting for cancellation of mining leases and ECs allotted to respondents 5 and 6 in respect of gata no. 7536 Ga mi (khand 1 and 3 respectively) on the ground that after Tribunal's judgment dated 13.09.2018, DEIAA could not have granted any EC.

23. Another representation was made by D.K. Singh, General Secretary, All India Kaimoor People's Front on 01.02.2022 to various authorities including MoEF&CC, UPPCB, SEIAA UP and District Magistrate, Sonbhadra, requesting for cancellation of EC and mining leases granted to respondents 5 and 6.

24. Nothing was done by the authorities concerned, hence, the present OA was filed, seeking relief as stated above.

25. **Tribunal's Order dated 28.02.2022:** OA was initially considered by Tribunal on 28.02.2022. Tribunal found it necessary to verify factual position by obtaining a report from a Joint Committee, comprising UPPCB, SEIAA UP and District Magistrate, Sonbhadra.

**Joint Committee Report dated 30.06.2022 filed on 01.07.2022:**

26. Pursuant to order dated 28.02.2022 passed by Tribunal, Joint Committee submitted Report dated 30.06.2022 on 01.07.2022. Report refers to Rule 10(1) of UP Minor Minerals (Concession) Rules, 2021 (hereinafter referred to as '**UPMMC Rules 2021**'). Thereafter Committee has recorded its observations as under:

“...it has been mentioned in available documents of Mining Department, Sonbhadra that the referred leases were granted in the light of Uttar Pradesh Minor Minerals (Concession) Rules, 2021 as described above by the **permission of District Magistrate, Sonbhadra vide letter No. 111/khanij/2018 dated 23.05.2018** to carved out the mining leases on Gatta no.7536 with other 03 Gattas as Gatta Nos. 4078, 4949 & 5593. As per order of District Magistrate, Sonbhadra, it has been directed to Mining Department, Sonbhadra to conduct detailed survey of available minerals in referred Gattas and be submitted. The detailed joint survey report had been submitted by the Geologist and Assistant Geologist, Mining Department, Sonbhadra vide its letter No. 267/Khanij/2018-19 dated 23.05.2018. In the referred survey report dated 23.05.2018, it was mentioned that Gatta No. 7536 had been carved out into 04 blocks of areas. However, out of the 04 mining blocks, the concerned blocks as Khand No. 01 & Khand No. 03 has been mentioned below:-

- A. **Khand No. 01**-This Khand is situated between 24°27'45.90" N to 24°27'54.94" and 83°01'57.00" to 83°02'10.77". This area has abundant mineable minerals but due to unsystematic mining in the past, the topography of the area has become undulatory and accordingly the available mineable mineral is approximately 6,93,667 cubic meter.
- B. **Khand No.03**-This Khand is situated between 24°27'34.68" N to 24°27'43.62" and 83°02'7.25" to 83°02'18.08" and contains 7,68,069 Cubic Meter mineable minerals.

As per report submitted by Mining Department, Sonbhadra, the tender was invited for e-auction of the above refereed 02 Blocks and other 02 as Khand. No. 02 & Khand No. 04 and accordingly above concerned 02 blocks were allotted to M/s Sai Ram Enterprises, Village-Billi-Markundi, Obra, District-Sonbhadra (Khand No. 01) and M/s C.S. Infraconstruction, Village-Billi- Markundi, Obra, District-Sonbhadra (Khand No. 03).

Apart from those mentioned above, **it has been mentioned in the revenue record that the Gatta No. 7536 has total area of 106.396 Hectare out of which 4.122 Hectare is private land, 60.1220 Hectare is Reserve Forest and rest area 42.1520 Hectare marked as 7536 Ga Mi is recorded in the name of PAHAD consisting of mineable minerals like Dolo Stone Boulders.**

*Khand No. 01 (Area-4.970 Hectares), Khand No. 02 (Area-4.0 Hectares), Khand No. 03 (Area-4.0 Hectares) and Khand No. 04 (Area-4.0 Hectares) are the parts of Gatta No. 7536 Ga Mi.(Area 42.1520 Hectare). **Since this Gatta No. 7536 Ga Mi is very large in area, hence 04 blocks were carved out as Khand No. 01, 02, 03 & 04 for practical solution of e-auction leaving 100 meter area as minimum safety distance of the reserve forest on Gatta No. 7536 Gha.***

*The details of the mining leases in the area concerned have been provided by the Mining Department, Sonbhadra vide its Reference **No.1090/khanij/2022 dated 28.06.2022** with all necessary documents with map of the area has been annexed with this report.*

3. *That, the Environmental Clearance for the concerned leases namely Khand No.01 and Khand No.03 were issued by the District Level Environmental Assessment Authority, Sonbhadra on **23.10.2018** and thereafter mining leases have been executed and registered in favour of respondents no. 05 and 06 on dated 05.10.2020 and 06.11.2020 respectively **which is against the order dated 13.09.2018 passed by this Hon'ble Tribunal by which direction have been issued to MoEF & CC to take appropriate steps to revise the procedure laid down in the notification dated 15.01.2016 and in compliance of which MoEF & CC, Govt. of India issued on dated 12.12.2018 in which the working of District Level Environmental Assessment Authority, Sonbhadra was stopped.***
4. *That in view of above statutory provisions, it is evident **that on 23.10.2018 the District Level Environmental Assessment Authority, Sonbhadra was legally working and the EC Issued to respondent no 5 and 6 is valid as well as in accordance with law.***

***Briefing the above mentioned facts, it is utmost to tell that these blocks are homogeneous in nature but heterogeneous for purpose of mining looking the topography of the area and capability of bidders interested for mining.”***

**Common Reply dated 14.07.2022 filed by Respondents 5 and 6:**

27. Respondents 5 and 6 have also filed a common reply dated 14.07.2022. As preliminary submissions, they have stated that applicant

is an extortionist, who had been blackmailing respondents 5 and 6 since sometime. As proponents refused to wilt down to the pressure exerted by applicant and declined to part away any money, the present OA has been filed as a misuse of process before Tribunal.

28. Respondents 5 and 6 lodged Caveats before Tribunal on 24.01.2022 and OA was filed on 14.02.2022 but copy of the same was not served upon the said proponents. Though, Tribunal disposed of Caveats vide order dated 28.02.2022 observing that no adverse order is being passed against respondents 5 and 6 but copy of OA was not, even thereafter, served upon the said respondents. From the order, respondents found that proceedings have been initiated by applicant through OA in question by concealment of facts and making misleading statements. A general advertisement was published by District Magistrate, Sonbhadra on 01.06.2018 for grant of mining leases in six blocks of land with four blocks in khasra no. 7536 Ga and two blocks in khasra no. 593 Ka. The plots of land for mining leases were carved out by District Magistrate, Sonbhadra, after obtaining No Objection Certificate (hereinafter referred to as '**NOC**') from Divisional Forest Officer, Obra Forest Division, Sonbhadra and Divisional Forest Officer, Kaimur Wildlife Sanctuary. Respondent proponents have no role in carving out the above plots. Proponents submitted their bids and respondent 5 was successful in respect of khasra no. 7536 Ga (Block-1) area - 4.97 acres while respondent 6 was successful in respect of khasra no. 7536 Ga (Block-3), area 4.00 acres. After completion of all the formalities, Letters of Intent were issued to respondents 5 and 6 on 20.08.2018. Thereafter, respondents 5 and 6, in terms of the procedure prescribed in EIA 2006 as amended by notification dated 15.01.2016 applied for prior EC before DEIAA Sonbhadra. DEIAA Sonbhadra granted

ECs by letters dated 23.10.2018 which cannot be said to be in contradiction to any law or legal procedure in as much as even vide judgment dated 13.09.2018, Tribunal neither set aside amendment notification dated 15.01.2016 nor stayed the same but only directed the Competent Authority i.e., MoEF&CC to bring Notification dated 15.01.2016 in consonance and accord with the directions contained in the judgment of Supreme Court in **Deepak Kumar vs. State of Haryana (supra)**. Later, in terms of OM dated 12.12.2018 issued by MoEF&CC, a joint meeting of SEIAA UP and State Expert Appraisal Committee (hereinafter referred to as '**SEAC**') was held on 05.02.2019 wherein a decision was taken that all mining cases of minor minerals in area of 0 to 5 hectares will be appraised by SEIAA UP for grant of EC. Neither in OM dated 12.12.2018 nor in the SEIAA UP and SEAC UP's decision dated 05.02.2019, it was held that prior ECs already granted by DEIAA would be illegal. In fact, ECs were granted to respondents 5 and 6 on 23.10.2018 in accordance with law as operating on that date i.e., EIA 2006 as amended from time to time including notification dated 15.01.2016.

29. The copy of minutes of joint meeting of SEIAA UP and SEAC UP dated 05.02.2019 is on record as annexure R-3 at page 241 which shows that initially the following resolution was passed:

***“Therefore, in compliance of MoEF&CC, GoI, OM dated 12/12/2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SELAA for Environmental Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) to process the application for grant of prior environmental clearance with immediate effect till further order.”***

30. Later, there was a change in the resolution in view of joint meeting dated 19.02.2019 and the above paragraph was substituted as under:

***“Therefore, in compliance of MoEF&CC, GoI, OM dated 12/12/2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environmental Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) to process the application for grant of prior environmental clearance with immediate effect till further order. It has also been decided that mining area from 05 ha to 25 ha earlier falling under category B-2 will be treated as category B-1 as per NGT order dated 13/09/2018 and MoEF&CC, Govt. of India O.M. dated 12/12/2018 and shall follow all the aspects of EIA including Public Hearing/Public Consultation etc.”***

31. Regarding delay in execution of lease deed, the intervening events have been explained by respondents 5 and 6 in paras 15 to 19 as under:

*“15. That one of the six mining leases, granted in favor of Neelkanth Mining, was registered on 12.12.2018 itself. However, pursuant to order dated 04.01.2019 passed by this Hon’ble Tribunal in Original Application No. 781 of 2018, titled as Amit Pandey vs State of U.P and Ors., wherein this Hon’ble Tribunal had directed that order dated 13.07.2018 passed in Original Application No. 429/2016, titled All India Kaimur People's Front vs State of Uttar Pradesh & Ors, be complied with, an order dated 05.02.2019 was passed by the District Magistrate, Sonbhadra, suspending the operation of the lease registered in favor of Neelkanth Mining and stating that the rest of the mining leases, including those of the Answering Respondents, shall not be given effect to [registered]. A report to this effect was also submitted by the Commissioner, Mirzapur, Uttar Pradesh to this Hon’ble Tribunal, in O.A. No. 781/2018. The said report was accepted by this Hon’ble Tribunal and O.A. No. 781/2018 was disposed of by order dated 25.03.2019.*

***16. That the premise behind the order dated 13.07.2018 passed by this Hon’ble Tribunal in O.A. No. 429/2016, which was subsequently followed by this Hon’ble Tribunal in O.A. No. 781/2018, was that mining leases, granted over land, which was covered under Notification issued under Section 4 of the Indian Forest Act, 1927, and in respect of which a Notification under Section 20 of the Indian Forest. Act has not been issued, shall***

stand cancelled.

17. That however, since this Hon'ble Tribunal had erred in not appreciating the fact that some tracts of land, including the land over which mining leases had been granted in favor of the Answering Respondents, were excluded from the purview of Section 4 Notification under the settlement proceedings, concluded in terms of the judgment passed by the Hon'ble Supreme Court in Writ Petition (Crl.) No. 1061 of 1982, titled *Banvasi Seva Ashram vs State of U.P. & Ors* (reported as (1986) 4 SCC 753], on the ground that the said lands were recorded as 'pahad' (uncultivable waste land belonging to the revenue department) at the time of issuance of the Notification under Section 4 and were not forest land, the **Answering Respondents, along with several other leaseholders, challenged the orders dated 13.07.2018 and 25.03.2019 passed by this Hon'ble Tribunal before the Hon'ble Supreme Court, with the lead matter being Civil Appeal No. 12202/2018 and the Civil Appeal filed by the Answering Respondents being Civil Appeal No. 5257/2019,**

18. That during the pendency of the Civil Appeals, the Hon'ble Supreme Court observed that the entire controversy, regarding what is forest land and what is not, has been created because of non-issuance of Notification under Section 20 of the Indian Forest Act, 1927 by the State of Uttar Pradesh since the last several years. Accordingly, the Hon'ble Supreme Court directed the State of Uttar Pradesh to issue a Notification under Section 20 of the Indian Forest Act in respect of the concerned area. **The Notification under Section 20 of the Indian Forest Act came to be issued by the State of Uttar Pradesh only on 15.06.2020, a fact which was noted by the Hon'ble Supreme Court in its order on 15.07.2020. After the issuance of Notification under Section 20 of the Indian Forest Act, it became categorically clear that the land, in respect of which mining leases were granted to the Answering Respondents, was not forest land.**

A true copy of order dated 05.06.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 12202/2018 is annexed and marked as ANNEXURE R-4.

A true copy of order dated 15.07.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 12202/2018 is annexed and marked as ANNEXURE R-5.

19. That it was only subsequent to the order dated 15.07.2020 passed by the Hon'ble Supreme Court, taking the Notification under Section 20 on record, that the decks were cleared for lifting of the

*embargo imposed by order dated 05.02.2019 passed by the District Magistrate, Sonbhadra, restraining the registration of the mining leases of the Answering Respondents. It was only after the completion of formalities and after receiving the go-ahead from the State Government that the mining leases of the Answering Respondents came to be registered on 05.10.2020 and 06.11.2020 respectively. It is pertinent to mention that in its judgment dated 28.10.2020, disposing of the Civil Appeals filed by the lease holders, including the Answering Respondents, the Hon'ble Supreme Court clearly noted that no fault could be attributed to the leaseholders for the cancellation/suspension of their mining leases on account of orders passed by this Hon'ble Tribunal."*

32. Challenge to ECs dated 23.10.2018 granted to respondents 5 and 6 by means of present OA has been seriously contested stating that if an EC has been wrongly granted, it can be challenged in an Appeal under Section 16(h) of NGT Act 2010 for which limitation is 30 days which is extendable by 60 days and no more and since period of limitation has expired and no Appeal has been filed, the present OA is not maintainable to challenge EC dated 23.10.2018 and liable to be dismissed.

33. However, on merits, it is said that ECs have been granted in accordance with law and procedure as was prevalent at the time when ECs were granted hence the same cannot be said to be vitiated on account of subsequent OM dated 12.12.2018.

34. Respondent 6 in particular has also stated in para 23 that it has already surrendered its mining lease vide letter dated 12.01.2022 to District Magistrate, Sonbhadra and the same is not in operation.

35. **Tribunal's Order dated 04.08.2022:** Matter was taken up by Tribunal on 04.08.2022 when it found from record that formal notices were not issued to respondents 1, 3 and 4 and directions were issued to serve notices upon the said respondents.

**Objections dated 04.08.2022 filed by applicant to Joint Committee Report dated 30.06.2022:**

36. By e-mail dated 04.08.2022 at 11:26 am, office of Tribunal received objections filed by applicant to Joint Committee Report dated 30.06.2022.

The objections are:

- (i) No explanation in the Report as to why a cluster block of 16-17 hectare divided into 4 homogenous parts (4-khands) of 4 hectares and more than 4 hectares?
- Leases in question were granted in light of UPMMC Rules 2021, it is submitted here proceedings of leases in question started on 01.06.2018 and completed on 05.10.2020 and 06.11.2020 during this 2021, rules were not in existence and 2021, rules came into force on 29.10.2021 only.
  - As per UPMMC Rules 2021, mining lease deeds should be executed within a period of one month from the dated of grant of EC, in the present case, mining lease deeds have been executed around after two years from the date of grant of EC.
- (ii) No Explanation in the Report as to why mining lease deeds were executed around after two years on 05.10.2020 and 06.11.2020 from the date of grant of EC on 23.10.2018?
- As contented in Report dated 30.06.2022, khand-1 (4.970 hectares); khand-2 (4.000 hectares); khand-3 (4.000 hectares) and khand-4 (4.000 hectares) are parts of Gata No. 7536 Ga. Mi (area 42.1520 hectare) is

absolutely wrong, hence, denied in reality all these above mentioned 4 khands are part of 7536 Gha land of Reserved Forest (60.1220 hectare).

- Gata No. 7536 is a vast area of 106.396 hectare consist of Gata No. 7536 Gha Reserve Forest (60.1220 hectare) and Gata No. 7536 Ga Mi Pahad (42.1520 hectare) as per revenue records which were not demarcated on map on the date of publication of advertisement (01.06.2018), so, taking advantage of it, State Authorities modified Gata No. 7536 Gha as Gata No. 7536 Ga Mi of their own for the convenience of leasing out the said Gata No. 7536 Gha (reserved forest) as Gata No. 7536 Ga Mi (pahad) for illegal mining of minor minerals, meaning thereby, **all leased out 4 Khands were Reserved Forest**, further as on today, out of entire area of 106.369 hectare of 7536, only around 16-17 hectare land (subject matter of present case) is remaining where minor minerals are available otherwise the rest of area of Gata No. 7536 are trench of 60-80 meters from surface and no surviving forest (60.1220 hectare) present on spot due to continuous illegal mining in past permitted by State Authorities as per their convenience.
- It is apposite to refer a letter dated 08.09.2014 of Chief Forest Conservator, Mirzapur Region, Mirzapur addressing to District Magistrate, Sonbhadra where a great concern raised with regard to demarcation of forest

area in Gata No. 7536, in absence of which lease holders carrying out illegal mining on forest land (60.122 hectare) by declaring it their own lease area for mining.

- (iii) In view of the contentions made above **a demarcated map of Gata No. 7536 showing Gata No. 7536 Ga Mi and Gata No. 7536 Gha should be called upon.**

37. In OA, it has been alleged that mining is being carried out outside the mining area but nothing has been stated in this regard in Report dated 30.06.2022.

**Reply/Response dated 31.08.2022 by SEIAA UP filed on 01.09.2022:**

38. SEIAA UP has filed its reply/response dated 31.08.2022 on 01.09.2022. It is said that in view of OM dated 12.12.2018, in the Joint Committee meeting of SEIAA UP and SEAC UP, decision has been taken on 05.02.2019 for appraisal of EC proposals for grant of mining leases in area from 0 to 5 hectares by SEIAA UP for which purpose, the concerned project proponents will apply to SEIAA UP in Form I alongwith requisite supporting documents online and the above proposals which earlier were placed in category B2, will now be treated as Category B1. **In para 14, it is said that on 23.10.2018, DEIAA Sonbhadra was legally working and EC issued to respondents 5 and 6 is valid and in accordance with law.**

**Rejoinder Reply dated 01.09.2022 by applicant filed on 02.09.2022:**

39. Applicant also filed rejoinder reply dated 01.09.2022 in response to the reply of respondents 5 and 6 and has virtually reiterated what has been stated in OA.

40. However, it is further said that Letter of Intent dated 20.08.2018 in respect of Gata no. 7536 Ga was challenged in **OA 781/2018, Amit Pandey vs. State of UP & Others** wherein respondents 5 and 6 were also parties impleaded as respondents 6 and 8 respectively. Therein, a report was submitted by Chief Conservator of Forest, Vindiyachal, Region Mirzapur and Commissioner, Vindiyachal Division Mirzapur wherein it was observed that any mining in the said area would be contrary to Tribunal's order dated 13.07.2018 passed in **OA 429/2016, All India Kaimur People's Front vs. State of U.P. & Others**. However, Report of Commissioner and Chief Conservator of Forest dated 31.12.2018 shows that till that date only one lease agreement was executed with M/s. Neel kant Mining. In respect of others, no lease agreement was executed. Therefore, there was no scope of any mining activities contrary to order of Tribunal or any Court on the part of respondents 5 and 6.

