



of the OA, and so also the correctness of the report of the Committee, which is in fact *non est*.

5. The instant OA has been filed alleging that two projects namely, Prayeja City I (PC-I) and Prayeja City II (PC-II) have been constructed without prior environmental clearance (EC).
6. The Respondent No. 13 principally has 3 submissions:
  - a. That PC-I and PC-II are two distinct projects and cannot be considered as one for the purposes of applicability of the EIA notification. Accordingly, PC-II being less than 20,000 m<sup>2</sup> does not require a prior EC.
  - b. That the instant OA is barred by limitation and no issues prior to the date of the stated cause of action to institute the OA ought to be taken cognizance of the purpose of computing penalties.
  - c. That the final report of the committee constituted by this Hon'ble Tribunal has wrongly computed penalties applicable for industrial units, rather than follow the Standard Operating Procedure for identification and handling of violation cases dated 07.07.2021 issued by the Ministry of Environment Forest and Climate Change (MoEF) for post facto grant of EC.

#### DISTINCT PROJECTS, PC-II DOES NOT REQUIRE AN EC

7. PC-I and PC-II cannot be considered as a singular project for the following reasons:
  - i. The plots on which PC-I and PC-II were never a part of one parcel of land, and have been purchased by distinct transaction; while the former was purchased between 14.12.2004 to 08.12.2012, the latter was purchased between 24.02.2005 to 30.04.2012.
  - ii. The plots have always been distinct. While PC-I has been constructed on the property bearing Sy. Nos. 71/5 (P), 71/6A/1 to 71/6A/13, 71/6B/1 to 71/6B/6, 71/7B, 71/9A/1, 71/3/1 to 71/3/6; PC-II has been constructed on the property bearing Sy. Nos. 71(Part), 72/20A to 27A. It is not as if they have been divided by the Respondent No. 13 after purchasing a single large plot so as to circumvent the requirement of an EC.

- iii. The two projects have been conceived and commenced at different points in time, inasmuch as the commencement certificate for PC-I is dated 07.05.2008 (346), while that for the latter is dated 08.10.2015 (141). The Plot No.II has also been recommended for getting the Environmental Clearance by SEIAA and has also received the Consent to Establish.
8. All authorities i.e., the Pune Municipal Corporation (PMC) (296), SEIAA (309) and the Joint Committee appointed by this Hon'ble Tribunal by order dated 09.07.2020 (291) are *ad idem* that these are two distinct projects. In particular, the SEIAA even before the present *lis* commenced had observed "*It is clear that Prayēja City-I and Prayēja City-II are the two independent projects.*" (309 at 310)
9. Since these are distinct projects, PC-II having a built-up area of 11,200m<sup>2</sup> does not require an EC. This has been confirmed both by the SEIAA (310), and the Joint Committee (293).
10. If, the above notwithstanding, these projects are considered as one whole solely on account of the fact that their ownership is common, it would be imposing some manner of a macro EIA requirement based on ownership, which is wholly foreign to the EIA notification, and even the EIA manuals issued thereunder.
11. In other words, if projects are clubbed as one simply because they are owned by the same person, and are put up for assessment under the EIA Notification by this reason, it will amount to arbitrariness inasmuch as similar project owned by different entities will not be subjected to the same rigors of the EIA Notification.
12. In fact, as far as PC-II, since the Respondent No. 13 seeks to expand the project beyond the present sanctioned capacity of 18,461 m<sup>2</sup> (307) to 37,095 m<sup>2</sup>, it has already applied for and has obtained a recommendation from the SEIAA for the grant of an EC (399 at 402).

LIMITATION

13. The instant OA has been filed on 29.06.2020, while the construction of PC-I commenced on 30.03.2007. The limitation provided in the NGT Act is peculiar in its phraseology inasmuch as, the limitation is to be computed from when the cause of action '*first arose*'. The Hon'ble Supreme Court in *Khatri Hotels Pvt. Ltd.v. Union of India* (2011) 9 SCC 126 and *L.C. Hanumanthappa v. H.B. Shivakumar* (2016) 1 SCC 332 (477 at 484, 492) has held that when these words appear in a provision, and if there are multiple causes of action, then only the first can be regarded. This Hon'ble Tribunal too, has in *Aradhana Bhargav v. Ministry of Environment and Forest* 2013 SCC OnLine NGT 84 (456 at 469), while emphasizing on this words held that the concept of continuing cause of action cannot be applied. Hence, the maximum period that can be afforded to the Applicant in this case, is 5 years from when the cause of action first arose. It is submitted that the cause of action first arose with the commencement of construction in the instant case on 30.03.2007. Thus, the OA is barred by at least 8 years.
14. At any rate, in the context of the instant case, the cause of action has to be linked to the alleged violation, i.e., requirement of obtaining an EC. It is submitted that the said requirement can only be said to be breached when a project commences construction beyond 20,000 m<sup>2</sup>. In fact, in a case involving breach of a threshold for an EC in *Tanaji Balasaheb Gambhire v. Union of India* OA No. 64/2019, this Hon'ble Tribunal by an judgment dated 23.03.2022 held that the starting point for limitation would be when the threshold for 20,000 m<sup>2</sup> is breached. Thus, it was held by this Hon'ble Tribunal that "*Starting point of limitation is not the approval of the plan, as contended by the PP but the violation in going ahead with construction beyond 20,000 sq. mtrs. without requisite EC and consents and violating environmental norms.*"
15. In the instant case, the Answering Respondent who was proceeding on the basis of its understanding as to EC requirement based on the built-up area being synonymous with FSI area had breached 20,000 m<sup>2</sup> in 2007 itself. Hence, in view of the law laid down in *Tanaji Balasaheb Gambhire v. Union of India*

OA No. 64/2019, the starting point of limitation would be 29.03.2007, which would expire even as per Sec. 15 of the NGT Act on 29.03.2012. Hence, the instant OA is hopelessly barred by limitation.

16. It is apparent that the Applicant was well aware of this situation, and hence conveniently sought to wish away the construction undertaken during a period prior to the limitation provided under the NGT Act. Accordingly, the OA contends at ¶35 that cause of action arose ‘first’ on 10.07.2017 with respect to PC-I, which is the date of the last sanctioned plan obtained by the Respondent No. 13. The additional area as per this sanctioned plan is of 5843 m<sup>2</sup> (**304 at 305**). The said ¶ 35 reads as follows:

*“c. It is submitted that, the PP has made the changes in the capacity or modification in the project layout by carrying out subsequent amendments in sanction plans of PMC till 10.07.2017 and these sanction given rise to the cause of action, as there is change in the previous sanction, in fact there is increase in capacity of the project and all these sanctions become the first cause of action by making the previous sanction ineffective, null & void and PP have not obtained EC, despite there was clear cut condition no. 19 imposed in sanction vide its commencement certificate No. CC/1001/17 dated 10.07.2017, mandating prior environment clearance and consent from MPCB.” [Emphasis supplied]*

Thus, even assuming the sanctioned plan dated 10.07.2017 can be regarded as the first cause of action for the purposes of recommencing limitation under Sec. 15 of the NGT Act, any construction completed based on the previous sanctioned plans which are admittedly beyond the ambit of the OA, even as the Applicant cannot be considered for adjudication by this Hon’ble Tribunal, and most certainly not for the purposes of imposition of any penalty.

17. Further in the alternative, if the matter is seen from another perspective, the buildings that have already been completely constructed and handed over to residents more than 5 years of the institution of the OA must necessarily stand excluded for the purposes of any penalties. In this regard, it is pertinent to note that Part Occupancy certificates have been obtained for PC-I on 29.12.2012 and 09.01.2014 for buildings A, B1, B2, C1, C2, C3 & C4 and E1 respectively. It is submitted that these buildings having been completed and handed over to

residents more than 5 years before the institution of the OA, they ought to be excluded from the purview of this OA, and surely from any penalty that is calculated. The built-up area of the said buildings comes to 38,000 m<sup>2</sup>.

18. Even the Joint Committee, in its final report dated 02.03.2020, while recommending the imposition of penalty has given two scenarios, one computed from the date of commencement of construction, and another considering the 5 years limitation contemplated in Sec. 15 of the NGT Act. The final report in ¶6(b) states:

*“b) Whereas, taking reference from Section 15, Sub-Section 3 of The National Green Tribunal Act, 2010 and to limit a period since when default/non-compliance is to be considered for assessing environmental damage and compensation, the period of default/non-compliance has been taken into account in the past five years prior to the day; OA no. 33/2020 (WZ) was filed before the Hon’ble NGT (i.e. on 02/07/2020) and till the date of Hon’ble NGT order (i.e. 17/11/2020) vis-à-vis 02.07.2015 to 17.11.2020, total number of days violation (N) took place without obtaining mandatory CTE/CTO from MPCB, comes out to be 1,965 days.”*

#### ERRONEOUS COMPUTATION OF PENALTY BY JOINT COMMITTEE

19. The Joint Committee in its final report though notices that the SOP formulated by the MoEF pursuant to the directions of the Hon’ble Tribunal in OA No. 34/2020 (WZ), has effectively been upheld by the Hon’ble Supreme Court in *Electrosteel Steels Ltd. v. Union of India and Others* 2021 SCC OnLine 1247 (¶88-89, 94) and subsequently reiterated in *Pahwa Plastics v. Dastar NGO* 2022 SCC OnLine SC 362, yet proceeds to compute additional penalties on the basis of the “Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund”. The said report, was expressly, one dealing with imposing of environmental compensation for ‘Industrial Units’.
20. At any rate, the penalty cannot go back in time beyond 5 years from the date of filing of the OA.
21. It is submitted that the report which is even otherwise *non est* (in view of the order of the Hon’ble Supreme Court dated 12.03.2021), is erroneous for the following reasons:

- a. *Firstly*, the formula adopted is *ex facie* inapplicable to a construction project of a residential nature. The formula employed is from the “REPORT OF THE CPCB IN-HOUSE COMMITTEE ON METHODOLOGY FOR ASSESSING ENVIRONMENTAL COMPENSATION AND ACTION PLAN TO UTILIZE THE FUND” which was evolved consequent to orders passed by this Hon’ble Tribunal’s Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, *Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.* where the CPCB was directed to:

*“take penal action for failure, if any, against those accountable for setting up and maintaining STPs, ETPs and CETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months”.* [Emphasis supplied]

The CPCB has further mentioned, under Point No. 1.3, the pre-conditions where this needs to be used and applied:

*“...It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on “Polluter Pay Principle .....”* [Emphasis supplied]

- b. *Secondly*, as is admitted at page 15 of the final report, the computation in this report is done only keeping in mind an industrial unit which is required in law to obtain a consent even to operate. Whereas the Hon’ble Delhi High Court has held in *Delhi Pollution Control Committee v. Splendor Landbase Ltd.* 2012 SCC OnLine Del 400 that a residential complex will not need a consent after the construction stage.

#### DOUBLE JEOPARDY

22. The Respondent No. 13 had on 05.09.2019 applied to the MoEF for an *ex post facto* clearance for its sanctioned plan dated 10.07.2017. The said application was based on the OM dated 14.03.2017 which though had a validity period of only 6 months and had since expired.

23. However, presently, the OM dated 07.07.2021 (Standard Operating Procedure for identification and handling of violation cases), which has been formulated under the direction of this Hon'ble Tribunal, and has effectively been upheld by this Hon'ble Court in *Electrosteel* (*supra*) and *Pahwa* (*supra*) is very much in force.
24. Respondent No. 13 undertakes to apply under the SOP for the completion of its project, in terms of the sanction plan dated 10.07.2017. However, if the Joint Committee's Final Report is accepted, it would amount to double jeopardy for the Respondent No. 13 inasmuch as ¶12 of the said SOP elaborately spells out the penalties to be imposed.
25. Hence, it is humbly submitted that the Respondent No. 13 be allowed to be proceeded under the SOP dated 07.07.2021, and not be saddled with any punitive measures over and above the same lest the Respondent No. 13 be subject to double jeopardy.
26. In this context it is pertinent to note that the committee has sought to impose penalties based on a CPCB report which in its 'Foreword' itself confirms that its basis is the same as that of the SOP, namely, "*Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principle*". The difference between the SOP and the said CPCB report is that while the SOP is a clear statutory document, which has met with the approval of the Hon'ble Supreme Court in *Electrosteel Steels* (*supra*) and *Pahwa* (*supra*), in contrast the CPCB report, has not even been approved by the Board of CPCB, or the MoEF&CC. It is also not formally notified or incorporated in the Rules. The Respondent No. 13, thus, submits that it cannot be visited with double jeopardy for the same violation.
27. In summary, it is submitted that:

- a. The OA, which is filed on 29.06.2020, is hopelessly barred by limitation, even assuming that the first cause of action arose when the 20,000 m<sup>2</sup> threshold was breached on 29.03.2007.
- b. Even as per the averment of the Applicant, the first cause of action arose on 10.07.2017. Hence no construction undertaken prior to the said date can be factored into computation of any penalties.
- c. The report of the Committee is *non est* in view of the order dated 17.11.2020 having been set-aside by the Hon'ble Supreme Court;
- d. Even assuming that the report can be relied upon, the same admits to the fact that any construction undertaken 5 years prior to the filing of the OA cannot be looked into;
- e. Even assuming that the report can be relied upon the same erroneously employs a CPCB report expressly meant for industrial units and in particular for their failure to construct a ETP/STP/CETP, which is *ex facie* inapplicable to the present case.
- f. PC-I and PC-II are distinct project and cannot be amalgamated for the purposes of the EIA notification solely based on common ownership.
- g. The Answering Respondent had already applied for an *ex post facto* EC for PC-I, and the same was not considered in view of the expiry of the 6 month window provided in the OM dated 14.03.2017. However, now that the SOP dated 07.07.2021 is in force, the Answering Respondent ought to be dealt with strictly in terms thereof. Any penalties *de hors* the SOP would amount to double jeopardy.
- h. The Answering Respondent has not breached the threshold for PC-II and has applied for prior EC on 22<sup>nd</sup> January 2020 since it proposes to build beyond 20,000 m<sup>2</sup>.

Pune

Date:04/04/2022



ADVOCATE FOR THE RESPONDENT N0.13

**Minutes of 114<sup>th</sup> SEAC-3 meeting held on 03<sup>rd</sup>, 04<sup>th</sup>, 05<sup>th</sup> February, 2021**  
**at Dalamal House, Nariman Point, Mumbai – 400 021**

The following members were present.

Dr. Deepak Mhaisekar, IAS Rtd.	Chairman	03 <sup>rd</sup> , 04 <sup>th</sup> , 05 <sup>th</sup> February, 2021
Shri Mukund Pathak	Member	03 <sup>rd</sup> , 04 <sup>th</sup> , 05 <sup>th</sup> February, 2021
Shri Dattatray Thorat	Member	03 <sup>rd</sup> , 04 <sup>th</sup> , 05 <sup>th</sup> February, 2021
Shri Kiran Acharekar	Member	03 <sup>rd</sup> , 04 <sup>th</sup> , 05 <sup>th</sup> February, 2021
Dr. Aseem Gokarn Harwansh	Member	03 <sup>rd</sup> , 04 <sup>th</sup> , 05 <sup>th</sup> February, 2021
Shri. Joy S. Thakur	Member Secretary	03 <sup>rd</sup> , 04 <sup>th</sup> , 05 <sup>th</sup> February, 2021

Chairman welcomed the members to the 114th SEAC III Meeting. Agenda Items were taken up for consideration.