**Reply dated 07.09.2022 filed by applicant to Joint Committee Report dated 30.06.2022:**

41. Applicant filed a reply dated 07.09.2022 to Joint Committee Report dated 30.06.2022, stating that area of Gata no. 7536 Ga is part of Reserved Forest land notified under Section 4 of Indian Forest Act, 1927 and for this purpose has relied on the following orders passed by various orders passed by various Courts/Tribunal:

- “(i) 2016 SCC OnLine NGT 1187 (T.N. Godavarman Thirumalpad vs. Union of India & Ors.);*
- (ii) 2018 SCC OnLine NGT 1514 (All India Kaimur Peoples Front vs. State of U.P. & Ors.);*
- (iii) Final order dated 25.03.2019 in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.) passed by this Hon'ble Tribunal;*
- (iv) (2021) 1 SCC 93 (Dharmendra Kumar Singh vs. State of U.P. & Ors.);*

(v) (2012) 4 SCC 629 Deepak Kumar Vs. State of Haryana & Ors.;

(vi) Final order dated 13.09.2018 in O.A. No. 186/2016 (Satendra Pandey vs. MoEF&CC & Ors.) passed by this Hon'ble Tribunal;"

**Reply dated 07.09.2022 filed by Applicant to SEIAA's Reply:**

42. Applicant has referred to Compliance Report dated 02.08.2019 submitted by Joint Committee comprising Member SEAC and Regional Officer, UPPCB, Sonbhadra. Paras VII, VIII and IX whereof read as under:

***"VII. The Director, Directorate Environment and Director, Geology and Mining by their orders dated 14-02-2019 requested all the District Magistrate to act as per decision taken by joint committee of SEIAA and SEAC on 05/02/2019 as follows:***

*"In compliance of MoEF & CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environment Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF & CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) to process the application for grant of prior environment clearance with immediate effect till further order."*

***VIII. In view of order of Hon'ble NGT dated 24/05/2019 this committee is of opinion that all EC's issued by DEIAA after Hon'ble NGT order dated 13/09/2018 between the lease area 0-5 ha should take fresh EC from SEIAA as per norms.***

*IX. All Mining activity remains suspended. So, in this period procedure may be adopted for seeking fresh EC of the areas between 0-5 ha as per NGT orders in this regard necessary order should be disbursed immediately to obey the procedure as per NGT order dated 13.09.2018."*

43. Applicant has also relied on judgment dated 17.05.2022 passed by Tribunal in **Appeal No. 103/2017 (WZ), Kesharsinh Parmar vs. DEIAA & Ors.**, wherein ECs for mining leases granted in District Banaskantha

(State of Gujarat) were challenged. The said judgment refers to a decision of MoEF&CC abrogating the system of grant of EC by DEIAA. The Appeals were allowed by issuing a direction that mining may be allowed only after requisite valid EC by SEIAA Gujarat is granted.

44. Respondents 5 and 6 submitted written note dated 10.09.2022 after judgment was reserved on the following two aspects:

- (a) Whether the recommendation/opinion of the Committee comprising RO, UPPCB, Sonbhadra and Member, SEAC contained in the Report submitted before Tribunal in **OA 474/2019 (supra)** shall be applicable in the instant case?
- (b) Whether OM dated 12.12.2018 issued by MoEF&CC by which MoEF&CC directed regime of grant of EC under EIA Amendment Notification dated 15.01.2016 to be amended in accordance with the directions passed by Tribunal in **Satendra Pandey vs. MoEF&CC & Another (supra)** shall be applicable with retrospective effect?

45. On the question (a), respondent 5 and 6 have submitted that opinion expressed in the Report reflects only the opinion of the Committee and not binding on Tribunal particularly in different matters and did not have course of law. Committee was not mindful of the situation of large scale and long term implications of its opinion where across the country during 13.09.2018 to 12.12.2018, ECs were granted in thousands of number and proponents granted EC had no occasion to contest the matter. That is why the opinion of Committee submitted in **OA 474/2019 (supra)** was not given effect to as it would have resulted in turning back the clock and opening a pandora's box.

46. On the second question, respondents 5 and 6 have submitted that no such retrospective effect has been given in OM particularly when OM on its own is not retrospective in nature and reliance was placed on Supreme Court's judgment in **Assistant Excise Commissioner, Kottayam & Ors. vs. Esthappan Cherian & Anr., (2021) 10 SCC 210** (Paras 16, 17 and 22); **Commissioner of Income Tax (Centrl-I), New Delhi vs. Vatika Township Private Limited (2015) 1 SCC 1** (Paras 28 and 29); **Union of India & Anr. vs. Indusind Bank Limited & Anr., (2016) 9 SCC 720** (Paras 18 to 24) and **The Income Tax Officer, Alleppy vs. M.C. Ponnose & Ors. (1969) 2 SCC 351** (Para 5).

47. Initially, arguments were heard and order was reserved by a Bench comprising Hon'ble Mr. Justice Arun Kumar Tyagi, Judicial Member and Hon'ble Dr. Afroz Ahmad, Expert Member on 08.09.2022 but later, the matter was directed to be listed for further hearing by order dated 06.12.2022, observing that Tribunal found that some material documents have not been furnished and material aspects have not been referred to specifically the arguments necessary for adjudication of the case. Tribunal found that in **Satendra Pandey vs. MoEF&CC & Another (supra)**, vide order dated 13.09.2018, Tribunal directed MoEF&CC to take steps to revise procedure laid down in EIA Amendment Notification dated 15.01.2016 in term of the observations made in the judgment dated 13.09.2018 but no response was filed by MoEF&CC in respect of such revision of notification dated 15.01.2016. It was also observed that though the decision was taken by SEIAA UP and SEAC UP on 05.02.2019 to reappraise all the mining leases granted by DEIAA but as per statement of respondents 5 and 6, thousands of ECs were granted in State of UP and other parts of the country by DEIAA in accordance with EIA Amendment

notification dated 15.01.2016 and in respect of such ECs, response from MoEF&CC and SEIAA UP was essential for just and fair adjudication.

48. **Tribunal's Order dated 07.12.2022:** Again the matter was taken up by Tribunal on 07.12.2022 when Tribunal noted that though OM dated 12.12.2018 was issued for compliance of Tribunal's judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** but MoEF&CC was also required to revise Notification dated 15.01.2016 in the light of the observations and directions in **Satendra Pandey vs. MoEF&CC & Another (supra)** and such compliance could have been possible only by exercise of Statutory powers issuing a notification and not OM which is issued in exercise of administrative powers.

49. Tribunal also observed that mining leases granted by DEIAA in view of EIA Amendment Notification dated 15.01.2016 are still continuing despite Tribunal's judgment passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** dated 13.09.2018 and issue of OM dated 12.12.2018 by MoEF&CC since without re-appraisal by SEIAA, the mining leases are continuing and only such mining leases may be continued which have been re-appraised and ECs are granted by SEIAA. MoEF&CC is supposed to take steps for compliance by collecting information in which ECs granted by DEIAA are still operating and had not expired and direction should be issued for re-appraisal of such ECs by SEIAA.

50. In view thereof, response of MoEF&CC was necessary to show as to in what manner, it has complied with directions contained in Tribunal's judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**.

**Counter Affidavit of MoEF&CC dated 31.01.2023 filed on 04.02.2023:**

51. MoEF&CC i.e., respondent 1, after referring the judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** has said that it filed **Review Application No. 47/2017 in OA 200/2016, Union of India vs. Rajiv Suri** against the final judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**. This Review Application was rejected vide order dated 21.12.2018. Tribunal also passed an order dated 11.12.2018 in **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India** and said in paras 6 and 7 as under:

**“6. .... The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.**

**7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.”**

52. MoEF&CC, in compliance of Tribunal’s judgment dated 13.09.2018, issued OM dated 12.12.2018 addressed to Chief Secretary of all the States and Union Territories, requesting them to comply the said judgment. Further, Ministry has preferred **Civil Appeals No. 3799-3800 of 2019, Union of India vs. Rajiv Suri**, which are pending before Supreme Court against Tribunal’s judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** and 11.12.2018 passed in **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India**.

53. Further, Ministry vide Notification dated 20.04.2022 published in Gazette of India (Extraordinary), of the same date, has made amendment

in EIA 2006 delegating power to grant EC to SEIAA in respect of all minor mineral mining projects, irrespective of mine lease area and for less than 250 hectares mining lease area in respect of major mineral leases other than coal. EIA Notification dated 20.04.2022 was challenged along with another notification dated 09.05.2022 in **OA 461/2022, Social Action for Forest & Environment (SAFE) vs. Union of India**. While deciding the matter vide judgment dated 07.12.2022, Tribunal observed that object of appraisal of impact of a project on environment and grant of EC is to give effect to 'Precautionary Principle' of environmental law, which is part of sustainable development. Such appraisal has to be meaningful. Environmental regulation mechanism for conducting such appraisal must be effective. Authority/agency conducting such appraisal must have requisite capacity else large-scale decentralization may defeat the object of sustainable development and appraisal may be farce. There is large scale inadequacy and capacity amongst the monitoring mechanism agencies including SEIAA like inadequate staff, inadequate database etc., hence there is a dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs. With increasing development, absence of adequate monitoring mechanism would make it difficult to check violation of environmental laws and norms and would defeat 'precautionary principle'. The meeting be held between Secretary, MoEF&CC and Chairman, CPCB with such other experts as may be found necessary to establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects. Tribunal, however did not annul notification but found it appropriate to direct MoEF&CC to seriously address the concern raised for ensuring effective appraisal before grant of EC if the regime in question is

to be operationalized. MoEF&CC may constitute a Committee to formulate guidelines/safeguards to be followed by the SEIAAs. Steps be taken to meet the inadequacy of man power and other infrastructure and with the above directions, **OA 461/2022 (supra)** was disposed of.

54. Since there was no Compliance Report submitted with regard to judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, Tribunal in its order dated 09.02.2023 observed that mere filing of an Appeal cannot be construed as stay of the orders appealed against hence MoEF&CC sought time which was granted to file additional affidavit on the question of compliance with order dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**.

**Additional Affidavit dated 11.05.2023 filed vide e-mail dated 12.05.2023 by MoEF&CC:**

55. It is said that in view of Appeal filed before Supreme Court which is pending, Ministry has yet to consider the direction regarding revision of notification dated 15.01.2016. Further, **pursuant to OM dated 12.12.2018, DIEAA is not functional and does not exist as on date and its work is being looked after by SEIAA w.e.f. 13.09.2018.**

56. An OM was issued by Ministry on **15.12.2021** whereby it has been directed that in view of Tribunal's judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, henceforth for all category "B2" projects (other than those cover in Schedule 8 of EIA 2006), the project proponents shall apply in Form-2 on Parivesh Portal along with requisite documents. On selection of Category as "B2", the fields in Form-2 which may not be relevant for such projects (EIA Report etc.) shall automatically get disabled. **This OM was to modify the earlier OM dated**

**20.04.2018** whereby it was directed that all projects other than projects covered under Schedule 8 of EIA 2006 and mining of minor minerals upto 05 hectares, which are categorised as B2 shall apply for EC as per the provision of Form-2.

57. With regard to directions for revised procedure to incorporate annual rate of replenishment and timeframe for replenishment after mining closure in an area, MoEF&CC has already formulated the guidelines i.e., Enforcement and Monitoring Guidelines for Sand Mining (hereinafter referred to as '**EMGSM-2020**').

58. In compliance to Tribunal's order dated 07.12.2022, in the present matter, MoEF&CC has issued **OM dated 28.04.2023**, clarifying that all valid ECs issued by DEIAA between 15.01.2016 to 13.09.2018 shall be appraised through SEAC/SEIAA. Giving information in respect of mining leases granted by SEIAA, where the lease period had not expired, MoEF&CC furnished following chart giving status as on 01.05.2023 as under:

**AS ON – 01.05.2023**

<b>Total no. of Districts</b>	<b>Information received from Districts</b>	<b>Total valid ECs granted by DEIAA 15.01.2016 to 13.09.2018</b>	<b>Status covered</b>
749	108	4798	Assam (Partially), Goa, Madhya Pradesh, Meghalaya, Uttarakhand (Partially),

			<i>Sikkim, Meghalaya. Note:- No EC granted by DEIAA in Manipur, Tripura, Chandigarh (U.T.), Puducherry.</i>
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59. **Tribunal's Order dated 15.05.2023:** When the matter was taken up on 15.05.2023 and Additional Affidavit of MoEF&CC filed by e-mail dated 12.04.2023 was considered, it was enquired as to whether during the period mining leases are to be re-appraised through SEAC/SEIAA whether mining will remain suspended or will continue and thereupon, Learned Counsel for MoEF&CC sought time which was granted.

**Compliance Report dated 19.05.2023 by SEIAA UP filed on 20.05.2023:**

60. The Report gives information about ECs granted by DEIAAs in U.P. from 15.01.2016 to 13.09.2018 wherein period of lease has not expired. Information relates to 17 districts and total number of such ECs run in several hundreds.

61. **Tribunal's Order dated 22.05.2023:** When the matter was taken up on 22.05.2023, statement was made by Learned Counsel appearing for MoEF&CC after instruction that during the period, mining leases are to be re-appraised through SEAC/SEIAA, the mining will continue. He was granted time to file affidavit on this aspect.

**Additional Affidavit filed on 25.05.2023 by MoEF&CC:**

62. It is sated that ECs granted from 15.01.2016 to 13.09.2018 will continue to be valid for one year and in this regard, an **OM dated 28.04.2023** has been issued subject to the compliance of the conditions mentioned therein. Copy of OM dated 28.04.2023 is at page 771 and para 4, 5 and 6 thereof reads as under:

*“4. The matter has been examined in the Ministry and accordingly it has been decided that **all valid ECs issued by DEIAA shall be reappraised through SEAC/SEIAA in compliance to the order of the Hon’ble NGT in O.A.142 of 2022. In view of above, it is hereby directed that all concerned SEACs shall re-appraise the ECs issued by DEIAAS between 15.01.2016 and 13.09.2018 (including both dates) and all fresh ECs in this regard shall be granted only by SEIAAs based on such appraisal. The exercise shall be completed within a time period of one year from the date of issue of this OM. DEIAAs shall transfer all such files where ECs have been granted to concerned SEIAA within a time period of one month from issue of this OM. The State Government may assess the existing workload of SEAC(s) and accordingly, send proposals for constitution of additional SEAC for a specified period to deal with such additional workload.***

*5. Further, in order to have a uniform approach across the country for such appraisal SEIAA shall scrutiny and appraise the proposals based on the checklist provided below:*

- i. Completely filled up Form-2 as per Ministry’s OM dated 15.12.2021*
- ii. Pre-Feasibility Report (PFR) as per MoEF Guidelines dated 30.12.2010.*
- iii. Valid Mine Lease Document*
- iv. Approved Mining Plan from the concerned Authorities.*
- v. District Survey Report approved by SEIAA as per Ministry’s Notification 5.0 3611(E) dated 25.07.2018.*

- vi. *Implementation of “Sustainable Sand Mining Management Guidelines, 2016” and “Enforcement & Monitoring Guidelines for Sand Mining, 2020” in case of sand mining proposals.*
- vii. *Details of forest land involved in the mine lease area and availability of Stage-I/II Forest Clearance (FC) for diversion of forest land for non-forestry purpose.*
- viii. *Details of Eco Sensitive Zones (ESZ) and Eco Sensitive Areas (ESAs), National Parks, Wildlife Sanctuary, Coastal Zone, Water bodies and other ecological sensitive areas within/in the vicinity of the mine lease area and if so details of NOC/Clearances obtained.*
- ix. *If any Schedule-I species is present in the study area, proof of submission of Wildlife Conservation Plan to the Forest Department*
- x. *Cluster Certificate from State Mines and Geology Department.*
- xi. *Compliance of Hon’ble Supreme Court judgment dated 02.08.2017 passed in Common Cause vs Union of India Writ Petition (C) 114 of 2014.*
- xii. *Proposal of re-grassing the mining area and any other area which may have been disturbed due to their mining activities and restore the land to a condition which is fit for growth of fodder, flora, fauna etc. in compliance to the direction dated 8<sup>th</sup> January, 2020 of Hon’ble Supreme Court in Writ Petition(s) Civil No. 114/2014, Common Cause vs Union of India & Ors.”*

**Additional Affidavit dated 29.05.2023 by Applicant:**

63. Applicant has filed Additional Affidavit dated 29.05.2023 summarising his submissions and we may refer the same during the course of the consideration of the matter on merits at the relevant time.

64. **Tribunal’s Order dated 04.12.2023:** Tribunal by the said order, granted time to MoEF&CC to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 before the date when the said order was conveyed to all concerned parties vide OM dated 12.12.2018.

**Additional Affidavit dated 03.01.2024 filed by MoEF&CC:**

65. It is said that MoEF&CC issued OM dated 12.12.2018 forwarding Tribunal's judgment dated 13.09.2018 to all the concerned authorities for compliance. Vide OM dated 28.04.2023, MoEF&CC granted validity for one year to mining leases wherein ECs were granted by DEIAA from 15.01.2016 to 13.09.2018. A clarification dated 03.11.2023 clarifying that ECs granted by DEIAA which are valid as on date shall continue to be valid for one year from the date of issue of OM dated 28.04.2023 unless validity of EC granted by DEIAA has lapsed prior to 28.04.2024 or until SEIAA has invalidated EC granted by DEIAA after carrying out re-appraisal whichever is earlier. Paragraphs 2 and 3 of the above OM dated 03.11.2023 are reproduced as under:

*"2. In this regard, the Ministry has filed an affidavit before the Hon'ble NGT on 25.05.2023 in OA No. 142 of 2022 in the matter of Jayant Kumar Vs. MoEFCC & Ors., stating that **all valid ECs granted by DEIAA from 15.01.2016 to 13.09.2018, will continue to be valid for one year from the date of issue of the Ministry's OM dated 28.04.2023 subject to the compliance of the conditions prescribed therein.***

*3. In view of the above, it is further clarified that the **ECs granted by DEIAA which are valid as on date shall continue to be valid for one year from the date of issue of OM dated 28.4.2023 unless the validity of the EC granted by DEIAA has lapsed prior to 28.4.2024 or until SEIAA has invalidated the EC granted by DEIAA after carrying out re-appraisal as outlined above, whichever is earlier.***"

**Additional Affidavit dated 12.01.2024 filed by Respondents 5 and 6 by e-mail on 13.01.2024:**

66. Through this affidavit, **respondents 5 has brought on record copy of EC dated 11.01.2024 (page 1011) granted by SEIAA UP** for Gitti, Boulder, (Dolo Stone) mining projects at gata no. 7536Ga, Mi (khand no. 1), village- Billi Markundi, Tehsil-Robertsganj, District-Sonbhadra.

67. It is also said that respondent 6 has surrendered his mining lease vide letter dated 12.01.2022 and even much before i.e., 02.11.2021, no mining has taken place in the lease area and no MM-11 form has been issued by Mining Department.

**Report dated 16.01.2024 by District Magistrate, Sonebhadra filed on 17.01.2024:**

68. The same relates to the proceedings of surrendering of mining lease by respondent 6 and it is said that since all the requisite documents have not been submitted, District Magistrate has not granted permission for surrender but this is also mentioned that survey was conducted on 22.12.2023 and it was found that no mining was going on at the site. Department's record also show that no MM-11 form was generated from 02.11.2021.

**Additional Affidavit dated 17.04.2024 of MoEF&CC filed vide e-mail dated 18.04.2024:**

69. It is said that after issue of OM dated 28.04.2023 and clarification OM dated 03.11.2023, Ministry vide **OM dated 15.01.2024** issued Standard Operating Procedure for dealing mining proposals under OM dated 28.04.2023. Further, Ministry is in receipt of representation requesting for extension of time period provided by OM dated 28.04.2023. Consequently, **OM dated 15.03.2024** (Page/1041) has been issued and time period has been extended by six months i.e., 27.10.2024.

70. **Tribunal's Order dated 18.04.2024:** On 18.04.2024, a detailed order was uploaded by Tribunal, wherein after giving the entire historical backdrop of the proceedings in this OA, it was observed that mining leases wherein ECs were granted by DEIAA, are still continuing despite judgment

dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** without any re-appraisal by SEIAA which is not proper. MoEF&CC has taken a stand that all ECs granted by DEIAA between 15.01.2016 to 13.09.2018 (both inclusive) shall be re-appraised by SEIAA and the said ECs will continue to be valid for a period of one year, meaning thereby, the mining will continue during such appraisal.

71. In the present case, however, EC was granted on 23.10.2018 and in view of the stand taken by MoEF&CC vide e-mail dated 03.01.2024, such EC will continue unless period of EC lapse or SEIAA invalidate the EC by declining to grant it after re-appraisal.