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03 <sup>rd</sup> February, 2021			
1.	P-01	MIS/117936/2019	Prayeja City - Plot 2 at S.No. 71(Pt) & 72/20a To 27a, Plot No.2, Wadgaon(Bk), Sinhgad Road, Taluka:-Haveli, District:- Pune, Pincode:- 411041. by Prayejacity A Jv Bhandari Gelada Associates LLP & Prayeja Developers LLP

PP had submitted application for prior Environmental clearance for total plot area of 17063.63 m<sup>2</sup>, FSI area of 17875.09 m<sup>2</sup>, Non FSI area of 19220.00 m<sup>2</sup> and total BUA of 37095.09 m<sup>2</sup>.

Brief information of the proposal is as below:

Proposal Number	SIA/MH/MIS /117936/2019	
Name of Project	PRAYEJA CITY PLOT 2	
Project category	Schedule 8(a) Category B2	
Type of Institution	Private	
Project Proponent	Name	SANDEEP NARAYANDAS JANI
	Regd. Office address	"MANGESHREE", 1464, SADASHIV PETH, PUNE 4110030.
Applied for	New	
Details of previous EC	NA	
Location of the project	S.NO. 71(Pt) & 72/20A TO 27A, PLOT NO.2, Village:WADGAON(BK), SINHGAD ROAD, Taluka: Haveli, District: Pune	
Latitude and Longitude	18 <sup>o</sup> 28'03.46"N 73 <sup>o</sup> 48'46.74"E	
Total Plot Area (m <sup>2</sup> )	17063.63	
Deductions (m <sup>2</sup> )	3036.51	

**Member Secretary, SEAC-3**

**Chairman, SEAC-3**

Net Plot area (m2)	14027.12			
Proposed FSI area (m2)	17875.09			
Proposed non-FSI area (m2)	19220.00			
Proposed TBUA (m2)	37095.09			
TBUA (m2) approved by Planning Authority till date	37095.09			
Ground coverage (m2) & %	12			
Total Project Cost (Rs.)	480000000			
Details of Building Configuration :				
Previous EC / Existing Building	Proposed Configuration			
nil	Building Name	Configuration	Height (m)	
	Wing H	B1+B2+G+11	35.4	
	Wing G1 & G2	2B+St.+14	46	
Total number of tenements:	272			
Water Budget	Dry Season (CMD)		Wet Season (CMD)	
	Fresh Water	129.78	Fresh Water	129.78
	Recycled	75.1	Recycled	67.10
	Swimming Pool	0	Swimming Pool	0
	Flushing	67.10	Flushing	67.10
	Total	205.29	Total	196.88
	Waste water generation	177.19	Waste water generation	177.19
Water Storage Capacity for Firefighting / UGT (CMD)				262
Source of water	PMC			
Rainwater Harvesting (RWH)	Level of the Ground water table:		10m BGL	
	Size and no of RWH tank(s) and Quantity:		N.A.	
	Quantity and size of recharge pits:		Quantity: 6 Nos & Size: 2m X 1.5m X 2m	
	Details of UGT tanks if any:		Domestic	195
			Flushing	67
Fire			As per NOC	
Sewage and Wastewater	Sewage generation in CMD:		177.19	
	STP technology:		MBBR	
	Capacity of STP (CMD):		180	
Solid Waste Management during Construction Phase	Type	Quantity (kg/d)		Treatment / disposal
	Dry waste:	3		Through authorised agency
	Wet waste:	2		Through authorised agency
	Construction waste	5		
Solid Waste Management during Operation Phase	Type	Quantity (kg/d)		Treatment / disposal
	Dry waste:	302		Handed over to Authorized Agency
	Wet waste:	422.75		In-situ Composting
	Hazardous waste:	Negligible		Negligible

	Biomedical waste	N.A.	N.A.	
	E-Waste	975	Handed over to Authorized Dismantler/Recycler	
	STP Sludge (dry)	16.22	In-situ Composting	
Green Belt Development	Total RG area (m2):	1402.71		
	Existing trees on plot:	33		
	Number of trees to be planted:	80		
	Number of trees to be cut:	0		
	Number of trees to be transplanted:	0		
Power requirement:	Source of power supply:	MSEDCL		
	During Construction Phase (Demand Load):	71 kW		
	During Operation phase (Connected load):	1909 kW		
	During Operation phase (Demand load):	788 kW		
	Transformer:	630 kVA X 2 + 315 kVA X 1		
	DG set:	200 kVA X 1 Nos.		
	Fuel used:	HSD		
Details of Energy saving	Most of the common area & external lighting are proposed to work on high energy efficient lamps(LED) as specified in bureau of energy efficiency which again results in saving in general consumption			
	Low loss Transformers due to which 6.22% losses are saved against conventional transformer.			
	Power Capacitors are proposed for load power factor correction and to maintain a healthy power situation. This also results in less demand load factor for the project.			
	Solar PV, Hot Water, Solar Street Lights, Energy Efficient Motors are proposed			
Environmental Management plan budget during Construction phase	No.	Details	Cost	
	1	Water for Construction & labour	Rs. 3.0 Lacs	
	2	Site Sanitation & Safety	Rs. 1.0 Lacs	
	3	Environmental Monitoring	Rs. 3.0 Lacs	
	4	Disinfection	Rs. 0.5 Lacs	
	5	Health Check up	Rs. 0.5 Lacs	
Environmental Management plan Budget during Operation phase	Component	Details	Capital (Rs.)	O&M (Rs./Y)
	Sewage treatment	Waste Water Management	14.5	8.6
	RWH	RWH Pits	1.75	0.1
	Solid Waste	Organic Waste Composting	7.4	1.0
	Green belt development	Tree Plantation	14.81	1.48
	Energy saving	Energy Conservation	46.16	4.61
	Environmental Monitoring	Pollution Control	0	4
	Disaster Management	Fire & LA	88.12	4.41
Parking details	Type	Required as per DCR	Actual Provided	Area per parking (m2)

4-Wheeler	296	298	3704
2-Wheeler	617	620	1234
Bicycles	296	296	207

The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised as category 8(a)B2. The Committee noted the letter issued by Environment & Climate Change Department vide no. Comp-2019/CR-23/SEIAA dt. 16.11.2019, withdrawing the Proposed Directions issued under section 5 of Environment (Protection) Act, 1986 vide letter dt.29.08.2009.

**During discussion following points emerged:**

1. PP to obtain Fire NOC.
2. PP to submit IOD / Plan Approval or any other form of documents as applicable clarifying its conformity with local planning rules and provisions there under.

SEAC decided to **recommend** the proposal for prior environmental Clearance subject to outcome of the Civil Appeal no. 4/2021 pending at Hon'ble Supreme Court of India.

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24	P24	117936/2019	PRAYEJA CITY.
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PP had submitted application for prior Environmental clearance for total plot area of 17063.63 m<sup>2</sup>, FSI area of 17875.09 m<sup>2</sup>, Non FSI area of 19220 m<sup>2</sup> and total BUA 37095.09m<sup>2</sup>.

The building configuration of the proposal is as below:

1. Prop wing – G1&G2 2B+Stilt+14 floor Height- 46 m
2. Wing H B1+B2+G+11 Height 35.40 m

The Committee noted that the proposed directions issued to the PP on dt. 29.08.2019 were withdrawn vide No.Comp.2019/CR-23/SEIAA dt. 16.11.2019.

The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised as category 8(a) B2

**During discussion following points emerged:**

1. PP to submit Architect's certificate indicating the building-wise construction carried out (FSI and non-FSI) on site till date.
2. PP to submit undertaking regarding compliance of all environmental parameters and norms.
3. PP to submit evacuation plan for entire project for occupants, visitors and as well as cars.
4. PP to obtain and submit following NOC's: (a) CFO NOC, (b) Water supply with quantity, (c) solid waste / e-waste management.

*PP requested for time to submit the information sought; after deliberations committee asked PP to **comply** with the observations and submit information to the committee for further discussion and consideration of SEAC.*

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**MAHARASHTRA POLLUTION CONTROL BOARD**

Tel: 24010706/24010437  
Fax: 24044532/4024068/4023516  
Website: <http://mpcb.gov.in>  
Email: [jdwater@mpcb.gov.in](mailto:jdwater@mpcb.gov.in)



Kalpataru Point, 2nd and  
4th floor, Opp. Cine Planet  
Cinema, Near Sion Circle,  
Sion (E), Mumbai-400022

No:- Format1.0/JD (WPC)/UAN No.0000096416/CE 2102000752 Date: 11.02.2021

To,  
M/s. PRAYEJA CITY -2 S.NO. 71(Pt) &  
72/20A to 27A, PLOT  
NO.2,Village:WADGAON(BK),,VADGAON  
BUDRUK Tal: Haveli, Dist :Pune

**Sub: Consent to Establish for Construction of Residential Project granted Under Red Category. under L.S.I Red Category**

**Ref:** 1. Your Application vide UAN No. -0000096416 Dated: 13/08/2020.

Your application NO. UAN No. -0000096416

For: grant of Consent to Establish under Section 25 of the Water (Prevention & Control of Pollution) Act, 1974 & under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Rule 6 of the Hazardous & Other Wastes (Management & Transboundary Movement) Rules 2016 is considered and the consent is hereby granted subject to the following terms and conditions and as detailed in the schedule I,II,III & IV annexed to this order:

- The Consent to Establish is granted for a period upto commissioning of project or up to 5 year whichever is earlier.
- The capital investment of the project is Rs.48 Crs. (As per undertaking submitted by pp).
- The Consent to Establish is valid for construction of Residential named as M/s. PRAYEJA CITY -2 S.NO. 71(Pt) & 72/20A to 27A, PLOT NO.2,Village:WADGAON(BK),,VADGAON BUDRUK Tal: Haveli, Dist :Pune on Total Plot Area of 17063.63 SqMtrs for construction BUA of 37095.09 SqMtrs including utilities and services and commencement certificate issued by local body.
- Conditions under Water (P&CP), 1974 Act for discharge of effluent:

Sr No	Description	Permitted (in CMD)	Standards to	Disposal
1.	Trade effluent	Nil	0	0
2.	Domestic effluent	177.19	As per Schedule - I	The treated effluent shall be 60% recycled for secondary purposes such as toilet flushing, air conditioning, cooling tower make up, firefighting etc. and remaining shall be connected to the sewerage system provided by local body

- Conditions under Air (P& CP) Act, 1981 for air emissions:

Stack No.	Description of stack / source	Number of Stack	Standards to be achieved
S-1	DG SET 630 KVA	1	As per Schedule -II

Stack No.	Description of stack / source	Number of Stack	Standards to be achieved
S-2	DG SET 231 KVA	1	As per Schedule -II

6. **Conditions under Solid Waste Rules, 2016:**

Sr No	Type Of Waste	Quantity & UoM	Treatment	Disposal
1	Wet garbage	423 Kg/Day	Organics waste Converter with composting facility / Biogas digester with composting facility	used by manure
2	Dry garbage	302 Kg/Day	-	Segregate and Hand over to Local Body for recycling
3	STP sludge	45 Kg/Day	STP	used as manure

7. **Conditions under Hazardous & Other Wastes (M & T M) Rules 2016 for treatment and disposal of hazardous waste:**

Sr No	Category No.	Quantity	UoM	Treatment	Disposal
NA					

- 8 This Board reserves the right to review, amend, suspend, revoke etc. this consent and the same shall be binding on the industry.
- 9 This consent should not be construed as exemption from obtaining necessary NOC/permission from any other Government agencies.
- 10 PP shall provide STP so as to achieve the treated domestic effluent standard for the parameter BOD-10 mg/lit.
- 11 The treated effluent shall be 60% recycled for secondary purposes such as toilet flushing, air conditioning, cooling tower make up, firefighting etc. and remaining shall be utilized on land for gardening.
- 12 PP shall install online monitoring system for BOD, TSS and flow at the outlet of STP with connectivity to MPCB Server.
- 13 PP shall install organic waste digester along with composting facility/biodigester (biogas) with composting facility for the treatment of wet garbage.
- 14 PP shall submit Board Resolution within 15 days stating construction prior to obtain consent to establish and EC and shall furnish BG of Rs. 2 Lakh towards compliance of this condition
- 15 This consent is issued subject to an order passed or may be passed by the Hon'ble NGT Court ordre dt 17/11/2020 vide original application No. 33/2020(wz)
- 16 Project proponent shall not use groundwater till obtain permission from Central Ground Water Authority (CGWA)
- 17 Project proponent shall not exceed construction work above 11,200.0 Sqm unless obtained Environmental Clearance from SEIAA till such time applicant should not take any effective steps for implementation of the project before obtaining Environmental Clearance as per EIA Notification 2006 and amendments thereto. As per Para 2 of EIA notification dated-14/09/2006, the effective steps include starting of any construction work or preparation of land by the project management. However as clarified by the MoEF vide office memorandum no. J-1103/41/2006-IA. II (I); Dated-19/8/2010, fencing of the site to protect it from getting encroached & construction of temporary shed(s) for the guard(s) & acquisition of land shall not be treated as an effective steps.



For and on behalf of the  
Maharashtra Pollution Control Board.

Dr. Y.B.Sontakke  
Joint Director (WPC)

09/12/2021

Received Consent fee of -

Sr.No	Amount(Rs.)	Transaction/DR.No.	Date	Transaction Type
1	75000.00	MPCB-DR-1442	17/08/2020	NEFT

Copy to:

1. Regional Officer, MPCB, Pune and Sub-Regional Officer, MPCB, Pune I  
- They are directed to ensure the compliance of the consent conditions.
2. Chief Accounts Officer, MPCB, Sion, Mumbai





**SCHEDULE-I**

**Terms & conditions for compliance of Water Pollution Control:**

- 1) A) As per your application, you have proposed to provide MBBR based Sewage Treatment Plants (STPs) of combined capacity **180 CMD for treatment of domestic effluent of 177.19 CMD.**
- B) The Applicant shall operate the sewage treatment plant (STP) to treat the sewage so as to achieve the following standards prescribed by the Board or under EP Act, 1986 and Rules made there under from time to time, whichever is stringent.

Sr.No	Parameters	Limiting concentration not to exceed in mg/l, except for pH
1	pH	5.5-9.0
2	Bio-Checimal Oxygen Demand (BOD)	10
3	Chemical Oxygen Demand (COD)	50
4	Nitrogen Total	10
5	Phosphorus-Total(For Discharge into Ponds,Lakes)	1.0
6	Fecal Coliform (FC) (Most Probable)	Desirable-100 Permissible-230

- C) The treated domestic effluent shall be 60% recycled for secondary purposes such as toilet flushing, air conditioning, cooling tower make up, firefighting etc. and remaining shall be utilized on land for gardening and connected to the sewerage system provided by local body.
- 2) The Board reserves its rights to review plans, specifications or other data relating to plant setup for the treatment of waterworks for the purification thereof & the system for the disposal of sewage or trade effluent or in connection with the grant of any consent conditions. The Applicant shall obtain prior consent of the Board to take steps to establish the unit or establish any treatment and disposal system or and extension or addition thereto.
- 3) The industry shall ensure replacement of pollution control system or its parts after expiry of its expected life as defined by manufacturer so as to ensure the compliance of standards and safety of the operation thereof.
- 4) **The Applicant shall comply with the provisions of the Water (Prevention & Control of Pollution) Act,1974 and as amended, and other provisions as contained in the said act.**

Sr. No.	Purpose for water consumed	Water consumption quantity (CMD)
1.	Industrial Cooling, spraying in mine pits or boiler feed	0.00
2.	Domestic purpose	205.29
3.	Processing whereby water gets polluted & pollutants are easily biodegradable	0.00
4.	Processing whereby water gets polluted & pollutants are not easily biodegradable and are toxic	0.00

- 5) The Applicant shall provide Specific Water Pollution control system as per the conditions of EP Act, 1986 and rule made there under from time to time.