72. Tribunal thus issued a direction in para 33 of the order to MoEF&CC to issue OM prohibiting continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA. CPCB was also issued direction in para 34 as under:

*“34. CPCB is directed (a) to obtain and compile information regarding (i) mining leases executed on the basis of ECs granted by DEIAA from 15.01.2016 to 13.09.2018 all over India and (ii) mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 all over India from the concerned SPCBs and UTPCCS within one week and (b) direct SPCBS and UTPCC (i) to send status report in compiled tabulated form regarding reappraisal by SEIAA of all the mining leases executed on the basis of ECs granted by DEIAA from 15.01.2016 to 13.09.2018 all over India within two weeks and (ii) to revoke consent and issue closure orders in respect of mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA and send compliance report in respect thereof to CPCB within two weeks.”*

73. A request of applicant for staying mining operation by respondent 5 was declined by recording the stand of respondent 5 that his mining lease has been re-apprised by SEIAA UP and EC has been granted on 11.01.2024. So far as respondent 6 is concerned, it had already surrendered its mining lease vide letter dated 12.01.2022. Tribunal held that in view of EC granted to respondent 5, it is entitled to continue with the mining in terms thereof. Tribunal also formulated a question, now surviving is, about “validity of mining leases executed in favour of respondents 5 and 6 on the basis of EC granted by DEIAA after 13.09.2018 and liability of respondents 5 and 6 to pay environmental compensation for past violation, if any”.

**Progress Report dated 20.05.2024 of CPCB pursuant to Tribunal's Order dated 19.01.2024:**

74. This affidavit has been filed wherein CPCB has referred to the various OMs issued by MoEF&CC i.e., OMs dated 28.04.2023, 03.11.2023, 15.01.2024 and 15.03.2024. It is said that for compilation of information PAN India with regard to ECs granted by DEIAA, directions have been issued to various authorities in all the States/UTs but response has been received only from Mizoram State PCB, Chandigarh State PCC, Lakshadweep State PCC and Puducherry State PCC stating that no ECs were issued by DEIAAs thereat. CPCB is taking follow-up action.

75. The failure on the part of CPCB in providing PAN India information about ECs granted by DEIAA was not found relevant to deter this Tribunal from proceeding ahead to decide this OA on merits since appropriate orders could have been passed in respect to such ECs in the light of the discussion on merits, hence OA was heard finally on 22.05.2024 and

judgment was reserved. However, accepting the request of Learned Counsel appearing for the parties, they are given opportunity to file Written Submissions, if any.

76. It was argued on behalf of applicant that in **Satendra Pandey vs. MoEF&CC & Another (supra)**, this Tribunal declared the process of grant of EC by DEIAA to be illegal and partly quashed amendment Notification dated 15.01.2016. In view of the above judgment, DEIAA ceased to have any legal authority or jurisdiction to grant any EC on and after 13.09.2018. EC, in the present case, has been granted by DEIAA on 23.10.2018 to respondents 5 and 6 which is patently illegal and it would result in rendering the entire mining operations carried out by respondents 5 and 6 pursuant to ECs dated 23.10.2018, illegal and they are liable to be penalised for the same by initiation of appropriate proceedings under Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**') and also to pay environmental compensation for illegal mining.

77. Per contra, Learned Senior Counsel Shri Pinaki Misra appearing for respondents 5 and 6 contended that in **Satendra Pandey vs. MoEF&CC & Another (supra)**, Tribunal found the procedure of grant of EC by DEIAA not consistent with Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)** but did not declare any part of the Notification to be illegal and struck down the same. Instead, Tribunal found it appropriate to direct MoEF&CC to re-visit the amendment Notification dated 15.01.2016 and make necessary changes so as to bring it in conformity with Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)**. In that view of the matter, so long as, necessary

amendment is not carried out by MoEF&CC as per directions of this Tribunal in **Satendra Pandey vs. MoEF&CC & Another (supra)**, DEIAA cannot be said to be deprived of any jurisdiction of granting ECs since law as stood at the relevant time, empowered DEIAA to grant EC and, therefore, ECs granted to respondents 5 and 6 on 23.10.2018 cannot be said to be per se illegal and hence, mining activities carried out by respondents 5 and 6, pursuant to the said ECs also cannot be said to be illegal.

78. It is further contended that later on, EC granted to respondent 5 has been appraised by SEIAA UP and EC has been granted on 11.01.2024 hence, respondent 5 is entitled to continue with mining operations in the light of the said EC dated 11.01.2024.

79. So far as respondent 6 is concerned, it is contended that it has already surrendered its mining lease vide letter dated 12.01.2022 and has not carried out any mining since thereafter. Therefore, no further order is required to be passed in respect to respondent 6.

**Additional Affidavit dated 21.05.2024 filed by MoEF&CC (Respondent 1):**

80. This Affidavit was filed in reference to Tribunal's order dated 18.04.2024, whereby a direction was given in para 33 that MoEF&CC would issue OM prohibiting continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA.

81. Pursuant to the above direction, MoEF&CC stated that OM dated 07.05.2024 was issued to the effect that continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 is prohibited with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been re-appraised and found valid by SEIAA or fresh ECs have been granted by SEIAA. Copy of OM dated 07.05.2024 has been placed on record as annexure R-1/1 at page 1118.

82. Applicant, vide email dated 27.05.2024 has filed a copy of Gazette Notification dated 15.06.2020 which is at page 1121. This is copy of the Notification issued by State of UP, Department of Environment, Forest and Climate Change under Section 20 of Indian Forest Act, 1927 declaring 819.785 hectares of land detailed in appendix A as "Reserve Forest".

**Written Submissions dated 22.05.2024 filed by Applicant:**

83. It is said that OA has been filed raising grievance regarding grant of mining leases to respondents 5 and 6 at Billi Markundi, District-Sonbhadra, Gata no. 7536 Ga Mi (khand-1) area - 4.970 hectares and Gata no. 7536 Ga Mi (khand-3), area - 4.000 hectares by breaking homogeneous block deliberately into smaller blocks less than 05 hectares to enable issue of EC granted by DEIAA which was actually issued to respondents 5 and 6 on 23.10.2018 by DEIAA in violation of Supreme Court's judgment in ***Deepak Kumar vs. State of Haryana (supra)***. Applicant has sought relief of cancellation of ECs dated 23.10.2018 and cancellation of mining leases dated 05.10.2020 and 06.11.2020 granted to respondents 5 and 6 respectively, re-appraisal of ECs by SEIAA and recovery of environmental compensation from respondents 5 and 6.

84. Referring to Report dated 30.06.2022, applicant has said that Committee found availability of minor mineral on survey in Gata No. 7536. This fact is also admitted that homogeneous blocks deliberately were broken into four khands comprising less than 05 hectares and ECs were issued to respondents 5 and 6 on 23.10.2018 by DEIAA. Report, however, did not mention any reason for delay of two years in registration of mining lease deeds and mining carried out illegally outside the leases by respondents 5 and 6 and that too, in an unscientific manner. Joint Committee Report dated 30.06.2022 also does not deal with SEIAA UP's decision dated 05.02.2019 that all mining cases of minor mineral having 0 to 5 hectares area will be appraised by SEIAA UP and this decision was appraised to all District Magistrates vide order dated 14.02.2019 issued by Director, Directorate Environment and Director, Geology and Mining issuing separate letters of same date. Report also wrongly mentions that EC granted by DEIAA on 23.10.2018 were valid and this observation is not consistent with Tribunal's judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**. State of UP issued a letter dated 25.10.2018 directing that DEIAA may issue ECs in accordance with amendment notification dated 15.01.2016 but this order of State Government was not approved by this Tribunal in its order dated 11.12.2018 passed in **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India**.

**Tribunal's Order dated 11.12.2015 passed in Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India:**

85. Execution Application was filed raising a grievance that judgment dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)** has not been complied with and MoEF&CC has failed to issue appropriate

notification as per the directions given by Tribunal. Instead, State of UP has issued a letter dated 25.10.2018 and State of Kerala has issued a letter dated 29.10.2018, directing grant of ECs in accordance with the Notification dated 15.01.2016 which is in violation of judgment passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**. Tribunal vide order dated 11.12.2018 directed MoEF&CC to comply with judgment dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)** forthwith and furnish a compliance Report on or before 31.12.2018 failing which coercive measures may be taken. It also made clear that till a fresh Notification is issued by MoEF&CC, Notification dated 15.01.2016 will not be acted upon. In para 6 of order, Tribunal refers to letter issued by State of Kerala on 29.10.2018 that since the Notification dated 15.01.2016 has not been stayed, therefore, ECs can be granted as per the said notification dated 15.01.2016 and said that this interpretation is contrary to the order of Tribunal whereby Notification dated 15.01.2016 was disapproved and Tribunal required the same to be revised. It was clearly said in para 6 of the judgment that direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment. Tribunal suspended the said direction till fresh notification issued by MoEF&CC. Paras 6 and 7 of the order dated 11.12.2018 are reproduced as under:

*“6. Since our attention has been drawn to letter dated 29.10.2018 issued by the State Environment Impact Assessment Authority, Kerala addressed to the District Environment Impact Assessment Authorities of various districts in Kerala that Notification dated 15.01.2016 having not being stayed, the same be followed. This **interpretation is clearly contrary to the order of this Tribunal disapproving the Notification dated 15.01.2016 and requiring the same to be revised. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.**”*

7. *This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.*”

86. The arguments stated in Written Statement are virtually repetitive but since Written Submissions have been filed, in order to avoid any complaint that particular arguments have been considered, we find it appropriate to reproduce the relevant submissions made in paras 6 to 28 as under:

- “6. *EIA notification dated 14.09.2006 amended by notification dated 15.01.2016 by which EC for B-2 category (0 ha. – 25 ha.) authority given to DEAC/DEIAA, whereby this Hon’ble Tribunal vide order dated 13.09.2018 in Satendra Pandey’s case directed EC be granted by SEAC/SEIAA instead of DEAC/DEIAA for area 0 to 5 ha. as well as directed MoEF&CC to revise Notification dt. 15.01.2016. This Hon’ble Tribunal vide order dt. 11.12.2018 has suspended the activities of issuing EC by DEAC/DEIAA as per Notification dt. 15.01.2016. MoEF&CC in compliance of order dt. 13.09.2018 issued O.M. dt. 12.12.2018 and in compliance of O.M. dt. 12.12.2018 U.P.-SEAC/SEIAA decided on 05.02.2019 that minor mineral having 0-5 ha. area will be appraised by UP-SEAC/SEIAA for EC for all concerned project proponents and this decision was addressed to all District Magistrates of State of U.P. vide order/letter dt. 14.02.2019.*
7. *Let us assume Environmental Clearance dated 23.10.2018 granted to Respondent Nos. 5 & 6 in conformity with legal regime existing on that date. **That regime of DEIAA ended on 12.12.2018, more specifically for State of Uttar Pradesh regime of DEIAA ended on 05.02.2019**, hardly matters in the circumstances of the present case. The crucial point to be noted here is till 05.02.2019/14.02.2019 Mining Lease Deeds of Respondent Nos. 5 & 6 neither executed and registered nor mining was made operational, therefore validity of Environmental Clearances dated 23.10.2018 issued by DEIAA expired and regime of SEIAA begins for future leases, hence Respondent Nos. 5 & 6 required to obtain Environmental Clearances as per decision of SEIAA/SEAC dated 05.02.2019 thereafter which made for all concerned project proponents.*
8. *That Mining Lease Deeds executed and registered on*

05.10.2020 & 06.11.2020 almost after 1 year 8 months in favour of Respondent Nos. 5 & 6 respectively through District Magistrate on the basis of Environmental Clearances dated 23.10.2018 issued by DEIAA and mining made operational, therefore, it is submitted here that during this span of duration of 1 year 8 months which seems to be ample time, neither Respondent Nos. 5 & 6 acted upon for issuance of EC from SEIAA as per decision dated 05.02.2019 of SEIAA/SEAC made for all concerned project proponents nor District Magistrate verified the details of Environmental Clearance mentioned in para 20 of Lease Deeds despite knowledge of decision of SEIAA/SEAC dated 05.02.2019 before execution of Mining Lease Deeds whether Environmental Clearances have been obtained from SEIAA or not.

9. Though Mining Lease Deeds dt. 05.10.2020 & 06.11.2020 in its Para 20 (pages 119 & 132) contains details of invalid ECs issued by DEIAA ended long back and regime of SEIAA begins w.e.f. 05.02.2019, therefore respondent nos. 5 & 6 could have obtained valid ECs issued/appraised by SEIAA having ample time in their hands, hence **Mining Lease Deeds dt. 05.10.2020 & 06.11.2020 are invalid and liable to be cancelled.**
10. That MoEF&CC vide affidavit dated 11.05.2023 stated that in pursuance to the Hon'ble NGT order dated 13.09.2018 and O.M. dated 12.12.2018, DEIAA is not functioning and does not exist as on dated as well as DEIAA's work is now looked after by SEIAA w.e.f. 13.09.2018. (Para 7, Page 643)
11. Further, this Hon'ble Tribunal vide order dated 04.12.2023 specifically directed MoEF&CC to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 and before the orders were conveyed to all concerned by issuance of O.M. dated 12.12.2018, to which vide additional affidavit dated 02.01.2024 MoEF&CC states that the ECs granted after 13.09.2018 to be governed by the Hon'ble NGT's order dated 13.09.2018. (Paras 2 & 6, Pages 979 & 980)
12. That in cases O.A. No. 474/2019 (Surendra Singh v. MoEF&CC & Ors.) filed on 17.05.2019 & O.A. No. 992/2019 (Surendra Singh v. MoEF&CC & Ors.) filed on 27.09.2019 before this Hon'ble Tribunal in which Environmental Clearances were also granted on 23.10.2018 by DEIAA, this Hon'ble Tribunal while disposing of these matters vide final orders dated 14.08.2019 (Pages 103- 105) & 23.12.2020 (Pages 134-137) respectively **directed to re-appraise the Environmental Clearances by**

**SEIAA and till re-appraisal mining operations remain suspended as well as directed the State of U.P. to recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by MoEF&CC in compliance of the judgment dated 13.09.2018 in the matter of Satendra Pandey which has been enforced by the State of Uttar Pradesh on 05.02.2019.**

13. That the abovementioned final orders dated 14.08.2019 & 23.12.2020 in Surendra Singh cases have not been challenged and attained finality. **That these final judicial orders can be treated as precedent for similar situation.** The intent of this Hon'ble Tribunal while passing these final orders following O.M. dated 12.12.2018 issued by MoEF&CC in compliance of the judgment dated 13.09.2018 in the matter of Satendra Pandey which has been enforced by the State of Uttar Pradesh on 05.02.2019 were that **specifically for the State of Uttar Pradesh regime of DEIAA ended so all ECs issued by DEIAA expired and regime of SEIAA begins w.e.f. 05.02.2019, therefore for future mining operations ECs required to be obtained from SEIAA as per decision dated 05.02.2019 of SEIAA/SEAC made for all project proponents, as implemented in Surendra Singh Cases.**
14. Though in the above-mentioned cases of Surendra Singh mining operations were continuing on the basis of expired ECs issued by DEIAA on 23.10.2018, therefore, this Hon'ble Tribunal stopped mining operation directed for reappraisal from SEIAA because decision of SEIAA/SEAC dated 05.02.2019 made for all concerned project proponents for obtaining ECs from SEIAA, therefore this Hon'ble Tribunal directed for recovery of compensation for illegal mining due to non-compliance of decision dt. 05.02.2019 of SEAC/SEIAA which has already been enforced by State of U.P., hence orders passed in cases of Surendra Singh Cases (supra) are squarely applicable in the present case, hence respondent nos. 5 & 6 liable for recovery of Environmental Compensation for violation and illegal mining.
15. That it is very pertinent to mention here vide I.A. No. 68/2022 filed on 21.03.2022 stay of mining activities carried out on basis of EC dt. 23.10.2018 issued by DEIAA was sought but till date said I.A. is pending. Further **vide order dated 07.12.2022 this Hon'ble Tribunal directed "All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in Deepak Kumar (supra) and order dated 13.09.2018 by this**

**Tribunal in Satendra Pandey (supra) by re-appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA.”** Despite such directions mining activity of respondent nos. 5 & 6 not suspended who continued illegal mining on the basis of EC dated 23.10.2018 issued by DEIAA.

16. As one of the Ground taken in O.A. that there is a delay of about 2 years in execution and registration of Mining Lease Deeds in favour of Respondent Nos. 5 & 6 dated 05.10.2020 & 06.11.2020 respectively from the date of issuance of ECs dated 23.01.2018, answering respondents submitted reason for delay caused due to pendency of Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) arising out of final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v. State of U.P.) which was finally decided with other Civil Appeals vide order dated 28.10.2020 in a lead case (2021) 1 SCC 93 [Dharmendra Kumar Singh vs. State of Uttar Pradesh & Ors.]. (Pages 422-444)
17. That **final order dated 25.03.2019 (pages 367-368) passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v. State of U.P.) prohibited leases to be given effect in pursuance of order dated 13.07.2018 (pages 335-337) passed by this Hon'ble Tribunal in O.A. No. 429/2016 (All India Kaimur Peoples Front v. State of U.P.) prohibiting leases on forest land notified U/s. 4 of the Indian Forest Act, 1927 for which notification under Section 20 of the Indian Forest Act, 1927 has not yet been issued.** Further, from report dated 31.12.2018 (pages 334-348) submitted in Amit Pandey's case it is apparent that subject lease land of Respondent Nos. 5 & 6 notified U/s. 4 resultantly lease being prohibited.
18. That during proceedings in the bunch of Civil Appeals Hon'ble Supreme Court directed the State of U.P. for issuance of Section 20 notification in compliance of which Gazette Notification No. 1136/81-2-2020-20(5)2019 dated 15.06.2020 was published declaring **819.785 hectare land as reserved forest mentioned in list 'A' in which Gata No. 7536Gha area 60.122 Forest Block 85, Village-Billi Markundi, Pargana Agori, Tehsil-Robertganj, DistrictSonbhadra is also included.** (Page 1128)
19. That Joint Committee Report dated 30.06.2022 (pages 157-161) states total area of Gata No. 7536 is 106.396 hectare out

of which 4.122 ha is PRIVATE LAND, 60.1220 ha is RESERVE FOREST as 7536 Gha and rest 42.1520 ha is PAHAD marked as 7536 Ga Mi. and respondent Nos. 5 & 6 granted mining leases on Gata No. 7536 Ga Mi (Khand-01) area 4.970 ha and Gata No. 7536 Ga Mi (Khand-03) area 4.000 ha.

20. That it is very pertinent to submit here this 42.1520 ha marked as Gata No. 7536 Ga Mi PAHAD is in actual is Gata No. 7536 Gha RESERVE FOREST a notified Section 20 land, which is evident from FORM H-2 Case (pages 465- 466) where 61 lease holders were penalised for carrying out illegal mining on FOREST LAND comprising area of around 41.937 ha apparently equivalent to area marked as PAHAD, therefore, FOREST LAND and not PAHAD apparently similar area in measurement. Secondly, evident from the fact that one K.K. Stone Product granted mining lease on Gata No. 7536 Gha (page 470) whose North boundary was Arazi No. 3568 old no. = Arazi No. 7406 now new no. (as per list at page no. 482), and this arazi no. 7406 apparently North & East boundary of mining lease granted to respondent no. 5 on Gata No. 7536 Ga Mi. That earlier Gata No. 7406 now new no. sharing North boundary with Gata No. 7536 Gha now the same Gata No. 7406 sharing North boundary with Gata No. 7536 Ga Mi (page 111), therefore, apparently subject mining leases granted on RESERVE FOREST LAND Gata No. 7536 Gha which is a notified Section 20 land sharing North Boundary with Gata No. 7406.
21. Respondent Nos. 5 & 6 pointed out that the process of earmarking be done by State Government of U.P. only, therefore, it is very pertinent to mention here that **till date Gata No. 7536 Village-Billi Markundi, Pargana Agori, TehsilRobertsganj, District-Sonbhadra has not been yet physically demarcated** as Gata Nos. 7536 Ga Mi. & 7536 Gha despite Publication of Notification dated 15.06.2020 U/s. Section 20 of the Indian Forest Act, and it is been mentioned on papers only, apparent from Map of Gata No. 7536 at (Page No. 261) . Further, State Authorities themselves modify Gata No. 7536Gha (Notified Reserve Forest) into Gata No. 7536Ga Mi for leasing out.
22. That although respondent nos. 5 & 6 have challenged the final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v State of U.P.) prohibiting lease on Forest Land before the Hon'ble Supreme Court vide Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) wherein prayed for setting aside the final order dated

25.03.2019 but the said final order has not been set-aside and confirmed/upheld by the Hon'ble Supreme Court alongwith order dated 13.07.2018 passed in O.A. No. 429/2016 (All India Kaimur Peoples Front v. State of U.P.) vide judgment dt. 28.10.2020, granting no relief to the respondent nos. 5 & 6 who were appellant nos. 1 & 4 respectively in the said Civil Appeal.