**SCHEDULE-II**

**Terms & conditions for compliance of Air Pollution Control:**

- 1) As per your application, you have proposed to provide the Air pollution control (APC) system and also proposed to erect following stack (s) and to observe the following fuel pattern-

Stack No.	Stack Attached To	APC System	Height in Mtrs.	Type of Fuel	Quantity & UoM
S-1	DG SET 630	Acoustic enclosure	5	HSD	20 Ltr/Hr
S-2	DG SET 231	Acoustic enclosure	3.3	HSD	20 Ltr/Hr

- 2) The applicant shall operate and maintain above mentioned air pollution control system, so as to achieve the level of pollutants to the following standards.

Total Particular matter	Not to exceed	150 mg/Nm <sup>3</sup>
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- 3) The Applicant shall obtain necessary prior permission for providing additional control equipment with necessary specifications and operation thereof or alteration or replacement well before its life come to an end or erection of new pollution control equipment.
- 4) The Board reserves its rights to vary all or any of the condition in the consent, if due to any technological improvement or otherwise such variation (including the change of any control equipment, other in whole or in part is necessary).
- 5) **Conditions for utilities like Kitchen, Eating Places, Canteens:-**
- The kitchen shall be provided with exhaust system chimney with oil catcher connected to chimney through ducting.
  - The toilet shall be provided with exhaust system connected to chimney through ducting.
  - The air conditioner shall be vibration proof and the noise shall not exceed 68 dB(A).
  - The exhaust hot air from A.C. shall be attached to Chimney at least 5 mtrs. higher than the nearest tallest building through ducting and shall discharge into open air in such a way that no nuisance is caused to neighbors.

**SCHEDULE-III**

**Details of Bank Guarantees:**

Sr. No.	Consent(C2E/C2O/C2R)	Amt of BG Imposed	Submission Period	Purpose of BG	Compliance Period	Validity Date
1	Consent to Establish	10.0 lakh	15 days	Towards Compliance consent conditions and EC	Up to Commissioning of the project	Up to Commissioning of the project

Sr. No.	Consent (C2E/C2O/C2R)	Amt of BG Imposed	Submission Period	Purpose of BG	Compliance Period	Validity Date
2	Consent to establish	2.0 lakh	15 days	Towards submission of Board resolution as started construction work prior to Consnet to Establish and EC	31/03/2021	Up to Commissioning of the project

\*\* The above Bank Guarantee(s) shall be submitted by the applicant in favour of Regional Officer at the respective Regional Office within 15 days of the date of issue of Consent.

# Existing BG obtained for above purpose if any may be extended for period of validity as above.

**BG Forfeiture History**

Srno.	Consent (C2E/C2O/C2R)	Amount of BG imposed	Submission Period	Purpose of BG	Amount of BG Forfeiture	Reason of BG Forfeiture
NA						

**BG Return details**

Srno.	Consent (C2E/C2O/C2R)	BG imposed	Purpose of BG	Amount of BG Returned
NA				

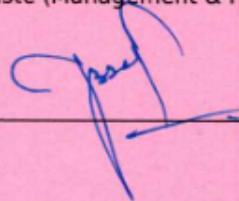
**SCHEDULE-IV**

**Conditions during construction phase**

<b>A</b>	During construction phase, applicant shall provide temporary sewage and MSW treatment and disposal facility for the staff and worker quarters.
<b>B</b>	During construction phase, the ambient air and noise quality shall be maintained and should be closely monitored through MoEF approved laboratory.
<b>C</b>	Noise should be controlled to ensure that it does not exceed the prescribed standards. During night time the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.

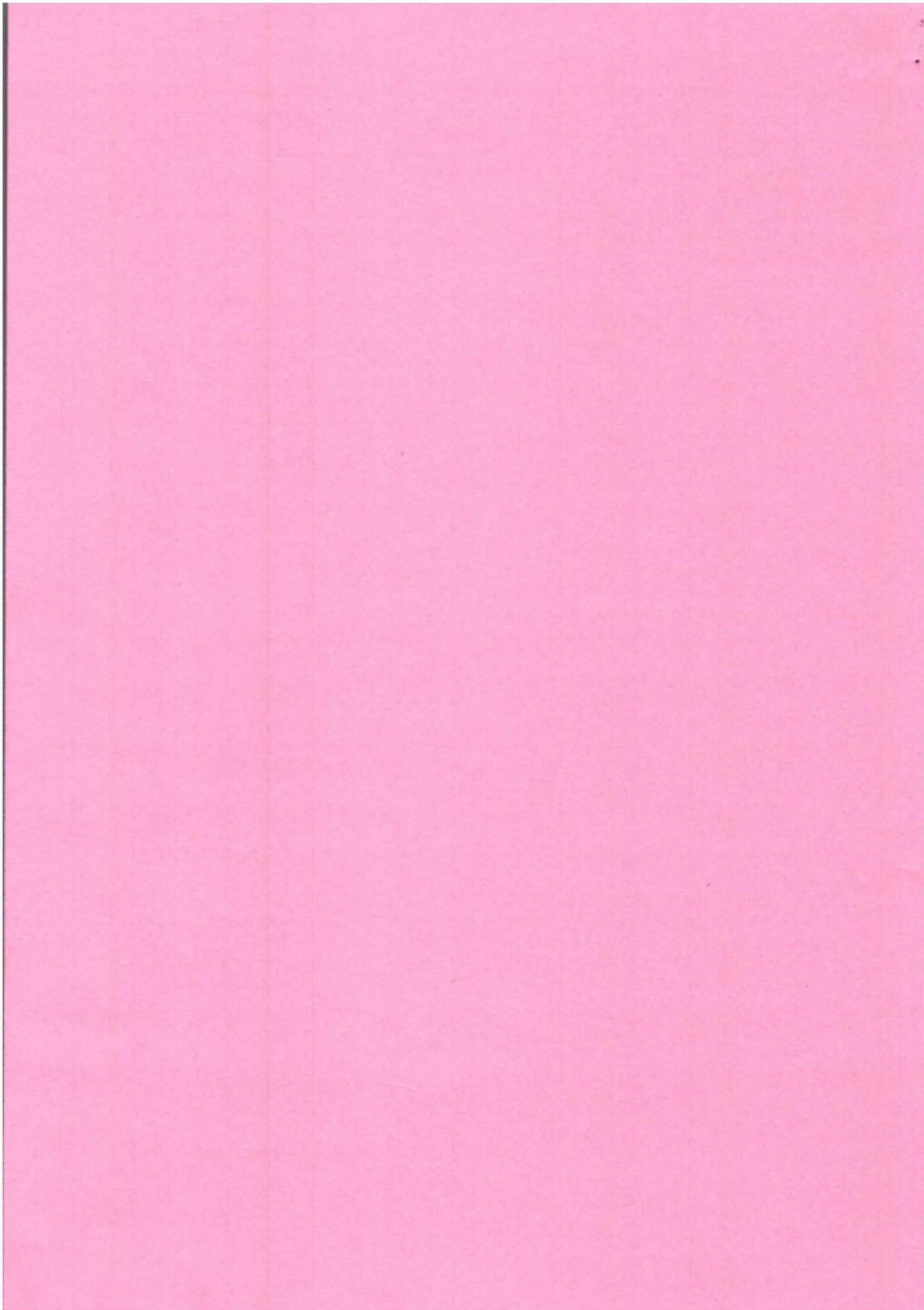
**General Conditions:**

- 1 The applicant shall provide facility for collection of samples of sewage effluents, air emissions and hazardous waste to the Board staff at the terminal or designated points and shall pay to the Board for the services rendered in this behalf.
- 2 The firm shall strictly comply with the Water (P&CP) Act, 1974, Air (P&CP) Act, 1981 and Environmental Protection Act 1986 and Solid Waste Management Rule 2016, Noise (Pollution and Control) Rules, 2000 and E-Waste (Management & Handling Rule 2011.



- 3 Drainage system shall be provided for collection of sewage effluents. Terminal manholes shall be provided at the end of the collection system with arrangement for measuring the flow. No sewage shall be admitted in the pipes/sewers downstream of the terminal manholes. No sewage shall find its way other than in designed and provided collection system.
- 4 Vehicles hired for bringing construction material to the site should be in good condition and should conform to applicable air and noise emission standards and should be operated only during non-peak hours.
- 5 Conditions for D.G. Set
  - a) Noise from the D.G. Set should be controlled by providing an acoustic enclosure or by treating the room acoustically.
  - b) Industry should provide acoustic enclosure for control of noise. The acoustic enclosure/ acoustic treatment of the room should be designed for minimum 25 dB (A) insertion loss or for meeting the ambient noise standards, whichever is on higher side. A suitable exhaust muffler with insertion loss of 25 dB (A) shall also be provided. The measurement of insertion loss will be done at different points at 0.5 meters from acoustic enclosure/room and then average.
  - c) Industry should make efforts to bring down noise level due to DG set, outside industrial premises, within ambient noise requirements by proper siting and control measures.
  - d) Installation of DG Set must be strictly in compliance with recommendations of DG Set manufacturer.
  - e) A proper routine and preventive maintenance procedure for DG set should be set and followed in consultation with the DG manufacturer which would help to prevent noise levels of DG set from deteriorating with use.
  - f) D.G. Set shall be operated only in case of power failure.
  - g) The applicant should not cause any nuisance in the surrounding area due to operation of D.G. Set.
  - h) The applicant shall comply with the notification of MoEFCC, India on Environment (Protection) second Amendment Rules vide GSR 371(E) dated 17.05.2002 and its amendments regarding noise limit for generator sets run with diesel.
- 6 Solid Waste - The applicant shall provide onsite municipal solid waste processing system & shall comply with Solid Waste Management Rule 2016 & E-Waste (M & H) Rule 2011.
- 7 Affidavit undertaking in respect of no change in the status of consent conditions and compliance of the consent conditions the draft can be downloaded from the official web site of the MPCB.
- 8 Applicant shall submit official e-mail address and any change will be duly informed to the MPCB.
- 9 The treated sewage shall be disinfected using suitable disinfection method.
- 10 The firm shall submit to this office, the 30th day of September every year, the environment statement report for the financial year ending 31st march in the prescribed Form-V as per the provision of rule 14 of the Environmental (Protection) Second Amended rule 1992.
- 11 The applicant shall obtain Consent to Operate from Maharashtra Pollution Control Board before commissioning of the project.





**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL WESTERN ZONE BENCH AT PUNE**

OA No. 33/2020

*Tanaji Balasaheb Gambhire. v. Union of India & Ors.*

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**COMPILATION OF JUDGMENTS**

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1.	<i>Noida Memorial Complex Near Okhla Bird Sanctuary, In re</i> , (2011) 1 SCC 744 [ <i>Anand Arya &amp; Anr. v Union of India and Ors.</i> ]
2.	<i>Aradhana Bhargav v. Ministry of Environment and Forest</i> , 2013 SCC OnLine NGT 84
3.	<i>Maruti Suzuki India Ltd. v. Ministry of Environment and Forests</i> , 2014 SCC OnLine Del 3264
4.	<i>L.C. Hanumanthappa v. H.B. Shivakumar</i> , (2016) 1 SCC 332
5.	<i>Builder Association of India (BAI) v. Union of India</i> Order dated 29.03.2019 in WP (L) No. 954/2019
6.	<i>Builder Association of India (BAI) v. Union of India</i> Order dated 03.05.2019 in SLP (c) No. 10078/2019
7.	<i>Sai Baba Sales (P) Ltd. v. Union of India</i> , 2021 SCC OnLine SC 1133
8.	<b>Delhi Pollution Control Committee v. Splendor Landbase Ltd.</b> 2012 SCC OnLine Del 400
9.	<b>Electrosteel Steels Limited v. Union of India and Others</b> 2021 SCC OnLine SC 1247
10.	<b>Pahwa Plastics Pvt. Ltd. and Another v. Dastak NGO and Others</b> 2022 SCC OnLine SC 362

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(BEFORE S.H. KAPADIA, C.J. AND AFTAB ALAM AND  
K.S.P. RADHAKRISHNAN, JJ.)

IN RE: CONSTRUCTION OF PARK AT NOIDA  
NEAR OKHLA BIRD SANCTUARY

ANAND ARYA AND ANOTHER . . . Applicants;

*Versus*

UNION OF INDIA AND OTHERS . . . Respondents.

T.N. GODAVARMAN THIRUMULPAD . . . Petitioner;

*Versus*

UNION OF INDIA AND OTHERS . . . Respondents.

IAS Nos. 2609-10 of 2009 in WP (C) No. 202 of 1995<sup>†</sup> with  
IAS Nos. 2896, 2900 of 2010 in IAs Nos. 2609-10 of 2009 and  
IA No. 2928 of 2010 in IAs Nos. 2609-10 of 2009 in  
WP (C) No. 202 of 1995, decided on December 3, 2010

**A. Environment Protection and Pollution Control — Forests — What are — Determination of forest land — Approach and considerations — Man-made forest and Afforestation — What are — Plantations for purpose of creating an urban park distinguished from afforestation — State Government project at NOIDA for building large-scale memorial with extensive stone-work diverting such urban park land and felling all trees thereon — Legality of — Held, any definition of “forest” howsoever wide relates to a context and cannot be applied absolutely, universally and totally independent of context — Though man-made forest with passage of time may acquire forest-like character and become forest, this rule has no universal application — Planting of trees in agricultural/non-forest land being for purpose of creating urban park and not for purpose of afforestation — Such trees being allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for alleged project on forest land — Said plantation, held, cannot be classified as forest land, nor deemed forest nor forest-like area — Hence impugned project not illegal — Forest (Conservation) Act, 1980 — S. 2 — Term “forest” under — Determination of ambit of**

**B. Environment Protection and Pollution Control — Forests — Identification — Acceptable evidence/proof — Satellite image showing forest cover, held, may not reveal complete picture — Revenue records corroborated by land acquisition proceedings revealed that land was not forest — Such revenue records were reliable because, they were much prior to project alleged to have diverted forest land — Forest (Conservation) Act, 1980 — S. 2 — Evidence Act, 1872 — S. 4 — Evidentiary value of satellite**

<sup>†</sup> Under Article 32 of the Constitution of India

NOIDA MEMORIAL COMPLEX NEAR OKHLA BIRD SANCTUARY, IN RE 745

**image for determining forest areas, held, may not be conclusive —  
Therefore, such evidence read with other evidence and ground realities**

**a C. Environment Protection and Pollution Control — Forest (Conservation) Act, 1980 — S. 2 — Prior approval under, for using land for non-forest purpose — When not required — Project site not being classifiable as forests, prior approval of Central Government, held, was not required**

**b** The centre of the controversy in the present IAs involved a very large project of the Uttar Pradesh Government at NOIDA. The two applicants were residents of NOIDA and had challenged the project on the grounds (1) that the project area was a forest area and violated Section 2, FC Act, (2) that no environmental clearance of EIA Authorities was obtained even if the project fell within the EIA Notification, 2006 under Section 3(3), EP Act and (3) that the project devastated the delicate and sensitive ecological balance of the Okhla Bird Sanctuary to which the site of the project lay adjacent.