23. In fact, respondent no. 5 being appellant no. 1 in Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) mislead the Hon'ble Supreme Court by providing wrong details of lease and suspension order by attaching its lease name Sai Ram Enterprises with Neelkanth Mining by providing lease duration as New lease through e-tender process 11.12.2018 to 10.12.2028 and date of suspension order as 05.02.2019 apparent from table drawn in Supreme Court judgment dt. 28.10.2020 (Page 431) mentioned as C.A. No. 5093 of 2019 Sai Ram Enterprises, Neelkanth Mining (the only claim in this Civil Appeal); Gyanendra Tripathi, C.S. Infraconstruction, Amit Enterprises (since other lease periods have not started).
24. It is apparent from the records in the present case that **Mining Lease Deed of Respondent No. 5 – Sai Ram Enterprises (Appellant No. 1 in Civil Appeal) executed and registered on 05.10.2020 only** and there was no date of suspension order.
25. That answering respondents in their reply here itself mentioned only about Mining Lease Deed of Neelkanth Mining registered on 12.12.2018 and operation of lease suspended vide order dated 05.02.2019 of DM, Sonbhadra passed in compliance of order dated 04.01.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey's Case) in pursuance of order dated 13.07.2018 passed in O.A. No. 429/2016 (All India Kaimoor Peoples Front case).
26. That answering respondents pleaded delay of 2 years caused in execution and registration of Mining Lease Deed due to pendency of Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) which was finally decided with other Civil Appeals by Hon'ble Supreme Court vide judgment dated 28.10.2020 but respondent no. 5 executed and registered his mining lease deed on 05.10.2020 before the final decision dated 28.10.2020 with an intent to mislead the Hon'ble Supreme Court regarding lease duration and date of suspension order.
27. Hence, in the facts and circumstances stated above the mining

*leases of respondent no. 5 & 6 granted on Gata No. 7536 Gha a notified Reserve Forest Lands which liable to be cancelled and forthwith directed to close mining activity being carried out on notified Section 20 Reserve Forest land as well as directed to be recover environmental compensation for violations and illegal mining from respondent nos. 5 & 6.*

28. ***That surrender application dated 12.01.2022 of Respondent No. 6 has been rejected by District Magistrate, Sonbhadra vide order dated 17.05.2022 due to non-payment of penalty of Rs. 3,23,08,880/- imposed for illegal mining outside the granted mining area, which has been assailed before the Special Secretary, Geology and Mining who upheld the order dated 17.05.2022 passed by the District Magistrate, Sonbhadra vide its order dated 16.02.2023. Consequently Civil Misc. Writ Petition No. 29751/2023 has been filed before the Hon'ble High Court of Allahabad challenging the order dated 17.05.2022 passed by the District Magistrate, Sonbhadra imposing penalty on the petitioner for illegal mining as well as the order dated 16.02.2023 passed by the Special Secretary, Geology and Mining Department, Government of Uttar Pradesh, Lucknow rejecting the revision filed by the petitioner against the order dated 17.05.2022. The Hon'ble High Court vide its order dated 24.11.2023 stayed the penalty levelled against the petitioner (respondent no. 6 herein) through order dated 17.05.2022 and the Writ Petition is still pending for hearing."***

**Written Submissions dated 29.05.2024 filed by Respondents 5 and 6:**

87. The preliminary submission raised by respondent 5 is that applicant is an extortionist, and associated with an organisation-All India Kaimur People's Front who is blackmailing respondents 5 and 6 and this attempt to extract money has failed, therefore, the present application has been filed on misleading, extraneous and ill-conceived grounds with ulterior motive and with a vindictive mindset. Replying the issues raised on merits, respondents 5 and 6 have contended in Written submissions as under:

- “2. That it is respectfully submitted that in the present case, there has been absolutely no violation of the judgment dated 13.09.2018 rendered by this Hon’ble Tribunal in Original Application No. 186/2016, titled *Satendra Pandey vs Ministry of Environment, Forest and Climate Change & Anr.*, wherein **this Hon’ble Tribunal did not set aside or stay the EIA Notification dated 15.01.2016 and only directed that the procedure laid down in the EIA Notification dated 15.01.2016 be brought in consonance and in accord with the directions passed in the case of Deepak Kumar case.**
3. Pursuant to the directions passed by this Hon’ble Tribunal, it was only on 11.12.2018 that this Hon’ble Tribunal passed an order in Execution Application No. 55/2018 in Original Application No. 520/2016 directing that till a fresh notification is issued by MoEF&CC in terms of the Satendra Pandey order, the Notification dated 15.01.2016 shall not be acted upon. Subsequently, on 12.12.2018, an Office Memorandum was also issued by the MoEF&CC, directing the authorities concerned all over the country to abide by the directions contained in the order passed by this Hon’ble Tribunal and to follow the regime indicated therein for grant of EC’s. Acting in compliance of O.M. dated 12.12.2018 issued by MoEF&CC, in a joint meeting of the State Environment Impact Assessment Authority [SEIAA], Uttar Pradesh and State Expert Appraisal Committee [SEAC], Uttar Pradesh, held on 05.02.2019, a decision was taken that all mining cases of minor minerals, having area of 0 to 5 Hectares, will be appraised by UP-SEIAA for grant of Environment Clearance.
4. It is respectfully submitted that **neither in the O.M. dated 12.12.2018 issued by MoEF&CC nor in the decision taken by UP-SEIAA and UP-SEAC on 05.02.2019, has a mention been made regarding retrospective effect being given to these directions or any of these directions having any sort of effect on the validity of the EC’s which already stand granted by DEIAA in accordance with the earlier prevalent legal regime.** It is no longer *res-integra* that unless specifically indicated, even if a legal regime is changed subsequently, that has no bearing whatsoever on the validity of the decisions taken under the earlier legal regime.
5. Thus, between 13.09.2018 and 12.12.2018 and for sometime even thereafter, DEIAA’s continued to function all over the country and continued to grant EC’s.

6. *It is respectfully submitted that the **stand adopted by the MoEF, in its Affidavits filed in compliance of various orders passed by this Hon'ble Tribunal, to the extent that it accords protection to the DEIAA EC's granted only during the period from 15.01.2016 to 13.09.2018 and not to those issued between 14.09.2018 to 12.12.2018, is ex-facie erroneous and based on a completely fallacious understanding of the legal position.** The fact of the matter is that vide its judgment dated 13.09.2018, this Hon'ble Tribunal left it to MoEF to take appropriate corrective action to bring the EIA Notification in consonance with the Deepak Kumar judgment and the first step towards that exercise was taken by the MoEF only on 12.12.2018 by issuance of an O.M. Hence, the MoEF cannot take advantage of its own inaction and cause prejudice to the leaseholders, who had validly applied under the then existing legal regime and had been granted EC's by DEIAA.*
7. *It is also submitted that during the pendency of the present Original Application, a fresh EC has already been granted in favour of Respondent No. 5 by UP-SEIAA on 11.01.2024 [Pg Nos. 1011-1021].*
8. *It is further submitted that Paragraph 8 of the Report dated 02.08.2019, submitted by the Committee comprising of the Regional Officer, UPPCB, Sonbhadra and Member, SEAC, before this Hon'ble Tribunal in O.A. No. 474/2019 [Surendra Singh vs MoEF & CC & Ors], on which heavy reliance has been placed by the Applicant, is reflective only of the opinion of that particular Committee, as is clearly evident from the language contained in the said Paragraph, and the said opinion of the Committee did not culminate in any general binding direction being issued by either SEIAA or this Hon'ble Tribunal.*
9. *The question of whether the lease blocks of Respondent Nos. 5 and 6 fall in the reserved forest or not has been conclusively settled with the issuance of the Notification under Section 20 of the Indian Forest Act by the State Government, with the division of Gata No. 7536 Ga and the manner of carving out of four blocks on which leases had been granted [with the said exercise having been conducted by the State] having also been categorically explained in the Joint Committee Report at Pg. 160. Hence, baseless attempts made by the Applicant to project that the lease blocks of Respondent Nos. 5 and 6 are falling in reserved forest is nothing but a malicious ploy to mislead and prejudice the mind of this Hon'ble Tribunal.*

10. *The reasons for the delay in registration of the mining leases of Respondent Nos. 5 and 6 has already been explained in detail in the Reply filed by the said Respondents and is not being repeated here for the sake of brevity. In summary, it is submitted that orders dated 13.07.2018 passed in Original Application No. 429/2016 and 25.03.2019 passed in Original Application No. 781/2018 [by relying on order dated 13.07.2018], were challenged before the Hon'ble Supreme Court in a batch of Appeals, with the lead matter being Civil Appeal No. 12202/2018 and the Civil Appeal filed by the Answering Respondents being Civil Appeal No. 5093/2019.*
  
11. *During the pendency of the Civil Appeals, pursuant to the orders of the Hon'ble Supreme Court, a Notification under Section 20 of the Indian Forest Act was issued by the State Government of Uttar Pradesh in respect of the concerned area on 15.06.2020, whereafter it became categorically clear that the land, in respect of which mining leases were granted to the Answering Respondents, was not forest land. It was only after this that the decks were cleared for registration of the mining leases of the Answering Respondents, which came to be registered on 05.10.2020 and 06.11.2020 respectively, with it also being observed by the Hon'ble Supreme Court in its judgment dated 28.10.2010 rendered in the batch of Appeals that no fault could be attributed to the mining leaseholders. In any event, delay in registration of the mining leases is an aspect covered by the Mines and Minerals (Development and Regulation) Act, 1957, which is not a statute covered under the Schedule of the National Green Tribunal Act, 2010.*
  
12. *That the aspect of surrender of the mining lease by Respondent No. 6 and the fact that no mining has taken place on the said lease and no E MM-11 has been generated since 02.11.2021 is borne out from the Reply dated 16.01.2024 submitted by the District Magistrate, Sonbhadra [Pgs 1026-1027]. It is respectfully submitted that pendency of some litigation in relation to the outstanding dues to be paid by the leaseholder in relation to the said lease, with an interim order having been granted by the Hon'ble High Court in favour of Respondent No. 6, has got no bearing on or relation with the present case, as it is an admitted fact that no mining has been done on the lease block since 02.11.2021."*

**IA Nos. 269/2024 and 270/2024:**

88. During the period, when judgment was reserved, IA Nos. 269/2024 and 270/2024 have been filed by certain mining lease holders of Ajmer, Jaipur and Udaipur, State of Rajasthan being aggrieved by an order dated 07.06.2024 issued by Regional Officer, Office of Rajasthan State Pollution Control Board but in our view, such applications are not maintainable though judgment has been reserved in the matter. The aforesaid **IAs are accordingly rejected.**

**ISSUES:**

89. In the light of the arguments advanced by the respective parties and their pleadings, oral submissions and written submissions etc., the following issues in our view have arisen which require adjudication by this Tribunal:

- (I) Whether ECs dated 23.10.2018 granted to respondents 5 and 6 can be challenged by means of OA filed under Sections 14 and 15 of NGT Act, 2010 when specific remedy of Appeal against grant of EC is provided under Section 16 and no such remedy has been availed that too when statutory period of limitation is prescribed and such period of limitation has expired long back?
- (II) Whether lease deeds dated 05.10.2020 and 06.11.2020 granted to respondents 5 and 6 under mining Statutes can be assailed before Tribunal under NGT Act, 2010 and whether Tribunal has jurisdiction to cancel and set aside the lease deeds granted under mining Statutes?

- (III) Whether ECs granted by DEIAA on and after 13.09.2018 are per se illegal in view of Tribunal's judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**?
- (IV) Whether respondents 5 and 6 have carried out mining operations at any point of time illegally and hence liable for punitive action as well as payment of environmental compensation by application of principle of 'Polluter Pays' ?
- (V) Whether applicant is entitled to any relief if so, what and to which extent and what relief and what appropriate order is required to be passed in this OA?

**CONSIDERATION ON MERITS:**

90. EIA 2006 is statutory order issued by Ministry of Environment and Forest in exercise of powers conferred by Section 3(1) and (2)(v) of EP Act, 1986 read with Rule 5(3)(d) of Environment (Protection) Rules, 1986 (hereinafter referred to as '**EP Rules, 1986**'). It talks of requirement of prior EC by projects and activities mentioned in Schedule. The project or activity relating to mining of minerals is covered by item 1(a) and initially, the said entry read as under:

(1)	(2)	(3)	(4)	(5)
1(a)	Mining of minerals	≥ 50 ha of mining lease area  Asbestos mining irrespective of mining area	<50 ha ≥ 5 ha of mining lease area	<b>General Condition shall apply</b> <u>Note</u> Mineral prospecting (not involving drilling) are exempted provided the concession areas

				<i>have got previous clearance for physical survey</i>
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91. At the end of the Schedule, there is a note containing certain conditions as 'General and Specific Conditions' and read as under:

**Note:**

**General Condition (GC):**

*Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries:*

**Specific Condition (SC):**

*If any Industrial Estate/Complex/Export processing Zones/ Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre-defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."*

92. First amendment in the Schedule item 1(a) was made vide Notification dated 04.04.2011 published in Gazette of India (Extraordinary) 06.04.2011. In the **Schedule, Item 1(a), the existing entry was substituted** by the following:

***"(i) against item 1(a),-***

***In column (5), for the entries, the following entries shall***

**be substituted, namely:-  
“General conditions shall apply.**

**Note:**

- (i) **Prior environmental clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal.**
- (ii) **Mineral prospecting is exempted.”**

93. Item 1(a) of EIA 2006 excluded from the purview of appraisal of Environment Impact Assessment in respect of leases granted for smaller area i.e., upto 5 hectares though impact of mining leases even in respect to smaller area, particularly, when such mining is allowed on river banks/ river bed etc. would have drastic and severe consequences and impact on ecology and environment, hence this issue was raised before Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** (decided on 27.02.2012). In this judgment, effect of mining of minor minerals and its regulation was considered in the context of auction notices issued by Department of Mines and Geology, Government of Haryana. Supreme Court, however, extended its scope of direction PAN India. Background facts are that auction notice dated 03.06.2011 issued by Department of Mines and Geology, Haryana proposing to auction extraction of minor minerals, boulders, gravel and sand quarries of an area, not exceeding 4.5 hectares in District Panchkula, was challenged. Further, auction notices dated 08.08.2011, in Districts Panchkula, Ambala and Yamuna Nagar exceeding 5 hectares and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone and sand mines in the District of Mohindergarh, slate stone mines in the District of Rewari, and also in the Districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri,

Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., were also challenged. It was also brought to the notice of Supreme Court that similar illegal mining is going on in various Districts of Rajasthan and Uttar Pradesh. **It was pointed out that under EIA 2006, EC is required only when mining is permitted in an area not less than 5 hectares. Auction notices permitting mining in area less than 5 hectares were challenged on the ground that in order to escape from environment study under EIA 2006, bigger areas have been divided in smaller areas of less than 5 hectares and that is how illegal mining is being permitted causing damage to environment.** Supreme Court noticed the stand taken by MoEF in its affidavit dated 23.11.2011 that where mining area is homogenous, physically proximate and identifiable piece of land of 5 hectares or more, it should not be broken into smaller sizes to circumvent EIA 2006. There was a Committee of Minor Minerals which had recommended minimum lease size of 5 hectares for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Court said that minor minerals, boulders, gravel and sand quarries etc., in the places notified in auction notices, including the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., **would result in environmental degradation and threat to bio-diversity, damage to riverine vegetation, cause erosion, pollute water resources etc.** There was nothing on record to come to otherwise conclusion. It further shows that sand mining on either side of river upstream and instream, is one of the causes for environmental degradation and also threat to biodiversity over the years; India's rivers and riparian ecology had been badly affected at alarming rate due to unrestricted sand mining which has caused

damage to ecosystem of rivers and safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds. It would also affect fish breeding and migration, spells disaster for conservation of many bird species, and had increased saline water in rivers. Commenting on the loss to the environment due to mining of minerals within or near streambeds or inside streambeds, Court observed, that **extraction of alluvial material from within or near a streambed has direct impact on stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. If these habitat characteristics are altered, the same can have deleterious impact on both, instream biota and the associated riparian habitat. It is true that demand for sand had continued and would continue to increase, day by day, due to ongoing construction of new infrastructures and expansion of existing ones.** It is continuous process, placing immense pressure on the supply of sand resource. This has, and would, encourage mining activity which are bound to go on, legally or illegally, without any restriction. Lack of proper planning and sand management cause disturbance of marine ecosystem and would upset, the ability of natural marine processes to replenish the sand. Court expressed its anguish in the manner auction notices which were published by State of Haryana, permitting quarrying, mining and removal of sand from upstream and instream of several rivers which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds, and sand extraction may have an adverse effect on biodiversity as well. This may also lead to bed degradation and sedimentation having

a negative effect on the aquatic life. Some of the rivers mentioned in the auction notices are on the foothills of fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markand, etc. River Ghaggar is a seasonal river which rises up, in the outer Himalayas, between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hisar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this river swells up into a raging torrent, notorious for its devastating power, as also River Yamuna. Court found that without conducting any study on the possible environmental impact, on/in the riverbeds, and elsewhere, the auction notices were issued. Court said that, when extraction of alluvial material within or near a riverbed has an impact on river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that extraction is in blocks of less than 5 hectares, separated by 1 km, since their collective impact may be significant, hence the necessity of a proper Environmental Assessment Plan. **MoEF brought to the notice of Court that it had come across several instances across the Country regarding damage to lakes, river beds and ground water leading to drying up of water beds and causing water scarcity on account of quarrying/mining leases and mineral concessions granted under rules, by Provincial Governments.** State Government paid less attention on environmental aspect of minor minerals on the pretext that area was small but ignored the fact that collective impact in a particular area, over a period of time, was or would be significant. For taking note of these aspects, MoEF constituted, a Core

Group under Chairmanship of Secretary (Environment and Forest) to look into the environmental aspects associated with mining of minor minerals, vide order dated 24.03.2009. The Core Group considered matter on following aspects: (i) Need to relook the definition of minor mineral, (ii) Minimum size of lease for adopting eco-friendly scientific mining practices, (iii) Period of lease, (iv) Cluster of mine approach for addressing and implementing EMP in case of small mines, (v) Depth of mining to minimise adverse impact on hydrological regime, (vi) Requirement of mine plan for minor minerals, similar to major minerals and, (vii) Reclamation of mined out area, post mine land use, progressive mine closure plan etc. **The Core Group examined the matter and submitted a Draft report to MoEF which was considered and discussed on 29.01.2010 and, thereafter, final report was circulated to all the State Governments vide MoEF's DO letter dated 01.06.2010.** Ministry of Mines, Government of India also prepared draft rules called "Minor Minerals (Conservation and Development) Rules 2010", and also sent communication dated 16.05.2011, called "Environmental Aspects of Quarrying and of Minor Minerals-Evolving of Model Guidelines" along with a draft model guideline, calling for inputs, before 30.06.2011. In view of above, Court noticed that it is absolutely necessary to have an effective frame work of mining plan which will take care of all environmental issues, evolve a long term rational and sustainable natural resource base and also bio assessment protocol. Quarrying of river sand is an important economic activity of the Country with river sand, forming a crucial raw material for infrastructural development and construction industry, but excessive instream sand and gravel mining causes degradation of rivers. Instream mining lowers the stream bottom of rives which may lead to bank erosion. Depletion of sand

in the streambed and along coastal areas causes deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material from within or near a streambed has a direct impact on stream's physical habitat characteristics. Sand mining, therefore, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will affect various species of flora and fauna and may also destabilise soil structure of river banks and often leaves isolated islands.

94. In these circumstances, **Supreme Court said that Government of India's recommendations made in March 2010 followed by Model Rules 2010 must be given effect so as to inculcate spirit of Article 48(A), Article 51 (A)(g) read with Article 21 of Constitution. Court, therefore, issued directions to all States and Union Territories, MoEF and Ministry of Mines to give effect to the recommendations made by MoEF in its Report of March 2010 and the model guidelines framed by Ministry of Mines, within a period of six months from the date of judgment i.e., 27.02.2012 and submit compliance. Court also directed Government of India to take steps to bring into force Minor Minerals Conservation and Development Rules, 2010 at the earliest. Various State Governments and Union Territories were also directed to take steps to frame necessary rules under Section 15 of Mines and Minerals (Development And Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957'), taking into consideration recommendations of MoEF in its Report of March 2010 and Model Guidelines framed by Ministry of Mines, Government of India.**

95. The details of recommendation made by MoEF are reproduced in para 19 of the judgment and key recommendations contained in MoEF's DO letter dated 01.06.2010 are mentioned in para 22 of judgment. **Supreme Court specifically directed that lease of minor minerals including renewal of an area of less than 5 ha would be granted by concerned authorities only after getting EC from MoEF.**

96. Another matter came up before Supreme Court in **Goa Foundation vs. Union of India & Others, (2014) 6 SCC 590**. Relying on interim report dated 15.03.2012 submitted by Justice Shah Commission to Ministry of Mines, Government of India recording its findings in respect of illegal Mining of iron ore in violation of Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act, 1980**'), MMDR Act, 1957, Mineral Concession Rules, 1960 (hereinafter referred to as '**MC Rules, 1960**'), EP Act, 1986, Water Act, 1974, Air Act, 1981 and Wild Life (Protection) Act, 1972 (hereinafter referred to as '**WLP Act, 1972**'), Goa Foundation came to Court by filing Writ Petition under Article 32 of the Constitution, in Supreme Court and made a prayer that direction be issued to the Respondents to prosecute all those who have committed offences under different laws and are involved in pilferage of State revenue through illegal mining activities in State of Goa, including public servants who have aided and abated the offences. Goa Foundation also prayed that an independent authority be appointed with full powers to take control, supervise and regulate mining operations in State of Goa and to ensure implementation of laws. Lastly, Goa Foundation also prayed for some incidental and consequential reliefs. Entertaining Writ Petition, Supreme Court on 05.10.2012, issued notice directing Central Empowered Committee to submit Report on the issues raised in the Writ Petition. Supreme Court

further directed that, till further orders, all mining operations in the leases identified in the report of Justice Shah Commission, transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the said report. Simultaneously, some mining lessees of State of Goa and Goa Mining Association had filed Writ Petition in Bombay High Court, (Goa Bench), seeking a declaration that report of Justice Shah Commission is illegal. They also prayed to quash the order issued by State Government, suspending mining operation in State of Goa, pursuant to the aforesaid Report. MoEF's order dated 14.09.2012, directing to keep ECs to mines, in State of Goa, in abeyance, was also sought to be quashed. On the application moved before Supreme Court, Writ Petitions filed before Bombay High Court, were transferred to be heard in Supreme Court, along with **Writ Petition (Civil) No. 435/2012** filed by Goa Foundation. Some Background facts, giving rise to the above matter are, that prior to 19.12.1961, when Goa was a Portuguese territory, the then Government granted mining concessions in perpetuity to certain persons (hereinafter referred to as '**concessionaires**'). Goa was liberated on 19.12.1961. MMDR Act, 1957 was made applicable to State of Goa on 01.10.1963. Controller of Mining Leases, on 10.03.1975, issued a Notification calling upon every lessee and sub-lessee to file returns under Rule 5 of Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to concessionaires in Goa. The above notification was challenged by concessionaires in Bombay High Court (Goa Bench). Vide judgment dated 29.09.1983, in **Vassudeva Madeva Salgaocar vs. Union of India, (1985)1Bom.CR36**, Bombay High Court restrained Union of India from treating concessions as mining leases and from enforcing

notification against concessionaires. To overcome difficulty arisen due to above judgment, Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 was passed which received assent of President of India on 23.05.1987. The said Act abolished mining concessions and declared that with effect from 20.12.1961, every mining concession will be deemed to be a mining lease granted under MMDR Act, 1957 and that provisions of MMDR Act, 1957 will apply to such mining lease. The above Abolition Act was challenged by lessees in Bombay High Court wherein an interim order was passed permitting lessees to carry on mining operations and mining business in the concessions for which renewal applications had been filed under 24-A of the MC Rules, 1960. The above **Writ Petition 177/1990, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India** was decided by Bombay High Court vide judgment dated 20.06.1997. The validity of Abolition Act, as such, was upheld, but Court held Section 22(i)(a) of Abolition Act to operate prospectively and not retrospectively. Concessionaires filed Appeal in Supreme Court in **SLP (C) No. 23827 of 1997, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India**, wherein an interim order was passed on 02.03.1998 permitting concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications were made but imposing a condition that lessees would pay to the Government, dead rent from the date of commencement of Abolition Act. When appeal was pending, Central Government appointed a Commission under Section 3 of Commissions of Inquiry Act, 1952, by notification dated 22.11.2010, to enquire into and determine nature and extent of mining, trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and

also, to identify the person etc., engaged in such illegal activities. The term of reference contained four aspects. Justice Shah Commission was constituted in view of various reports received from various State Governments regarding widespread mining of iron and manganese ore, in contravention of MMDR Act 1957, FC Act 1980, EP Act 1986 and rules and guidelines issued thereunder. Justice Shah submitted an interim Report on 15.03.2012 to Ministry of Mines, Government of India which was tabled on Parliament along with an Action Taken Report. State Government of Goa passed an order on 10.09.2012, suspending all mining operations in State of Goa, with effect from 11.09.2012. Consequently, District Magistrates in State of Goa, banned transportation of iron ore in their respective Districts. Director of Mines and Geology, ordered verification of mineral ore which was already extracted, and also issued show cause notices on 13.09.2012 to about 40 mining leases. On 14.09.2012, MoEF issued an order keeping in abeyance all ECs granted to mines in State of Goa. In this backdrop, Goa Foundation came in Supreme Court and other litigation arose as already stated. Report of Commission was challenged primarily on the ground of violation of Principles of the Natural Justice. Mining lessees argued that they were not given any opportunity of hearing in the Inquiry conducted by the said Commission and, therefore, Principles of Natural Justice have been violated. Supreme Court recorded stand of Government of Goa that no action will be taken against mining lessees only on the basis of findings recorded in the report of Justice Shah Commission but it would make its own assessment of facts after giving opportunity of hearing to all concerned parties and in that view of the stand taken by State Government, Supreme Court, in para 14 of judgment, observed that it is not inclined to quash Justice Shah

Commission's Report on the ground of violation of Principles of Natural Justice but also would not direct to prosecute lessees only on the basis of findings recorded in the said Report. However, looking to the serious dispute raised in the matter pertaining to environment, Supreme Court proceeded to examine legal and environmental issues raised in the Report of Justice Shah Commission. The first issue was regarding continuance of leases, as deemed renewed. Court held, in para 28 of judgment, that deemed mining leases of the then lessees in Goa, expired on 22.11.1987, under sub-section (1) of Section 5 of Abolition Act. The maximum of 20 years renewal period of deemed mining leases in Goa, as provided in sub-section (2) of Section 8 of MMDR Act, 1957 read with sub-rules (8) and (9) of Rule 24-A of MC Rules 1960, expired on 22.11.2007. The next question was, dumping of reject, tailing or waste, whether can be kept beyond lease area. This question was answered in negative i.e., against the stand taken by mining lessees. Court said (i) a holder of mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under MMDR Act, 1957 and rules framed thereunder. Even if such area is outside the leased area of mining lease, belong to State or any private person, but if mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in an area outside the leased area. Dumping of waste materials, tailings and rejects, outside leased area, would be without valid authorisation under the lease deed. In view of Section 9(2) of MMDR Act, 1957, if mineral is removed or consumed from the leased area, holder of mining lease, has to pay royalty. The term

'mineral' includes tailings or rejects, excavated during mining operations. Rule 64-C of MC Rules, 1960, firstly, did not permit dumping of tailings or rejects in any area outside the leased area and even otherwise if a rule goes beyond what the section contemplates, the rule must yield to the statute as held in **Central Bank of India vs. Workmen, AIR 1960 SC 12**, therefore, Rule 64-C of the MC Rules, 1960, if suggests dumping of tailings or rejects outside the leased area, it must give way to section 4 of MMDR Act, 1957 which does not authorise dumping of minerals outside the leased area. The said Rule must give way to section 9 of MMDR Act, 1957 which does not authorise removal of minerals, outside the leased area, without payment of royalty. Even Rule 16 of Mineral Conservation and Development Rules, 1988 (hereinafter referred to as '**MCD Rules, 1988**') does not permit dumping of overburden and waste materials, obtained from mining operation, outside the leased area. The lessees also cannot be allowed to dump overburden tailings or rejects in the area owned by them for the reason that most of the land, owned by lessees, is located in the forest area where non-forest activities such as mining is not permissible in view of section 2 of FC Act, 1980 and it also requires prior EC under EP Act, 1986 read with Rule 5(3) of EP Act, 1986. For dumping of mining waste on the private land, Court said that prior clearance of Central Government under notification issued under Rule 5 (3) of EP Rules, 1986 would be necessary. Justice Shah Commission found that despite restriction on mining activities inside National Parks, Sanctuaries and other protected and eco-sensitive areas, mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected area. Thus, **Court considered next question as to within what distance from the boundaries of national parks and wildlife**

**sanctuaries mining is permissible or not in the State of Goa.**

Answering this question, Court found that State of Goa has taken a clear stand that no mining operations were allowed inside any National Park or Wildlife Sanctuaries hence question to this extent did not require any adjudication. Next question was ***“whether mining could have been permitted or could be permitted within a certain distance from the boundaries of national park or wildlife sanctuary in the State of Goa”***. Answering it, Court said that the argument advanced on behalf of lessees that until a notification is issued under EP Act, 1986 and rules framed thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited, is misconceived. Here Court relied on Article 21 of the constitution which guarantees right to life and further refers to a three Judge Bench Judgment in ***Noida Memorial Complex near Okhla Bird Sanctuary, In Re, (2011) 1 SCC 744***, where it was held that environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter, directly under the Constitution and if Court perceives any project or activity as harmful or injurious to the environment, it would feel obliged to step in. Then, with regard to permissible mining activities, Supreme Court referred to order dated 04.08.2006 in ***T.N. Godavarman Thirumulpad vs. Union of India, (2010) 13 SCC 740***, and 04.12.2006 in ***Goa Foundation vs. Union of India, (2011) 15 SCC 791***, and said that the above orders make it clear that grant of temporary working permits should not result in any mining activities within safety zone, around National Parks and Wildlife Sanctuaries, and as an interim measure, 1 km safety zone was to be maintained. Since the said orders were not varied

**subsequently, Supreme Court directed that the said order have to be followed and there will be no mining activity within 1 km safety zone around National Park and Wildlife Sanctuary in State of Goa.**

97. **The contention advanced on behalf of Goa Foundation, that within 10 kms from the boundaries of national park or wildlife sanctuary, no mining activity can be permitted, was returned by Supreme Court holding that no such order was issued either in *Goa Foundation vs. Union of India (supra)* or elsewhere.** Court further referred to EP Rules, 1986 and said that **until Central Government takes into account various factors mentioned in sub-rule 1, follows procedure laid down in sub-rule 3 and issues a notification under rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries.** The issue of the distance, with regard to mining activities qua National Park and Sanctuaries, was decided accordingly. The next question was regarding transfer or amalgamation of lease for which Justice Shah Commission observed that Rules 37 and 38 of MC Rules, 1960 were violated. Here State Government took a stand that there was a practice prevailing in State of Goa that a mining lease, by a person other than lease holder, can be operated. Deprecating it, Supreme Court said that Rules 37 and 38 clearly prohibit such transfer or amalgamation unless permitted specifically by State Government and directed State Government not to allow such activities in violation of Rules 37 and 38. Court also found from CEC's Report that there was no effective checks and measures with regard to production and transportation of mineral from the mining leases in the State of Goa, hence there was every possibility to believe that excess

quantity of minerals were extracted and transported. Court also found existence of Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 but non-observance thereof by the Authority. It directed State Government to enforce above rules, strictly.

98. The next question related to environment. “To what extent, mining has damaged environment in Goa” and “what measures are to be taken to ensure intergenerational equity and sustainable development”. In this regard, Court vide order dated 11 and 12.11.2013 (***Goa Foundation vs. Union of India, (2014) 6 SCC 738***) constituted an Expert Committee to conduct, a macro-EIA study, and propose sealing of annual excavation of iron ore in State of Goa, considering its iron ore resources, carrying capacity, keeping in mind Principles of Sustainable Development, Intergenerational Equity and all other relevant factors. The said Committee submitted report dated 14.3.2014 indicating that economy of Goa depends upon tourism, iron ore mining, besides agriculture, horticulture and minor industries. Commenting upon damage to environment in State of Goa, Expert Committee said that production of iron ore has drastically jumped on, from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. This has led to massive negative impact on all ecosystems leading to enhanced air, water and soil pollution, affecting quality of life, across Goa. With regard to sustainability of iron ore mining in Goa, Expert Committee opined that mining at the rate of 20 to 27.5 million tons per annum may be sustainable in State of Goa. Supreme Court referred to a report of Indian School of Mines, Dhanbad (hereinafter referred to as ‘**ISM**’), who was entrusted, by MoEF, to carry out regional impact assessment study of mining in Goa region. In the said report, ISM recommended a cap of 24.995 MT per annum on the basis of carrying capacity of existing infrastructure

of State of Goa. Relying on the said report, Court held that a cap between 20 to 27.5 MT per annum should be fixed for excavation of iron ore in State of Goa. Court also found that Goa State Pollution Control Board (hereinafter referred to as '**GSPCB**') has immense powers under Air Act, 1981 and Water Act, 1974 but despite that, iron ore production in State of Goa has led to massive negative impact on all ecosystem leading to enhanced air, soil and water pollution affecting quality of life across State of Goa, and GSPCB has miserably failed in discharge of its statutory functions. Supreme Court's observations are, "**Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties**". Court directed that GSPCB would exercise strict vigil and monitor water and air quality and if lessees failed to conform the prescribed norms, GSPCB must not hesitate in closure of mining operations of such lessees. Further, for restoration of environment, Court directed that **10% of sale proceeds of all iron ore**, excavated in State of Goa, and sold by lessees, would be appropriated towards 'Goan Iron Ore Permanent Fund', constituted for the purpose of sustainable development and intergenerational equity.

99. The next question, "whether mining in future should be allowed by granting leases in auction or otherwise", was answered by noticing observations in **Centre for Public Interest Litigation vs. Union of India (2012)3SCC1**, that "**State of the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good**". Court also noticed observations of constitution

bench in ***Natural Resources Allocation, In Re, Special Reference No. 1 of 2012, (2012) 10 SCC 1*** that auction, despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources, and therefore, every method other than auction cannot be struck down as ultra vires of the constitutional mandate. It is for State Government to decide as a matter of policy in what manner leases of mineral resources would be granted but this should be in accordance with statutory provisions i.e., MMDR Act, 1957 and rules framed thereunder by taking a policy decision. Supreme Court also quoted opinion of four Judges out of five Judges, in ***Natural Resources Allocation (supra)***, (in para 149), that **alienation of natural resources is a policy decision and the means, adopted for the same, are, thus executive prerogatives.** However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit, maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue, may be arbitrary and face wrath of Article 14 of the Constitution. Hence no hard and fast method ought to be laid by Court but judicial scrutiny of such matter would depend on fact and circumstances in each case. Supreme Court also held that the order issued by Government of Goa suspending mining operations cannot be quashed since in any case renewal of deemed mining leases expired on 22.11.2007 and any mining thereafter was illegal. Therefore, order dated 10.9.2012 of Government of Goa and 14.09.2012 of MoEF, will have to continue till decision is taken by State Government to grant fresh leases and MoEF takes decision for granting fresh EC for mining project in accordance with law. Supreme

Court ultimately issued directions which are briefly stated in para 87 and 88 of the judgment. **The above judgment shows that for remedy to the damage done to environment, 10% of sale proceeds of the subject i.e., goods and in this case mined iron ore, was required to be paid by lessees who excavated the said ore, illegally. The amount collected was to be kept in a separate fund, and to be consumed by appropriate authorities for sustainable development and intergenerational equity.** Further, here environment compensation was determined at 10% in view of the fact that mining cannot be stopped, and would continue as providing revenue to Government and heavy profits to illegal miners. Further, **environment compensation was determined on the rate of sale proceeds i.e., selling rate of mineral.**

100. Amendments were made in EIA 2006 after the judgment in **Deepak Kumar vs. State of Haryana (supra)** and **Goa Foundation (supra)** and have reflections of the said judgements. Subsequent amendments made in EIA 2006 are as under:

**A. Notification dated 13.12.2012 published in Gazette of India (Extraordinary) of the same date:**

- a) In the **Schedule Item 1(a) in Column V, following entries were substituted:**

*“In the Schedule to the said notification against item (a), in column (5) for the entries, the following entries shall be substituted namely,*

*“General conditions shall apply.*

*Note:*

- (i) Prior environment clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4<sup>th</sup>*

*April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4<sup>th</sup> April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after the 4<sup>th</sup> November, 2011.*

*(ii) Mineral prospecting is exempted.”*

**B. Notification dated 13.03.2013 published in Gazette of India (Extraordinary) of the same date:**

a) The amendment was made in Schedule Item 1(a) column 5 and following proviso was inserted under note (i):

*“Provided that no fresh environment clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environment clearance, under this notification.”*

**C. Notification dated 09.09.2013 published in Gazette of India (Extraordinary) dated 10.09.2013:**

a) In the Schedule item 1(a), amendment by substitution with regard to item and entry was made as under:

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	≥ 50 ha of mining lease area in respect of non-coal mine lease.	<50 ha of mining lease area in respect of minor minerals mine lease; and  ≤50 ha ≥ 5 ha of mining lease area in respect of other non-coal	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals:  Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of

		<p>&gt;150 ha of mining lease area in respect of coal mine lease.</p> <p>Asbestos mining irrespective of mining area.</p>	<p>mine lease.</p> <p>≤ 150 ha &gt;5 ha of mining lease area in respect of coal mine lease.</p>	<p>existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.</p> <p><b>Note:</b></p> <p>(i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4<sup>th</sup> April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4<sup>th</sup> April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4<sup>th</sup> November, 2011:</p> <p>Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification.</p>
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				(ii) Mineral prospecting is exempted.”.
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101. Thereafter, two **OMs dated 24.06.2013 and 24.12.2013** were issued by MoEF&CC. OM dated 26.06.2013 lays down guidelines regarding categorization of mining projects of brick earth and ordinary earth having lease area less than 5 hectares as category B2 subject to stipulation stated therein. We are not giving details of this OM not being relevant for our purposes.

102. MoEF&CC issued OM dated 24.12.2013 in the light of the Reports submitted by Expert Committee constituted vide OM dated 30.01.2013 with regard to categorization of category B projects/activities into B1 and B2 as per Schedule to EIA 2006 and its amendments. With regard to mining of minerals, para 2 of the said OM said as under:

*“2. In compliance with such a requirement under the EIA Notification and to examine other issues, the MoEF had constituted vide O.M. No. J-11013/12/2013-IA-II(I) dated 30.01.2013, an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur. The Committee has since submitted its report. The recommendations of the Committee have been examined by MOEF and the **following has been decided w.r.t. categorization of Category ‘B’ projects/activities into Category ‘B1’ & ‘B2’ listed in the Schedule of EIA Notification, 2006 and its amendments:***

*I. Mining of Minerals*

*Mining of minor minerals*

*As of now, mining projects of minor minerals with less than 50 ha of mining lease area are **categorized as Category ‘B’** as per Notification S.O.2731(E) dated 9<sup>th</sup> September, 2013. Also vide OM No.L-11011/47/2011-IA.II(M) dated 24.06.2013, guidelines have been issued regarding categorization of mining projects of ‘brick earth’ and ‘ordinary earth’ having lease area less than 5 ha as category ‘B2’ subject to stipulations stated therein.*

*In the above backdrop, the projects of mining of minor minerals, categorized as Category 'B' are hereby categorized as 'B2' as per the following:*

- (i) 'Brick earth'/'Ordinary earth' mining projects having lease area less than 5 ha will be considered for granting EC as per the aforesaid guidelines issued by MOEF on 24.6.2013.*
- (ii) 'Brick earth'/'Ordinary earth' mining projects with mining lease area  $\geq$  5 ha but  $<$  25 ha and all other minor mineral mining projects with mining lease area  $<$ 25 ha, except for river sand mining projects will be appraised as Category 'B2' projects. These projects will be appraised based on following documents:
 
  - (a) Form -1 as per Appendix-I under EIA Notification, 2006*
  - (b) Pre-feasibility report of the project*
  - (c) Mining plan approved by the authorized agency of the concerned State Government**

*Provided, in case the mining lease area is likely to result into a cluster situation, i.e., if the periphery of one lease area is less than 500 m from the periphery of another lease area and the total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.*

- (iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area  $\geq$ 5 ha but  $<$  25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations:
 
  - (a) The mining activity shall be done manually.*
  - (b) The depth of mining shall be restricted to 3m/water level, whichever is less.*
  - (c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.**

(d) No in stream mining shall be allowed.