**c** Disposing of the IAs, the Supreme Court

*Held :*

The project site is not forest land and the construction of the project without the prior permission from the Central Government does not in any way contravene Section 2, FC Act. The restriction imposed by Section 2(ii) is in respect of forest land. (Para 37)

**d** A satellite image may not always reveal the complete story. In support that there used to be a forest at the project site, the applicants rely upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. (Para 24)

**e** In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, banjar (uncultivable) or parti (uncultivated). The records of the land acquisition proceedings in 1980 to 1983 and 1991 also complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest*. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene. (Paras 24 and 25)

*Samatha v. State of A.P.*, (1997) 8 SCC 191; *M.C. Mehta v. Union of India*, (2004) 12 SCC 118; *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267, referred to

**g** The records pertaining to satellite images have not given information about the different species of trees, their age and the girth of their trunks, etc. The satellite images only reveal that in October 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted. The State Government admits to felling of over 6000 trees in 2008. As per government information on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project. (Paras 27 and 26)

**h** But trees planted in the project area cannot be branded as "forest". It is inconceivable that trees planted with the intent to set up an urban park would

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turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land. (Paras 28 and 27)

In the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad case*, (1997) 2 SCC 267 the Court gave a very wide definition of “forest”. But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. (Paras 29 to 31)

If the contention of the applicants is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-1996. (Para 36)

The CEC on a consideration of all the materials made available to it, including the report of the FSI (on which the applicants heavily rely), came to hold and find that the project site was not a forest or a deemed forest or a forest-like area in terms of the order of the Supreme Court dated 12-12-1996. (Paras 9 to 16)

No doubt a man-made forest may equally be a forest as a naturally grown one and a non-forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case. Otherwise it would lead to highly anomalous conclusions. Almost all the relied on orders and judgments defining “forest” and “forest land” for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon can be applied only to an extent and not in absolute terms. (Para 35)

*T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad (98) v. Union of India*, (2006) 5 SCC 28; *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 6 SCC 747, referred to

*Samatha v. State of A.P.*, (1997) 8 SCC 191; *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, partly distinguished

*Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504; *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*, (1997) 11 SCC 605; *State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643, cited

**D. Environment Protection and Pollution Control — Forests — Diversion of forest land — State Government project at NOIDA for building large-scale memorial with extensive stone-work — Classification of — EIA clearance, whether required as per scheme of EIA Notification S.O. 1533(E) dt. 14-9-2006 issued under S. 3(3), EP Act — (1) Applying common parlance**

NOIDA MEMORIAL COMPLEX NEAR OKHLA BIRD SANCTUARY, IN RE 747

- test to consider dominant purpose of alleged project, and (2) considering scheme of said notification, held, project concerned does not fall under B1 category requiring EIA report/clearance — Project cannot be classified as “township and area development project” under Item 8(b) because its total area and building area are 33.43 ha and 1,05,544.49 sq m respectively whereas the threshold limit for EIA eligibility is 50 ha and 1,50,000 sq m respectively as per Columns 5 and 4 of Schedule to said notification, respectively — Project cannot be classified as “building and construction project” under Item 8(a) either as notification treats projects under Item 8(b) separately and differently from those under Item 8(a) and considering dominant character of project it could have fallen under Item 8(b) if it would not have been within prescribed threshold limits — Environment (Protection) Act, 1986 — S. 3(3) — Notification S.O. 1533(E) dt. 14-9-2006 Items 8(a) and (b) of Schedule — Applicability (Paras 43 to 46, 60 and 66)**
- T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740, referred to
- E. Environment Protection and Pollution Control — Forests — Diversion of forest land — EIA clearance, whether required as per scheme of EIA Notification S.O. 1533(E) dt. 14-9-2006 issued under S. 3(3), EP Act — Different categories and their requirements, stated (Paras 50 and 51)**
- F. Evidence Act, 1872 — Ss. 3, 5, 7 and 9 — Irrelevance of derivative issues — Since it is held that project concerned does not come within ambit of notification concerned, the other three arguments based on activity area, application of general condition and application of the Office Memorandum dt. 2-12-2009, held, become irrelevant and need not be gone into (Paras 67 and 57)**
- G. Constitution of India — Arts. 21, 48-A and 51-A(g) — Town planning project — Viability and continuance of, considering it being adjacent to bird sanctuary — Expert body not holding project to be calamitous or ruinous enough to be entirely scrapped in order to save bird sanctuary — Therefore, said project allowed to continue with conditions recommended by expert bodies and further condition of being overseen by expert committee as directed — Further clarified that this is not to be treated as a precedent when Court is hearing matter on “buffer zones” — Environment Protection and Pollution Control — Wildlife — Wildlife sanctuary — Buffer zones — Applicable principles and law (Paras 74 and 79 to 82)**
- Goa Foundation v. Union of India*, WP (C) No. 460 of 2004 order dated 4-12-2006; *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740; *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *M.C. Mehta v. Union of India*, (1987) 4 SCC 463; *M.C. Mehta v. Union of India*, (1988) 1 SCC 471 : 1988 SCC (Cri) 141; *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449; *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598; *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577; *B.L. Wadehra (Dr.) v. Union of India*, (1996) 2 SCC 594; *Vellore Citizens’ Welfare Forum v. Union of India*, (1996) 5 SCC 647; *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664; *T.N. Godavarman Thirumulpad v. Union of India*, (2002) 10 SCC 606; *Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch*, (2000) 3 SCC 29; *State of M.P. v. Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389 : 2003 SCC (Cri) 1642, referred to

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**H. Environment Protection and Pollution Control — Environment (Protection) Act, 1986 — S. 3(3) — Notification for EIA clearance under — Clarity of notification, stressed — EIA Notification S.O. 1533(E) dt. 14-9-2006 not being clear enough — Government directed to urgently look into said issue**

SS-D/47084/C

Advocates who appeared in this case :

H.P. Raval, Additional Solicitor General, S.K. Dwivedi, Additional Advocate General, Harish N. Salve, U.U. Lalit, Jayant Bhushan, K.K. Venugopal, Raju Ramachandran and S.C. Mishra, Senior Advocates (Siddhartha Chowdhury, A.D.N. Rao, P.K. Manohar, Mihir Chatterjee, Harish Beeran, Manish Kr. Bishnoi, Gautam Talukdar, R.K. Gupta, Rajiv Kr. Dubey, Ankur Talwar and Kamendra Mishra, Advocates) for the appearing parties.