(e) The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with tarpoline to minimize dust/sand particle emissions.

(f) EC will be valid for mine lease period subject to a ceiling of 5 years.

Provided, in case the mining lease area is likely to result into a cluster situation i.e. if the periphery of one lease area is less than 1 km from the periphery of another lease area and total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

## II. Other projects or activities

The guidelines for categorizing some of the other category of projects or activities into 'B1' or 'B2' out of the category 'B' projects listed in schedule to EIA Notification, 2006, as amended from time to time, are as follows. These projects will be appraised based on Form-1 as per Appendix-I under EIA Notification, 2006, as amended and prefeasibility report of the project.

<b>S.N. of Schedule</b>	<b>Activities</b>	<b>Category B2</b>	<b>Category B1</b>
1 (d)	Thermal Power Plants	Thermal power plants based o coal/ lignite/ naphtha and gas of capacity $\leq$ 5 MW	Thermal power plants based on coal/ llignite/ naphtha and gas of capacity $>$ 5 MW and $<$ 500 MW.
2 (b)	Mineral Beneficiation	The mineral beneficiation activity listed in the Schedule as Category 'B', with throughput $\leq$ 20,000 TPA, involving only physical beneficiation.	All other mineral beneficiation activity falling in the Schedule as Category 'B'.
3 (a)	Metallurgical	All non toxic	All other non toxic

	<i>Industries (ferrous &amp; non-ferrous)</i>	<i>secondary metallurgical processing industries involving operation of furnaces only, such as induction and electric arc furnaces, submerged arc furnaces, and cupola with capacity &gt; 30,000 TPA but &lt; 60,000 TPA provided that such projects are located within the notified Industrial Estates.</i>	<i>secondary metallurgical processing industries falling in the Schedule as Category 'B'.</i>
3 (b)	<i>Cement Plants</i>	<i>All stand-alone grinding units listed in the Schedule as Category 'B' subject to the condition that transportation of raw material and finished products shall be primarily* through Railways.</i>	<i>All stand-alone grinding units listed in the Schedule as Category 'B' where the transportation of raw material and finished products is not primarily through Railways.</i>
4 (d)	<i>Chlor Alkali Industry</i>	<i>All Chlor Alkali plants with production capacity &lt; 300 TPD (located within notified industrial area) listed in the Schedule as Category 'B'.</i>	<i>All Chlor Alkali plants with production capacity &lt; 300 TPD (located outside notified industrial area) listed in the Schedule as Category 'B'.</i>
4 (f)	<i>Leather/Skin/Hide Processing Industry</i>	<i>All new or expansion projects of leather production without tanning, located within a notified industrial area/estate, listed in the Schedule as Category 'B'.</i>	<i>All others projects listed in the Schedule as Category 'B'.</i>
5 (a)	<i>Chemical Fertilizers</i>	<i>Single Super Phosphate (SSP) plants involving only the activity of granulation of SSP powder.</i>	<i>All other Single Super Phosphate (SSP) plants listed in the Schedule as Category 'B'.</i>
5 (d)	<i>Manmade Fibres Manufacturing</i>	<i>All manmade fibre manufacturing units producing fibres from</i>	<i>All other manmade fibre manufacturing units listed in the Schedule as Category</i>

		<i>granules or chips.</i>	<i>'B'</i>
<i>7 (g)</i>	<i>Aerial Ropeways</i>	<i>All Aerial Ropeway projects, listed in the Schedule as Category 'B', should be categorized as Category B2.</i>	

*\*transportation by railways should not be less than 90% of the traffic (inward and outward put together)*

103. The said OMs were challenged in **OA 343/2013, Ranbir Singh vs. State of H.P. & Ors.** and **OA 279/2013, Promila Devi vs. State of H.P. & Ors.** filed at Circuit Bench, Shimla. Vide order dated 28.03.2014, Tribunal stayed operation of OM dated 24.12.2013. Relevant extract of the order dated 28.03.2014 reads as under:

*“The Ministry of Environment & Forest (MoEF) has not been able to explain as to how the Office Memorandum dated 24<sup>th</sup> December, 2013 in in conformity with the order of the Hon’ble Supreme Court in Deepak Kumar’s case, order of the NGT and the Notification dated 9<sup>th</sup> September, 2013 issued by the MoEF itself. We do not think that the MoEF could have issued such memorandum.*

*The Notification issued by the MoEF is an act of subordinate legislation and was issued in exercise of statutory powers. The Office Memorandum is an administrative order and cannot frustrate the legislative act.*

*In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of Office Memorandum dated 24<sup>th</sup> December, 2013. In so far as it relates to the minor minerals like sand etc., list these matters on 30<sup>th</sup> May, 2014 for hearing.”*

104. The above OAs were disposed of finally vide judgment dated 13.01.2015 along with some other matters with the following directions:

*“83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to*

*provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:*

- I. ***For the reasons afore recorded, we hold and declare that the Notification dated 9<sup>th</sup> September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.***
- II. ***We also hold and declare that the Office Memorandums dated 24<sup>th</sup> June, 2013 and 24<sup>th</sup> December, 2013 to the extent afore-indicated are invalid and inoperative being beyond the power of delegated legislation.***
- III. *All the Office Memorandums and Notifications issued by MoEF i.e. 1<sup>st</sup> December, 2009, 18<sup>th</sup> May, 2012 and 24<sup>th</sup> June, 2013 and 24<sup>th</sup> December, 2013 (except to the extent afore-stated) are operative and **would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.***
- IV. *We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.*
- V. ***All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We direct Secretary, Ministry of Environment and Forest to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.***
- VI. *We direct that in the meeting it shall also disused and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less*

than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.

- VII. **We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.**
- VIII. **Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.**
- IX. *It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and orders passed by the concerned authorities at the earliest and in any case not later than six months from today.*
- X. *We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.*
- XI. *We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.*
- XII. *In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.*

XIII. *We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.*

XIV. *In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law.”*

105. OM dated 24.12.2013 was held bad so far as it imposed complete prohibition on grant of mining permission for area less than 5 hectares.

This was observed by Tribunal in para 64 as under:

*“64....it is clear that no Environmental Clearance would be granted for extraction of minor minerals, sand mining from any riverbed where the area is less than 5 hectares. This will amount to total prohibition of carrying on of minor mineral activity of extraction of sand from riverbed anywhere in the country. Such prohibition, as we have already noticed, cannot be imposed in exercise of executive powers in face of the Notification of 2006 which places no such restriction.*

*xxx.....xxx.....xxx*

*Therefore, we find that this restriction is without any basis and is incapable of being imposed through an Office Memorandum. The minor mineral mining activity, other than sand mining, on riverbed was permitted in the sense that for such activity even areas less than 5 hectares could be considered for grant of Environmental Clearance.”*

106. Thus, from the above, it is evident that this Tribunal reiterated and directed MoEF&CC to act strictly as per the directions issued by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** with respect of permitting mining as per EIA 2006.

107. Further amendments were made in EIA 2006 by Notification dated 07.10.2014 published in Gazette of India (Extraordinary) of the same date and it reads as under:

*“In the said notification, in the Schedule, for item 1(a) and entries relating thereto, the following item and entries shall be substituted, namely:-*

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	<p>≥ 50 ha of mining lease area in respect of non-coal mine lease.</p> <p>&gt;150 ha of mining lease area in respect of coal mine lease.</p> <p>Asbestos mining irrespective of mining area.</p> <p>All projects.</p>	<p>&lt;50 ha of mining lease area in respect of non-coal mine lease.</p> <p>≤ 150 ha of mining lease area in respect of coal mine lease.</p>	<p><b>General Conditions shall apply except for project or activity of less than 5 ha of mining lease area:</b></p> <p>Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.</p> <p><b>Note:</b></p> <p>(i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal.</p> <p>Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification.</p> <p>(ii) Mineral prospecting is exempted.”</p>
	(ii) Slurry pipelines (coal lignite and other ores)			

	<i>passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.</i>			
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108. Notification dated 15.01.2016 published in Gazette of India (Extraordinary) of the same date was issued to make amendments in the light of Supreme Court judgment in ***Deepak Kumar vs. State of Haryana & Ors., (supra)***, wherein it was held that in the matter of mining, prior EC would be mandatory for mining of mineral minerals irrespective of the area of mining lease.

(a) In **paragraph 2, certain words were inserted** and the amended paragraph of EIA 2006 reads as under:

***“2. Requirements of prior Environmental Clearance (EC):-***  
*The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, and at District level, the District Environment Impact Assessment Authority (DEIAA) for matters falling under Category ‘B2’ for mining of minor minerals in the said Schedule”*

(Emphasis added)

(b) In paragraph 3 of EIA 2006, **para 3A was inserted and para 5 and 6 were substituted** as under:

**“3A. District Level Environment Impact Assessment Authority:**

- (1) *A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.*
- (2) *The District Magistrate or District Collector shall be the Chairperson of the DEIAA.*
- (3) *The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.*
- (4) *The other two members of the DEIAA shall be the senior most Divisional Forest Officer and one expert. The expert shall be nominated by the Divisional Commissioner of the Division or Chief Conservator of Forest, as the case may be. The term and qualifications of the expert fulfilling the eligibility criteria are given in Appendix VII to this notification.*
- (5) *The members of the DEIAA who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert member.*
- (6) *The District Level Expert Appraisal Committee hereinafter referred to as the DEAC shall comprise of eleven members, including a Chairman and a Member-Secretary.*
- (7) *The senior most Executive Engineer, Irrigation Department in the district of respective State Governments or Union territory Administration shall be the Chairperson of the DEAC.*
- (8) *The Assistant Director or Deputy Director of the Department of Mines and Geology or District Mines Officer or Geologist of the district shall be the Member-Secretary of the DEAC in that order.*
- (9) *A representative of the State Pollution Control Board or Committee, senior most Sub-Divisional Officer (Forest) in the district, representative of Remote Sensing Department or Geology Department or State Ground Water Department, one occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector, Engineer from Zila Parishad, and three expert members to be nominated by the Divisional Commissioner or Chief Conservator of Forest, as the case may be, shall be the other members of the DEAC. The term*

*and qualifications of the experts fulfilling the eligibility criteria are given in Appendix VII to this notification.*

- (10) *The members of the DEAC who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert members.*
- (11) *The District Magistrate or District Collector shall notify an agency to act as Secretariat for the DEIAA and the DEAC and shall provide all financial and logistic support for their statutory functions.*
- (12) *The DEIAA and DEAC shall exercise the powers and follow the procedure as specified in the said notification, as amended from time to time.*
- (13) *The DEAC shall function on the principle of collective responsibility and the Chairman shall endeavor to reach a consensus in each case and if consensus cannot be reached, the view of the majority shall prevail.”;*

(c) In **paragraph 4, after sub-paragraph (iii), the following sub-paragraph shall be inserted**, namely:

***“(iv) The ‘B2’ Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectare shall require prior environmental clearance from DEIAA. The DEIAA shall base its decision on the recommendations of DEAC, as constituted for this notification.”;***

(d) For **paragraph 5**, the following paragraph shall be **substituted**, namely:

***“5. Screening, Scoping and Appraisal Committees:***

*The same Expert Appraisal Committees (EACs) at the Central Government, SEACs at the State or Union territory level and DEAC at the district level shall screen, scope and appraise projects or activity in category ‘A’, ‘B1 and B2’ and ‘B2’ projects for mining of minor minerals of lease area less than and equal to five hectare respectively. EAC, SEACs and DEACs shall meet at least once every month.*

*(a) The composition of the EAC shall be as given in Appendix VI.*

*The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition. DEAC at the district level shall be constituted by the Central Government as per the composition given in paragraph 3 A.*

*(b) The Central Government may with the prior concurrence of the concerned State Governments or the Union territory Administration constitute one SEAC for more than one State or Union territory for reasons of administrative convenience and cost.*

*(c) The EAC and SEAC shall be reconstituted after every three years.*

*(d) The authorised members of the EAC, SEACs and DEACs concerned, may inspect any site connected with the project or activity in respect of which the prior environmental clearance is sought for the purpose of screening or scoping or appraisal with prior notice of at least seven days to the project proponent who shall provide necessary facilities for the inspection.*

*(e) The EAC, SEACs and DEACs shall function on the principle of collective responsibility. The Chairperson shall endeavor to reach a consensus in each case and if consensus cannot be reached the view of the majority shall prevail.”;*

**(e) for paragraph 6, the following paragraph shall be substituted, namely:**

**“6. Application for Prior Environmental Clearance (EC):-**

*An application seeking prior environmental clearance in all cases shall be made by the project proponent in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II after the identification of prospective site (s) for the project and/or activities to which the application relates; and in Form 1M for mining of minor minerals up to five hectare under Category ‘B2’ projects, as given in Appendix VIII, before commencing any construction activity, or preparation of land, or mining at the site by the project proponent. **The project proponent shall furnish along with the application, a copy of the pre-feasibility project report, in addition to Form 1, Form 1A, and Form 1M;** and in case of construction projects or activities (item 8 of the Schedule), a copy of the conceptual plan shall be provided*

*instead of pre-feasibility report.”*

- (e) In **paragraph 7** under the heading “**I. Stage (1)-Screening**”, the **existing paragraph was renumbered as “(A)”** and, thereafter, following **paragraph (B) was inserted:**

*“(B) The cases as specified in Appendix IX shall be exempted from prior environmental clearance.”;*

- (f) In **para 7(ii)**, the following sub-paragraph (iii) was inserted:

**“7 (iii) Preparation of District Survey Report for Sand Mining or River Bed Mining and Mining of other Minor Minerals:**

*(a) The prescribed procedure for preparation of District Survey Report for sand mining or river bed mining and mining of other minor minerals is given in Appendix X.*

*(b) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.”;*

- (g) In **paragraph 8, 9 and 11**, after the words EAC or SEAC or Expert Appraisal Committee or State Level Expert Appraisal Committee, the **words DEAC or District Level Expert Appraisal Committee were inserted** so as to bring the same in conformity with this amended notification.

- (h) In **paragraph 10**, after sub-paragraph (iii), following sub-paragraph (iv) was inserted:

*“(iv) The prescribed procedure for sand mining or river bed mining and monitoring is given in Appendix XII.”;*

(i) **In para 11**, for the words “Expert Appraisal Committee or State Level Expert Appraisal Committee”, the words “**Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee**” were substituted.

(j) In the Schedule, item 1(a) and entries were substituted as under:

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	<p>≥ 50 ha of mining lease area in respect of non-coal mine lease.</p> <p>&gt;150 ha of mining lease area in respect of coal mine lease.</p> <p>Asbestos mining irrespective of mining area.</p>	<p>&lt;50 ha of mining lease area in respect of non-coal mine lease.</p> <p>≤ 150 ha of mining lease area in respect of coal mine lease.</p>	<p>General Conditions shall apply except:</p> <p>(i) for project or activity of minor minerals of Category ‘B2’ (upto 25 ha of mining lease area);</p> <p>(ii) River bed mining projects on account of inter-state boundary.</p> <p><b>Note:</b></p> <p>(1) Mineral prospecting is exempted.”;</p> <p>(2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.”;</p> <p>(3) The mining leases which have obtained environmental clearance under Environment Impact Assessment Notification, 1994 and Environment Impact Assessment Notification, 2006 shall not require fresh environmental clearance during renewal provided the project has valid and subsisting environmental clearance.</p>
	(ii) Slurry pipelines (coal lignite	All projects.		

	<i>and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.</i>		
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(k) After Appendix VI, appendix VII to XII were inserted. Appendix VII lays down qualifications and terms for the experts in DEIAA and DEAC; Appendix VIII contains Form I M i.e., the format application for mining of minor minters under Category 'B2' for less than and equal to 5 ha and it required following information:

**“(II) Basic Information**

- (viii) Name of the Mining Lease site:*
- (ix) Location / site (GPS Co-ordinates):*
- (x) Size of the Mining Lease (Hectare):*
- (xi) Capacity of Mining Lease (TPA):*
- (xii) Period of Mining Lease:*
- (xiii) Expected cost of the Project:*
- (xiv) Contact Information:*

**Environmental Sensitivity**

<b>Sl. No</b>	<b>Areas</b>	<b>Distance in kilometre /Details</b>
1.	<i>Distance of project site from nearest rail or road bridge over the concerned River, Rivulet, Nallah etc.</i>	
2.	<i>Distance from infrastructural facilities Railway line National Highway State Highway Major District Road Any Other Road Electric transmission line pole or tower Canal or check dam or reservoirs or lake or</i>	

	<i>ponds In-take for drinking water pump house Intake for Irrigation canal pumps</i>	
3.	<i>Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value</i>	
4.	<i>Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests</i>	
5.	<i>Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration</i>	
6.	<i>Inland, coastal, marine or underground waters</i>	
7.	<i>State, National boundaries</i>	
8.	<i>Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas</i>	
9.	<i>Defence installations</i>	
10.	<i>Densely populated or built-up area, distance from nearest human habitation</i>	
11.	<i>Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)</i>	
12.	<i>Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)</i>	
13.	<i>Areas already subjected to pollution or environmental damage. (those where existing legal environmental standards are exceeded)</i>	
14.	<i>Areas susceptible to natural hazard which could cause the project to present environmental problems (earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions)</i>	
15.	<i>Is proposed mining site located over or near fissure/fracture for ground water recharge</i>	
16.	<i>Whether the proposal involves approval or clearance under the following Regulations or Acts, namely:- (a) The Forest (Conservation) Act, 1980;</i>	

	<p>(b) <i>The Wildlife (Protection) Act, 1972;</i>  (c) <i>The Coastal Regulation Zone Notification, 2011.</i>  <i>If yes, details of the same and their status to be given</i></p>	
17.	<i>Forest land involved (hectares)</i>	
18.	<p><i>Whether there is any litigation pending against the project and/or land in which the project is propose to be set up?</i>  (a) <i>Name of the Court</i>  (b) <i>Case No.</i>  (c) <i>Orders or directions of the Court, if any, and its relevance with the proposed project.</i></p>	

(l) Appendix IX provided exemption of certain cases from requirement of EC and reads as under:

**“EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE**

*The following cases shall not require prior environmental clearance, namely:-*

1. *Extraction of ordinary clay or sand, manually, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
2. *Extraction of ordinary clay or sand, manually, by earthen tile makers who prepare earthen tiles.*
3. *Removal of sand deposits on agricultural field after flood by farmers.*
4. *Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
5. *Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts.*
6. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management.*
7. *Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-*

2189(68)/5-CHH, dated the 14<sup>th</sup> February, 1990 of the Government of Gujarat.

8. Digging of well for irrigation or drinking water.
9. Digging of foundation for buildings not requiring prior environmental clearance.
10. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nala, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate.
11. Activities declared by State Government under legislations or rules as non-mining activity with concurrence of the Ministry of Environment, Forest and Climate Change, Government of India.”

- (m) Appendix X lays down procedure for preparation of district survey report and reads as under:

**“PROCEDURE FOR PREPARATION OF DISTRICT SURVEY  
REPORT**

**The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline) is to ensure the following:**

**Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.**

The report shall have the following structure:

1. Introduction
2. Overview of Mining Activity in the District
3. The List of Mining Leases in the District with location, area and period of validity
4. Details of Royalty or Revenue received in last three years
5. Detail of Production of Sand or Bajari or minor mineral in last three years
6. Process of Deposition of Sediments in the rivers of the District
7. General Profile of the District
8. Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.
9. Physiography of the District
10. Rainfall: month-wise
11. Geology and Mineral Wealth

In addition to the above, the report shall contain the following:

- (a) District wise detail of river or stream and other sand source.
- (b) District wise availability of sand or gravel or aggregate resources.
- (c) District wise detail of existing mining leases of sand and aggregates.

**A survey shall be carried out by the DEIAA with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.**

**Drainage system with description of main rivers**

S. No.	Name of the River	Area drained (Sq. Km)	% Area drained in the District

*Salient Features of Important Rivers and Streams:*

S. No.	Name of the River	Total Length in the District (in Km)	Place of origin	Altitude at Origin

Portion of the River or Stream Recommended for Mineral Concession	Length of area recommended for mineral concession (in kilometer)	Average width of area recommended for mineral concession (in meters)	Area recommended for mineral concession (in square meter)	Mineable mineral potential (in metric tonne) (60% of total mineral potential)

*Mineral Potential*

Boulder (MT)	Bajari (MT)	Sand (MT)	Total Mineable Mineral Potential (MT)

*Annual Deposition*


S. No	River or Stream	Portion of the river or stream recommended for mineral concession	Length of area recommended for mineral concession (in kilometer)	Average width of area recommended for mineral concession (in meters)	Area recommended for mineral concession (in square meter)	Mineable mineral potential (in metric tonne) (60% of total mineral potential)

**A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.**

**Methodology adopted for calculation of Mineral Potential:**

The mineral potential is calculated based on field investigation and geology of the catchment area of the river or streams. As per the site conditions and location, depth of minable mineral is defined. The area for removal of the mineral in a river or stream can be decided depending on geo-morphology and other factors, it can be 50 % to 60 % of the area of a particular river or stream. For example in **some hill States mineral constituents like boulders, river born Bajri, sand up to a depth of one meter are considered as resource mineral.** Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river or stream.

**The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty one days. The comments received shall be considered and if found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.**

**The District Survey Report shall form the basis for**

***application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years.”***

(n) Appendix XI lays down procedure for environmental clearance for mining of minor minerals including cluster and read as under:

*“The following policy shall be followed for environmental clearance of mining of minor minerals including cluster situation:-*

*(1). The data provided by the States (Sustainable Sand Mining Guidelines) shows that most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill States getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.*

*(2). The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.*

*(3). There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.*

*(4). Environmental clearance shall be applied for and issued to the individual project proponent. The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.*

*(5). The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each*

environmental clearance in that cluster and DEAC, SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.

**(6). A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.**

(7). Form 1M, Pre-Feasibility Report and mine plan for Category 'B2' projects for mining of minor minerals shall be prepared by the Registered Qualified Person or Accredited Consultants of Quality Council of India, National Accreditation Board for Education and Training. The Environment Impact Assessment or Environment Management Plan for Category 'A' and Category 'B1' projects shall be prepared by the accredited consultants of Quality Council of India, National Accreditation Board for Education and Training.

**(8). The SEIAAs shall have supervisory jurisdiction over the DEIAAs and decisions of DEIAA shall be reviewed by the SEIAA without prejudice to any provisions under any existing law.**

**Schematic Presentation of Requirements on  
Environmental Clearance of Minor Minerals including  
cluster situation**

Area of Lease (Hectare)	Category of Project	Requirement of EIA / EMP	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
<i>EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease</i>								
0 – 5ha	'B2'	Form – IM, PFR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC / DEIAA	DEIAA SEIAA SPCB CPCB MoEFC C Agency
> 5 ha and < 25 ha	'B2'	Form –I, PFR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC/ SEIAA	nominated by MoEFC C

$\geq 25ha$ and < 50ha	'B1'	Yes	Yes	Yes	Project Propon ent	Project Propone nt	SEAC/ SEIAA	
$\geq 50 ha$	'A'	Yes	Yes	Yes	Project Propon ent	Project Propone nt	EAC/ MoEF CC	
<i>EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation</i>								
Cluste r area of mine leases up to 5 ha	'B2'	Form – 1M, PFR and Approve d Mine Plan	No	Yes	State, State Agency, Group of Project Propon ents, Project Propon ent	Project Propone nt	DEAC / DEIA A/	DEIAA SEIAA SPCB CPCB MoEFC C Agency nominate d by MoEFC C
Cluste r area of Mine leases > 5 ha and < 25 ha with no individ ual lease > 5 h	'B2'	Form –I, PFR and Approve d Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Propon ents, Project Propon ent	Project Propone nt	DEAC / DEIA A/	
Cluste r of mine leases of area $\geq 25$ hectar es with individ ual lease size < 50ha	'B1'	Yes	Yes	Yes	State, State Agency, Group of Project Propon ents, Project Propon ent	Project Propone nt	SEAC/ SEIAA	
Cluste r of any size with any of the individ ual lease $\geq 50ha$	'A'	Yes	Yes	Yes	State, State Agency, Group of Project Propon ents, Project Propon ent	Project Propone nt	EAC/ MoEF CC	

(o) Appendix XII lays down procedure for monitoring of sand mining or river bed mining and said as under:

*“1. The security feature of Transport Permit shall be as under:*

- (a) Printed on Indian Banks’ Association (IBA) approved Magnetic Ink Character Recognition (MICR) Code paper.*
- (b) Unique Barcode.*
- (c) Unique Quick Response (QR) code.*
- (d) Fugitive Ink Background.*
- (e) Invisible Ink Mark.*
- (f) Void Pantograph.*
- (g) Watermark.*

*2. Requirement at Mine Lease Site:*

- (a) Small Size Plot (Up to 5 hectare): Android Based Smart Phone.*
- (b) Large Size Plots (More than 5 hectare): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.*
- (c) Access control of mine lease site.*
- (d) Arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used.*

*3. Scanning of Transport Permit or Receipt and Uploading on Server:*

- (a) Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;*
- (b) Android Application: Scanning on mining site can be done using Android Application using smart phone. It will require internet availability on SIM card;*
- (c) SMS: Transport Permit or Receipt shall be uploaded on server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, an unique invoice code gets generated with its validity period.*

*4. Proposed working of the system:*

*The State Mining Department should print the Transport Permit or Receipt with security features enumerated at Paragraph 1 above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine*

*lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued.*

*When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.*

#### *5. Checking On Route:*

*The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using website, Android Application and SMS.*

#### *6. Breakdown of Vehicle:*

*In case the Vehicle breakdown, the validity of Transport Permit or Receipt shall be extended by sending SMS by driver in specific format to report breakdown of vehicle. The server will register this information and register the breakdown. The State can also establish a call centre, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call centre.*

#### *7. Tracking of Vehicles:*

*The route of vehicle from source to destination can be tracked through the system using check points, RFID Tags, and GPS tracking.*

#### *8. Alerts or Report Generation and Action Review:*

*The system will enable the authorities to develop periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.*

***The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the DEIAA, SEIAA and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place not later than three months. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.”.***

109. By Notification dated 20.01.2016 published in Gazette of India Extraordinary of the same date, Central Government constituted District Level Environmental Impact Assessment Authority for grant of EC for category B2 projects for mining of minor minerals for all the districts in the country and said as under:

1. *District Magistrate or District Collector of the district-Chairperson*
  2. *Senior most Divisional Forest Officer in the district-Member*
  3. *An expert member to be nominated by the Divisional Commissioner or- Member Chief Conservator of the Forest*
  4. *Sub-Divisional Magistrate or Sub-Divisional Officer of the district head-Member-Secretary quarter*
2. *The Chairperson and official members of the Authority for the districts shall hold office during their tenure in the district on said posts and the expert member shall hold office for a period of three years from the date of nomination by the competent authority.*
  3. *The Authority for the districts shall exercise such powers and follow the procedures as specified in the said notification.*
  4. *The Authority for the districts shall base its decision on the recommendations of the District Level Expert Appraisal Committee constituted under paragraph 5 of this notification.*
  5. *For the purposes of assisting the Authority for the districts, the Central Government hereby constitutes the District Level Expert Appraisal Committee for all the districts of the country (hereinafter referred to as DEAC for the district) comprising of the following members, namely:-*

1.	Senior most Executive Engineer, Irrigation Department	- Chairperson
2.	Senior most Sub-Divisional Officer (Forest)	- Member
3.	A representative of Remote Sensing Department or Geology Department or State Ground Water Department to be nominated by the District Magistrate or District Collector	- Member
4.	Occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector	- Member
5.	Engineer from Zila Parishad	- Member
6.	A representative of State Pollution Control Board or Committee	- Member
7.	An expert to be nominated by the Divisional Commissioner or Chief Conservator of Forest	- Member
8.	An expert to be nominated by the Divisional Commissioner or Chief Conservator of Forest	- Member
9.	An expert to be nominated by the Divisional Commissioner or Chief Conservator of Forest	- Member
10.	Senior most Assistant Engineer, Public Works Department	- Member
11.	Assistant Director or Deputy Director or District Mines Officer or Geologist in the district in that order	- Member Secretary

6. The Chairperson and the official members of the DEAC shall hold office during their tenure in the district and the non-official members shall hold office for three years from the date of their nomination by the competent authority.

7. The DEAC shall exercise the powers and follow the procedures as specified in the said notification.

8. The DEAC shall function on the principles of collective responsibility and the Chairperson shall endeavor to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

9. *The District Magistrate or District Collector of the district shall notify an agency to act as Secretariat for the Authority for the districts and DEAC. The agency shall provide all logistic support including transportation, accommodation, and such other facilities in respect of all its statutory functions.*

10. *The non-official members of the Authority for districts and the DEAC shall be entitled to such sitting fees, travelling allowance and dearness allowance which shall be paid in accordance with the concerned rules of the respective State Governments.*

110. In **Satendra Pandey vs. MoEF&CC & Another (supra)** filed on 18.04.2016, validity of Notifications dated **15.01.2016 and 20.01.2016** amending EIA 2006 were challenged and a direction was sought that DEIAA should not function in the manner as provided in the said Notifications.

111. **Satendra Pandey vs. MoEF & Ors. (supra)** along with OA 200/2016, *Rajeev Suri vs. Union of India*; OA 580/2016, *Badal Singh vs. Union of India & Ors.*; OA 102/2017, *Nature Club of Rajasthan (NGO) vs. Union of India & Ors.*; OA 404/2016, *Naresh Zargar vs. Ministry of Environment & Forest and Anr.*; OA 405/2016, *Rajeev Suri vs. Union of India & Anr.* and OA 520/2016, *Vikrant Tongad vs. Union of India* was decided vide judgment dated 13.09.2018. Tribunal found both the above Notifications, partly, inconsistent with Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)**. The exemption granted to leases upto 5 hectares in regard to procedure of appraisal by DEIAA was not upheld. The relevant extract of the judgment reads as under:

**“9.** *Upon consideration of the fact and circumstances set out in the original application and upon hearing the Ld. Counsel for parties, we find that the impugned Notification dated 15<sup>th</sup> January, 2016 is not consistent with the decision of the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We find substance in the submissions of the Ld. Counsel for the applicant that while breaking category B of the*

*mines to B-1 & B-2 may not per se be bad, it certainly dilutes the stringent requirement of lease areas upto 25 ha being exempted from the necessity of submitting EIA and EMP for grant of Environmental Clearance. It is undisputed that the impugned Notification is issued with the object to comply with the directions passed in the case of Deepak Kumar (supra). This case had arisen as the EIA Notification dated 14<sup>th</sup> September, 2006 was being flouted by breaking homogenous areas into pieces of less than 5 ha in the States of Uttar Pradesh, Rajasthan and Haryana, as the notification then did not require Environmental Clearance for areas less than 5 ha. The Hon'ble Supreme Court after noting the serious deleterious effect of quarrying, mining and removal of sand in-stream and up-stream of rivers to the environment, in paragraphs 9 and 10 (of SCC), held as follows:*

*“9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream’s physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.*

*10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on biodiversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes*

through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. **We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.**”

**10.** The Hon’ble Supreme Court also took note of the fact that the MoEF&CC had constituted a Core Group under the Chairmanship of the Secretary (Environment & Forest) to look into the environment aspects associated with mining of the minor minerals vide order dated 24<sup>th</sup> March, 2009 with specific terms and conditions. The Core Group after consideration of various issues including cluster of mine approach for addressing and implementing EMP in case of small mines, submitted a report on 29<sup>th</sup> January, 2010 with the recommendation to permit mining of minor minerals under strict regulatory regime and carried out only under an approved framework of mining plan which should provide for reclamation and rehabilitation of mine areas. For smaller mine lease areas a cluster approach was recommended. It was directed that the States should adopt the recommendations and the model guidelines framed by the Ministry of Mines, namely the Model Rules, 2010.

**11.** In pursuance of the directions, the impugned Notification dated 15<sup>th</sup> January, 2016 was ultimately issued. The MoEF&CC Notification dated 14<sup>th</sup> December, 2006 as it stood earlier prescribed for two categories of projects and activities as Category A and Category B based on the spatial extent of potential impacts, potential impacts on human health and natural and man-made resources. Stage (1)- Screening that provides for Category ‘B’ projects or activities, entail scrutiny of an application seeking prior Environment Clearance made in Form 1 by the concerned State Level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of EIA for appraisal

prior to grant of Environment Clearance depending upon the nature and location specificity of the project. It further provides that the project requiring EIA report would be termed as Category 'B-1' and remaining projects as Category 'B-2' that would not require EIA report. Discretion to make such categorization was left upon the MoEF&CC and to issue appropriate guidelines from time to time. **This provision was a subject matter of challenge in the case of Himmat Singh Shekhawat v. State of Rajasthan, 2015 ALL (I) NGT Reporter (1) DEL 44 by which it was upheld as having been issued by the Ministry as a Subordinate Legislation. However, the office memorandums dated 24<sup>th</sup> June, 2013 and 24<sup>th</sup> December, 2013 prohibiting grant of Environment Clearance to the mine areas of less than 5 ha was quashed as being in conflict with the aforesaid provision.**

**12. The only contention that require for us to consider in this case is as to whether the Notification dated 15<sup>th</sup> January, 2016 would satisfy the spirit of the directions issued in the case of Deepak Kumar (supra). As already noted, EIA Notification dated 14<sup>th</sup> September, 2006 under the Schedule provided thereto require all mining lease area of equal to and up to 50 ha to seek Environment Clearance requiring to submit EIA for appraisal from the SEIAA.**

**13. The impugned Notification dated 15<sup>th</sup> January, 2016, however, would clearly indicate that Category B has been split into category B1 and B2 and again, category B2 has been further split into areas of 0-5 ha and 5-25 ha. While 0-5 ha has been exempted from the requirement of EIA/Public Consultation, such exemption has also been provided even for mining areas of 5 ha to 25 ha with the DEAC and the DEIAA as the prescribed authority for evaluation and grant of Environmental Clearance. Category B-1 being mining areas of 25 ha to 50 ha, the authorities prescribed are the SEAC and SEIAA. For falling in excess of 50 ha being Category-A, it is the EAC and the MoEF&CC.**

**14. The procedure for grant of the Environment Clearance by the DEIAA for areas between 0 to 5 ha falling under Category 'B-2' is found prescribed in paragraphs 6, 7(iii) (a) and 7(iii) (b) of the impugned Notification read with appendices VIII, X and XI. The Schematic Presentation of Requirement of Environment Clearance of Minor Minerals including cluster situation provided in a table to Appendix XI would substantiate indubitably that even for areas between 5 to 25 ha, no EIA and Public Hearing is required and in cluster situation also, the requirement of EIA and Public Hearing have been exempted.**

**15. Introduction of such procedure, in our view, is clearly**

**not consistent with the directions contained in the case of Deepak Kumar (supra) and the spirit behind such direction. By the provision, mining area upto from 5 ha to 25 ha has been completely exempted from the EIA and Public Consultation. For areas of 5 ha and below, apart from the exemption, it has been made only subject to a separate procedure of preparing a District Survey Report (DSR). These provisions quite apparently are more minecentric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects.**

**16. The Sustainable Sand Mining Management Guidelines, 2016 prepared by the MoEF&CC has also deprecated the procedure as will appear from below which is contained in the chapter on “The Issues and Management of Mining in Cluster”:-**

*“It is seen that the categorization of mines into ‘B1’ and ‘B2’ category in which Category ‘B2’ leases are being exempted from the requirement of Environment Impact Assessment, Environment Management Plan, and Public Consultation for grant of EC, in many cases now the mining leases are being given for 25 hectares or less. **This defeats the purpose and intent of Hon’ble Supreme Court Judgment** which orders environment clearance for all mining leases irrespective of size. The environment clearance without Environment Impact Assessment, Environment Management Plan, and Public Consultation does not serve the purpose of environment clearance which is to ensure environmentally sustainable and socially responsible mining. So if a cluster or individual lease size exceeds 5 hectare, the EIA/EMP should be completed in the process of grant of prior environment clearance.”*

**17. Thus, even according to the Sustainable Sand Mining Management Policy issued by the MoEF&CC by dispensing with Public Hearing, the judgment of the Hon’ble Supreme Court in the case of Deepak Kumar (supra) will stand defeated.**

**18. We also find that parameters for consideration while preparing District Mining Plan (DMP) and District Survey Report (DSR) are only for the purpose of ascertaining whether an area is fit for mining which are quite different from the parameters laid down for EIA. The consideration of the view point of the public by keeping DSR in public domain is not a substitute of Public Hearing for consideration of the view point of the public for EIA.**

**19.** *With specific reference to mining in cluster, the Report of the Committee of Secretaries, Ministry of Environment, Forest and Climate Change, 2010 recommended as follows:*

*“Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently.”*

**20.** *This report which is a part of the Sustainable Sand Mining Management Guidelines, 2016 finds reinforcement in the Chapter “The Issues and Management of Mining in Cluster” referred to earlier where it has inter-alia been recommended as under:*

*“The Hon’ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so following conditions need to be ensured for cluster of mines:*

- 1. To address the concern of adverse impact of minor mineral mining on environment it is proposed that all mining activity including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance. These reports (EIA/EMP) can be prepared by the State or State nominated Agency/the Project Proponent (s).*
- 2. **As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon.** So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.*
- 3. The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon’ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.*

- 4. **A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.**
- 5. *The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.*
- 6. *The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.*
- 7. *There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.*
- 8. *The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.*
- 9. ....
- 10. ....
- 11. ....”

**21. Dispensing with the requirement of Public Hearing which**

*forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14<sup>th</sup> September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of Deepak Kumar (supra).*

**22.** *For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.*

**23.** *We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order.*

**24.** *It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime*

**shall be viewed seriously.** *This in our view will be in the interest of the environment as deliberated in detail in the case of Deepak Kumar (supra) and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.*

**25.** *The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15<sup>th</sup> January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra)."*

112. The consequences flowing from the judgment passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** are the bone of contentions raised in the present case.

113. In the backdrop of the above Statutory changes made in EIA 2006 and the retrospect of various verdict of the Courts and Tribunal, we may now proceed to consider the issues noted above on merits.

**ISSUE I:**

114. This issue pertains to the maintainability of OA to the extent, the applicant has sought relief for cancellation of ECs dated 23.10.2018 and mining leases issued in favour of respondent 5 on 05.10.2020 and in favour of respondent 6 on 06.11.2020. The submission of Learned Senior Counsel appearing for respondents 5 and 6 is that if the person is aggrieved against grant of EC, he can avail remedy of Appeal providing in Section 16(h) of NGT Act, 2010. It is contended that specific Statutory remedy as provided, Tribunal will not set an appeal by entertaining an application filed under Section 14 since Sections 14 and 15 do not confer appellate jurisdiction upon Tribunal, therefore, challenge to ECs dated 23.10.208 and seeking cancellation thereof by means of OA filed under Sections 14 and 15 of NGT Act, 2010. It is impermissible and OA is not

maintainable in this respect. The applicant has not specifically replied this aspect but submits that since *ex-facie* ECs granted are not in violation of Tribunal's judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**, therefore, Section 14 is wide enough to confer jurisdiction of Tribunal to look into the correctness of grant of EC to respondents 5 and 6 and if satisfied that the same are granted illegally, can adjudicate such issues while declaring ECs to be illegal. In fact, what has been contended by applicant is that jurisdiction conferred by Section 14 over lapse the Appellate jurisdiction conferred by Section 16 and in fact Section 14 is wider enough to consider correctness of a statutory order passed under EP Act, 1986 or orders, rules or directions issued thereunder even if remedy is provided in Section 16 and the same has not been availed. The issue of jurisdiction of Tribunal under Sections 14, 15 and 16 has been considered by Supreme Court in **Mantri Techzone Private Limited v. Forward Foundation & Ors., (2019) 18 SCC 494** and it has been held that Tribunal has been established under a constitutional mandate provided in Schedule Schedule VII List I Entry 13 of the Constitution of India to implement the decision taken at the United Nations Conference on Environment and Development. Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. Right to Healthy Environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, Tribunal has special jurisdiction for enforcement of environmental rights. Jurisdiction of Tribunal is provided under Sections 14, 15 and 16 of Act. Section 14 provides the jurisdiction over all civil cases where a

substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. Tribunal has also jurisdiction under Section 15(1)(a) to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Section 15(1)(b) and 15(1)(c), Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as Tribunal may think fit. Supreme Court said in para 42 of the judgment that Section 15(1)(b) and (c) have not been made relatable to Schedule I enactments of the Act. Court further held that Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. In para 45 of the judgment, Supreme Court categorically held that powers and jurisdiction under Section 15 of the Act are independent of Section 14. Similarly, Section 14(3) and 15(3) of NGT Act, 2010 are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation since different period of limitation has been described under Sections 14 and 15 i.e., six months and five years respectively from the date on which cause of action first arose. Legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdiction. Supreme Court also referred to Section 18 of NGT Act, 2010 stating that it recognizes right to file applications each under Sections 14 and 15. Supreme Court rejected the contention that Section 14 provides jurisdiction to Tribunal while Section 15 merely supplements the same with powers. Going into light of the above observations, we find that the appellate jurisdiction of Tribunal recognize under Section 16 is also different and Section 18 separately talks of filing

an appeal under Section 16. We do not find any over-lapping power or jurisdiction of Tribunal under Sections 14 and 16 as sought to be argued by applicant. In the Appellate jurisdiction the issue which is to be considered by Tribunal is whether Statutory power exercised by statutory authority in grant of statutory consent or clearance has been validly exercised or not consistent with the provisions of law irrespective of the question whether any substantial question relating to environment arising out of implementation of enactments specified in Schedule I exists or not. Section 16 confers independent appellate power upon Tribunal and a different period of limitation is prescribed to avail such remedy of Appeal i.e., 30 days from the date of which the order or decision or direction or determination is communicated to the person preferring Appeal. We may also notice at this stage that right of appeal if not availed within the time of limitation, the remedy to challenge the order of action whereagainst appeal lie disappear/barred and once such specific remedy is barred unless there is a provision in the Statute or may be inferred by necessary implication, if any, such appellate jurisdiction cannot be read in any other provision which do not confer any appellate jurisdiction.

115. The applicant has not disputed that the prayer made in the present case with regard to cancellation of ECs dated 23.10.2018 does not come within the purview of Section 15 but has attempted to bring it within the ambit of Section 14. We have already given our reasons for not agreeing to the above submission that under Section 14, statutory order or action or direction can be challenged whereagainst a specific remedy of Appeal under Section 16 is provided which has not been availed. Even if what is contended by applicant, for the sake of arguments, if taken to be correct, limitation under Section 14(3) is only six months from the date when cause

of action first arose. In the present case, ECs were granted on 23.10.2018 while OA in question has been presented before Registry of Tribunal on 14.02.2022 i.e., after more than three years. Thus, even otherwise, it is barred by limitation under Section 14(3) also.

116. We are, therefore, of the view that the present OA, so far as the prayer for cancellation of ECs dated 23.10.2018 is concerned, not maintainable under Section 14.

117. **We answer issue I accordingly, against applicant, and in favour of respondents 5 and 6.**

**ISSUE II:**

118. Copy of lease dated 05.10.2020 is on record as annexure-8 at page 106 and dated 06.11.2020 as annexure-9 at page 121. A bare reading of those documents shows that State Government granted mining leases for mining of building stone as Block, Gitti, Boulder, (Dolo Stone) under the provisions of **Uttar Pradesh Minor Minerals (Concession) Rules, 1963** (hereinafter referred to as '**UPMMC Rules, 1963**').

119. The above Rules have been framed under MMDR Act, 1957. Both the above statues are not mentioned in Schedule I of NGT Act, 2010. Therefore, remedy under Section 14 in respect to an action taken under the above Statues, cannot be subject matter of adjudication before Tribunal under Section 14 of NGT Act, 2010.

120. Further, mining leases granted under UPMMC Rules, 1963 read with MMDR Act, 1957 is not an order, direction or document whereagainst any appeal is prescribed under Section 16 of NGT Act, 2010. Therefore, apparently, this Tribunal has no jurisdiction to cancel the lease deeds

granted to respondent 5 and 6 under the provisions of Mining Statues and to this extent, OA is not maintainable as no such relief can be granted to applicant.

121. **Issue II is answered accordingly.**

**ISSUE III:**

122. The discussion made above makes it clear that ECs were granted to respondents 5 and 6 by DEIAA in view of the power conferred under EIA 2006 as amended vide Notifications dated 15.01.2016 and 20.01.2016. Tribunal did not find the entire amendment Notifications inconsistent to the directions issued by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***. It clearly observed that breaking of category 'B' of the Mines into 'B1' and 'B2' is not per se bad and, therefore, it allowed retention of 0 to 5 hectares as a category, as is evident from Tribunal's judgment from para 23 in ***Satendra Pandey vs. MoEF&CC & Another (supra)***.

123. However, to the extent the amendment notifications diluted the stringent requirement of appraisal for grant of EC, it was not found consistent with the judgment of Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***. Tribunal held that there was an attempt to prevent implementation of the directions of Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)*** by breaking homogenous areas into pieces of less than 5 hectares in States of UP, Rajasthan and Haryana. Since the notification did not require EC for less than 5 hectares, this discretion of exemption of the mining blocks of less than 5 hectares was not appreciated by Tribunal. It was also held that categorisation of B2 category into areas 0 to 5 hectares and 5 to 25 hectares and thereafter,

exemption of 0 to 5 hectares from the requirement of EIA/Public Consultation and dispensation of public hearing where lease area is upto 25 hectares, was not consistent with the directions issued by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)*** and spirit behind such direction.

124. In para 15 of the judgment in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, this Tribunal clearly said that mining area upto 05 and from 05 hectares to 25 hectares has been completely exempted from EIA and Public Consultation. These provisions are more minecentric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects.

125. Dispensation of Public Hearing was also seriously castigated and it is in this backdrop, Tribunal directed MoEF&CC to take appropriate steps to revise the procedure laid down in the amendment notification dated 15.01.2016 to make it consistent with the directions made in ***Satendra Pandey vs. MoEF&CC & Another (supra)*** and to bring in conformity with the letter and spirit of the directions given by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***.

126. This judgment in ***Satendra Pandey (supra)*** was pronounced on 13.09.2018. Tribunal chose not to quash or struck down the amendment notification even partly but holding that the same is not in conformity with the Supreme Court's judgment in ***Deepak Kumar vs. State of Haryana (supra)***, required the Ministry to make necessary changes so as to bring it in conformity with the letter and spirit with the directions passed by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***.

127. The effect is that notification dated 15.01.2016 so long as is not changed/revised/alterd by MoEF&CC, continued to operate PAN India.

128. In **Satendra Pandey vs. MoEF&CC & Another (supra)**, this Tribunal also did not give any direction that henceforth the procedure laid down in the notification dated 15.01.2016 shall not be followed or DEIAA across the country shall cease to function or would not operate or would not grant any EC forthwith.

129. Probably, Tribunal had the intention that MoEF&CC would comply with the directions contained in **Satendra Pandey vs. MoEF&CC & Another (supra)** at an early date, therefore, without affecting the mining leases operating at the relevant time, Tribunal chose not to pass any such order creating a vacuum for the purpose. However, taking undue advantage of the situation, State of UP and State of Kerala issued letters directing that DEIAA shall continue to grant EC as per the amendment notification dated 15.01.2016.

130. For more than two months, MoEF&CC also did not act in the light of the directions given by this Tribunal in **Satendra Pandey vs. MoEF&CC & Another (supra)** and no changes were made in EIA 2006 as amended vide notification dated 15.01.2016.

131. Consequently, an **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India** was filed before Tribunal. For the first time, vide order dated 11.12.2018, Tribunal issued directions to MoEF&CC to comply with the judgment dated 13.09.2018 forthwith and submit a compliance report on or before 31.12.2018. Tribunal also said

specifically that till fresh notification is issued by MoEF&CC, notification dated 15.01.2016 will not be acted upon.

132. Thus, any further action pursuant to the amendment notification dated 15.01.2016 was stopped by Tribunal vide order dated 11.12.2018.

133. The directions of State Governments that notification dated 15.01.2016 having not been stayed may be followed, was not consistent with the Tribunal's judgment dated 13.09.2018 and the same was suspended till a fresh notification is issued by MoEF&CC.

134. The directions given vide order dated 11.12.2018 were applied/extended to all SEIAAs and State Governments.

135. Consequently, on 12.12.2018, MoEF&CC issued an OM and communicated Tribunal's judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)** to all State Governments and statutory regulators with the direction to comply the same. In this backdrop of above orders, particularly, considering the order dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, whereby amendment notification dated 15.01.2016 was not set aside or quashed or struck down even partly or wholly, it is difficult to hold that if on and after 13.09.2018, across the country where DEIAAs were operating, if any EC was granted after 13.09.2018, the same would become per se illegal. The situation changed only on 11.12.2018 when in **Execution Application 55/2018 (supra)**, Tribunal restrained the respondents to act upon the amendment notification dated 15.01.2016 and thereby DEIAAs ceased to have any authority to grant EC thereafter.

136. The observations in **Satendra Pandey vs. MoEF&CC & Another (supra)** case were in respect to the protection of appraisal under EIA 2006 which was dispensed with in respect to the mining leases of small areas i.e., 0 to 5 hectares and 5 to 25 hectares though distinction was negated by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** case. Therefore, with regard to the appraisal of Environment Impact Assessment, Tribunal found that proper procedure was not being observed hence grant of EC particularly when DEIAAs did not contain experts for such appraisal, was not in accordance with the letters and spirit of the directions passed by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** but to read the said judgment to hold that the amendment notification dated 15.01.2016 became a nullity to some extent or partly, in our view, is something reading in the judgment which is not there. However, later a clear order has been passed on 11.12.2018 in **Execution Application No. 55/2018 (supra)** and, therefore, if any EC is granted by DEIAA PAN India after 11.12.2018, the same cannot be said to legal and will not hold good but ECs granted upto 11.12.2018 by DEIAA per se will not become illegal. However, to make ECs consistent with the provisions of EIA 2006 read with judgment of Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** and **Satendra Pandey vs. MoEF&CC & Another (supra)**, it would require appraisal in accordance with the procedure prescribed in EIA 2006 as amended from time to time from SEIAA of the concerned State/Union Territory and in the light of the result of such re-appraisal, mining activities may or may not be allowed to continue.

137. The entire confusion and complication, in our view, has been created due to inaction/laxity shown by MoEF&CC by not acting in a reasonable

manner within a reasonable time as per the directions given by this Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***.

138. Learned Counsel appearing for MoEF&CC contended that against the order passed by Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, an Appeal was preferred before Supreme Court but could not dispute that there is no stay granted by Supreme Court and therefore, inaction on the part of MoEF&CC in not complying with the directions of Tribunal for a long time is a serious defiance and an attempt to permit mining activities to continue without proper appraisal by Competent Authority. We deprecate MoEF&CC in the strongest words for such conduct.

139. Some OMs have been issued by MoEF&CC without realizing that when statutory order has been issued in exercise of powers under Section 5 of EP Act, 1986 i.e., EIA 2006, its provisions need to be amended following the same procedure as was followed when EIA 2006 was made and by issuing executive orders in the form of OM, effect of statutory provisions cannot be controlled and regulated.

140. An incidental question to issue III is when ECs have been granted by DEIAAs upto 11.12.2018 and the same have not been appraised/re-appraised by SEIAA till date, whether mining activities by such mining lease holders would be illegal. We find that the fault is more on the part of MoEF&CC and statutory authorities who failed to take action consistent and in compliance with the directions given by this Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***. For the fault of State and its authorities, it would not be appropriate to penalize the mining lease holders for no fault of theirs in the entire exercise. Simultaneously, it is

also true that without proper appraisal of Environment Impact Assessment of the mining leases by Competent Authority, if the mining is continued for long time, it is bound to cause serious damage to environment in various ways some of which have been observed by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)**.

141. In **OA 26/2023(CZ), Rakesh Sharma vs. State of Rajasthan & Ors.**, this Tribunal had an occasion to consider a similar controversy. Therein, EC was granted by DEIAA on 26.06.2016 and it was argued that since amendment notification dated 15.01.2016 was held to be illegal and not consistent with Supreme Court's directions given in **Deepak Kumar vs. State of Haryana (supra)**, therefore, the mining activities carried out pursuant to above EC were illegal. It was held that so long as the mining was carried out complying with all the conditions mentioned in EC, the same cannot be said to be illegal merely because EC was granted by DEIAA on 25.06.2016. Tribunal further said that the issue of re-appraisal/appraisal by SEIAA cannot remain pending indefinitely and it is not necessary for SEIAA to keep the matter pending for months together in every case. Decision must be taken by concerned SEIAA in a reasonable period and therein, Tribunal directed SEIAA Rajasthan to complete the steps for appraisal/re-appraisal of ECs of proponents expeditiously but in any case within three months.

142. Therefore, a reasonable view need to be taken in this matter. To meet the ends of justice and also to implement the environmental laws and applying the Precautionary Principle and Sustainable Development, we are of the view that mining leases continuing pursuant to ECs granted by DEIAAs upto 11.12.2018, must be appraised/re-appraised by concerned

SEIAAs within three months from this judgment. Thereafter, if no decision is taken in favour of mining lease holders or no appraisal is made, the mining by lease holders who have been granted ECs by DEIAA shall not be allowed to operate. Further in all those cases where ECs have been granted by DEIAAs on and after 12.12.2018, such mining leases shall not be allowed to operate forthwith since such ECs are illegal. In such cases appraisal has to be made by concerned SEIAA and ECs are to be granted in accordance with the provisions of EIA 2006 as amended from time to time.

143. In order to avoid any doubt, we also make it clear that MoEF&CC would also make necessary rectifications/corrections in OMs already issued including OM dated 28.04.2023 so as to cover ECs granted by DEIAA from 15.01.2016 to 11.12.2018 instead of confining it to 13.09.2018 for appraisal/re-appraisal by SEIAA.

144. **We answer issue III accordingly.**

**ISSUE IV:**

145. In view of what has been discussed while answering issue III, it cannot be said that merely for the reason that mining activities continued by respondents 5 and 6 pursuant to ECs granted by DEIAA on 23.10.2018, the entire mining was illegal.

146. However, at this stage, one aspect needs be considered in the light of the facts which have been placed before us as also the law laid by Supreme Court. The record shows that the lease area is part of Gata no. 7536 which has a total area of 106.396 hectares. State of UP issued Gazette Notification dated 15.06.2020 under Section 20 of Indian Forest

Act, 1927 declaring 60.1220 hectares area of Gata no. 7536 as part of Reserve Forest. It is evident from record that the breakup of total 106.396 hectares of Gata 7536 is as under:

- Reserve Forest = 60.1220 hectares
- Private Land = 4.122 hectares and
- Pahad = 42.1520 hectares.

147. Applicant claims that there is no demarcation of the land while claim of respondents is that they have been allowed mining leases on a land which is outside the area declared as 'Reserve Forest'. The fact remains that the entire Gata comprises a bigger area and even if the boundary of 60.1220 hectares declared as 'Reserve Forest' is excluded, the remaining part is adjacent/appertenant to the boundary of Reserve Forest.

148. In **Goa Foundation vs. Union of India & Ors., (2014) 6 SCC 590**, Supreme Court in its order dated 21.04.2024 directed as under:

*“49. ....The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.”*

149. Supreme Court vide order dated 03.06.2022 passed in **T.N. Godavarman Thirumulpad, in Re vs. Union of India & Others (2022) 10 SCC 544** held that each protected forest i.e., National Park or Wildlife Sanctuary must have an Eco-Sensitive Zone of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 09.02.2011

shall be strictly adhered to. Mining within National Park or Wildlife Sanctuary shall not be permitted. In para 56.1, Supreme Court said that each protected forest, that is, national park or wildlife sanctuary must have an Eco-Sensitive Zone of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 09.02.2011 shall be strictly adhered to.

150. An IA No. 131377 of 2022 was filed seeking modification of the directions contained in para 56.1 and 56.5 of the order dated 03.06.2022 and this was decided vide order dated 26.04.2023. Supreme Court observed that there is necessity to have Eco-Sensitive Zone to provide a buffer zone around the projected areas. What such proper area should be has to be prescribed by Central Government in exercise of its powers under EP Act, 1986 read with Rule 5 of EP Rules, 1986.

151. So far as mining is concerned, in para 60, Court said, *“Insofar as the restriction on mining is concerned, we are of the considered view that it has been the consistent view of this Court that the mining activities within an area of one kilometre of the boundary of the Protected Areas will be hazardous for the wildlife.”*

152. The Court therefore, in para 65 said, *“We...direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.”*

153. Though in the present case, it is a ‘Reserve Forest’ but in our view, the need of having a buffer area for reserve forest similar to that it was

found necessary in respect of national parks and wildlife sanctuaries is equally relevant, important and necessary and therefore, the mere fact that the boundary of the mining lease area is outside the notified boundary of reserved forest is not sufficient reason to allow mining activities. Such activities must be disallowed within buffer area which until provided otherwise by Competent Authority by issuing appropriate notification, we find shall be followed as 1 km from the actual boundary of the notified 'Reserve Forest'/'Protected Forest', as the case may be.

154. Since mining area of respondents 5 and 6 is part of same gata, substantial part whereof has been declared to be part of Reserve Forest, it has to be examined by the concerned authorities whether remaining part is part of the 'Buffer Zone', whether mining activities can be permitted therein or not so as not to violate Supreme Court's judgments in **T.N. Godavarman Thirumulpad (supra)** and this order of the Tribunal. This exercise shall be undertaken by SEIAA UP within two months and appropriate decision would be taken.

155. Now coming to other aspects of the matter whether there is any breach of conditions of ECs and consent on the part of respondents 5 and 6 during the course the mining activities were carried out, we do not find any sufficient material on record to demonstrate such violations hence, instead of recording any finding on this aspect, we direct UPPCB to look into this aspect and if finds that there is any violation of any violation of the conditions of ECs and Consent, EC issued under EIA 2006 and consent issued under Air Act, 1981 and Water Act, 1974. Appropriate, punitive, prohibitive and remedial action including assessment of environmental compensation shall be taken by it within two months.

156. **Issue IV is answered accordingly.**

**ISSUE V:**

157. Now coming to **issue V**, in view of the discussion made above in our answers to issues I to IV, we are clearly of the view that applicant is not entitled for any relief except of what has already said above by us.

158. OA is accordingly disposed of with the observations/directions as above.

159. Pending IAs also stand disposed of.

160. A copy of this order shall be communicated to MoEF&CC, CPCB, UPPCB, SEIAA UP and District Magistrate, Sonbhadra for information and compliance.

161. Since the implication of this judgment is PAN India, therefore, we direct communication of this order to all the States/Union Territories, Pollution Control Boards/Pollution Control Committees/SEIAA and Additional Chief Secretaries/Principal Secretaries/Director, Mines for information and compliance.

**SUDHIR AGARWAL,**  
JUDICIAL MEMBER

**DR. AFROZ AHMAD,**  
EXPERT MEMBER

August 08, 2024  
Original Application No.142/2022  
R

**M** Gmail **PROOF OF SERVICE** Ravi Krishan Chandna <chandnaravikrishan@gmail.com>

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**ADVANCE SERVICE OF THE WRITTEN SUBMISSION FILED BY THE  
RESPONDENT NO 1 TITLED AS ASHISH CHAUBEY VS ACP TOLLWAYS PVT LTD  
& ORS.**

1 message

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**Ravi Krishan Chandna** <chandnaravikrishan@gmail.com>  
To: "Avinish Kr. Saurabh" <avinish4445@gmail.com>

Tue, Apr 29, 2025 at 8:58 PM

Respected sir,

**Greetings of the day!**

In reference to the captioned matter, the Respondent No 1 is filing Written Submissions along with compilation of judgements before Hon'ble Tribunal.

Kindly acknowledge the advance service of the same.

Please find attached the Written Submissions along with compilation of judgements.

Regards,

Malyaj Sehgal, Advocate

Mobile : 9811234793

From the office of

Mr. Ravi Krishan Chandna

**CHANDNA & ASSOCIATES**

E-320, Greater Kailash – I,

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9711752002 / 9711754002

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 **ACP Tolls Written Submissions.pdf**  
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