**Chronological list of cases cited**

**on page(s)**

1. (2010) 13 SCC 740, *T.N. Godavarman Thirumulpad v. Union of India* 776c-d
2. (2010) 6 SCC 747, *T.N. Godavarman Thirumulpad v. Union of India* 765b-c, 777c-d
3. (2006) 5 SCC 28, *T.N. Godavarman Thirumulpad (98) v. Union of India* 758b-c
4. WP (C) No. 460 of 2004 order dated 4-12-2006, *Goa Foundation v. Union of India* 771d-e, 775d
5. (2004) 12 SCC 118, *M.C. Mehta v. Union of India* 758e, 762c
6. (2003) 7 SCC 389 : 2003 SCC (Cri) 1642, *State of M.P. v. Kedia Leather & Liquor Ltd.* 777a
7. (2002) 10 SCC 606, *T.N. Godavarman Thirumulpad v. Union of India* 777a
8. (2000) 10 SCC 664, *Narmada Bachao Andolan v. Union of India* 777a
9. (2000) 3 SCC 29, *Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch* 777a
10. (1999) 2 SCC 718, *A.P. Pollution Control Board v. Prof. M.V. Nayudu* 777a
11. (1997) 11 SCC 605, *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority* 760e-f
12. (1997) 8 SCC 191, *Samatha v. State of A.P.* 758e, 761g-h
13. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad v. Union of India* 749b-c, 753f-g, 754a-b, 755e-f, 756a-b, 758d-e, 760a, 761b-c, 761g, 762f-g, 762h
14. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 777a
15. (1996) 2 SCC 594, *B.L. Wadehra (Dr.) v. Union of India* 777a
16. (1995) 2 SCC 577, *Virender Gaur v. State of Haryana* 777a
17. (1991) 1 SCC 598, *Subhash Kumar v. State of Bihar* 777a
18. (1990) 4 SCC 449, *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.* 777a
19. 1989 Supp (1) SCC 504, *Rural Litigation and Entitlement Kendra v. State of U.P.* 760e
20. (1988) 1 SCC 471 : 1988 SCC (Cri) 141, *M.C. Mehta v. Union of India* 777a
21. (1987) 4 SCC 463, *M.C. Mehta v. Union of India* 777a
22. (1987) 1 SCC 213, *Ambica Quarry Works v. State of Gujarat* 760e
23. (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *M.C. Mehta v. Union of India* 777a
24. (1985) 3 SCC 643, *State of Bihar v. Banshi Ram Modi* 760f, 761d-e, 761e, 761f-g

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NOIDA MEMORIAL COMPLEX NEAR OKHLA BIRD SANCTUARY, IN RE 749  
(*Aftab Alam, J.*)

The Judgment of the Court was delivered by

- a* **AFTAB ALAM, J.**— At the centre of the controversy is a very large project of the Uttar Pradesh Government at NOIDA. Objecting to the project are the two applicants who are residents of Sector 15-A, NOIDA, U.P. They claim to be public-spirited people, committed to the cause of environment. According to them, the project, undertaken at the instance of the Uttar Pradesh Government is a “huge unauthorised construction”.
- b* 2. The applicants state that a very large number of trees were cut down for clearing the ground for the project. The trees that were felled down for the project formed a “forest” as the term was construed by this Court in its order dated 12-12-1996 in *T.N. Godavarman Thirumulpad v. Union of India*<sup>1</sup> and the action of the Uttar Pradesh Government in cutting down a veritable forest without the prior permission of the Central Government *and* this Court, was in gross violation of Section 2(ii) of the Forest (Conservation) Act, 1980 (hereafter “the FC Act”). The project involved massive constructions that were made without any prior environmental clearance from the Central Government based on environment impact assessment. The constructions were, therefore, in complete breach of the provisions of the Environment (Protection) Act, 1986 (hereafter “the EP Act”) and the notification issued
- c* under the Act. More importantly, the project was causing great harm, and was bound to further devastate the delicate and sensitive ecological balance of the Okhla Bird Sanctuary to which the site of the project lay adjacent. The project was, thus, in complete disregard of this Court’s directions concerning “buffer zones”.
- d* 3. The State of Uttar Pradesh, of course denies, equally strongly, all the allegations made by the applicants. According to the State, it was setting up a park that would develop and beautify the area in a unique way. The park was conceived as a fine blend of hard and soft landscaping with memorial structures and commemoration pieces. The construction of the park did not violate any law or the order of the Court. There was no infringement of the provisions of the FC Act or the EP Act or the notification made under it.
- e* Further, the setting up of the park caused no harm to the bird sanctuary. The applicants’ objections to the construction of the park were fanciful and imaginary and actuated by oblique motives.
- f*

***The Project***

- g* 4. Before proceeding to examine the arguments of the two sides in greater detail it would be useful to take a look at the project and to put at one place the basic facts concerning it that are admitted or at any rate undeniable.
- (i) The project is sited at Sector 95, NOIDA. According to the applicants, at the site of the project previously there used to be five parks on the Yamuna front, namely, Mansarovar, Nandan Kanan, Children’s Park, Smriti Van and Navagraha, opposite Sectors 14-A, 15-A and 16-A, NOIDA.
- h*

<sup>1</sup> (1997) 2 SCC 267

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(ii) The project site, on its western side, lies in very close proximity to the Okhla Bird Sanctuary. The bird sanctuary was formed as a large water body with the adjoining land mass of the embankment as a result of the construction of the Okhla Barrage. It falls partly in Delhi and partly (400 ha in area) in the district of Gautam Buddha Nagar, U.P. The administrative control of the area of the sanctuary is under the Uttar Pradesh Irrigation Department and its management is with the Uttar Pradesh Forest Department. The sanctuary is home to about 302 species of birds. According to the Bombay Natural History Society, out of the bird species found here, 2 are critically endangered, 11 are vulnerable and 7 are nearly threatened. About 50 species are migratory in nature and come here mainly during the winter months. The annual population/visit is estimated as under:

2006-2007	24,166
2007-2008	17,111
2008-2009	21,272

This haven for birds was declared a bird sanctuary (the Okhla Bird Sanctuary) vide Notification dated 8-5-1990 issued by the State of Uttar Pradesh under Section 18 of the Wildlife (Protection) Act, 1972. The project, subject of the present controversy, is sited in very close proximity to the Okhla Bird Sanctuary on its eastern side. The applicants refer to it as adjoining the left afflux bund of the Okhla Bird Sanctuary but to be accurate it lies about 35-50 m away from the outer limit of the sanctuary. According to the applicants, the boundary of the project site is as under:

North	Delhi-U.P. DND Toll Road
South	Not clearly stated
East	Dadri Road
West	Okhla Bird Sanctuary, left afflux bund

(iii) The project is spread over an area of 33.43 ha, equal to 334334.00 sq m of land surrounded by a boundary wall made of stone, 2 m in height and 0.3 m in thickness. The estimated cost of the project is ₹685 crores.

(iv) At the site of the project there used to be a tree cover, thin to high-moderate in density and for clearing the ground for the project six thousand one hundred and eighty-six (6186) trees were cut down and one hundred and seventy-nine (179) were “shifted”. These trees were of subabul, bottle brush, bottle palm, morepankhi, *Ficus benjamina*, *Cassia siamea*, eucalyptus, fishtail palm, rubber plant, silver oak, etc.

(v) The project, though insisted upon by the Uttar Pradesh Government as nothing but a “recreational park”, involves the construction of dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life-size statues on tall

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*a* pedestals, large stone tablets with tributary engravings, pedestrian pathways, service block, boundary wall, hard landscape, soft landscape, etc. As initially planned the break-up of the area under different uses was as under:

<i>b</i>	1.	Total area within boundary wall	3,34,334.00 sq m	
	2.	Total built-up covered area for activities		
	(a)	Memorial building and toilet blocks	3499.50 sq m	1.05%
	(b)	Utilities and facilities	3500.00 sq m	1.05%
<i>c</i>	3.	Area under hard landscape (including platforms, plinth, sculptures and surrounding paved areas, paths)	1,29,140.80 sq m	38.62%
<i>d</i>	4.	Total area under soft landscape		
	(a)	Area under grass and plantation	1,57,161.79 sq m	47.01%
	(b)	Area under planters built within paved areas	6181.91 sq m	1.85%
<i>e</i>	5.	Total area for vehicular movement with grass pavers (maintenance, fire path, etc.)	34,850.00 sq m	10.42%

*f* (vi) According to the State Government, the work on the project commenced in January 2008. The applicants filed IA No. 1179 before the Central Empowered Committee (hereafter “CEC”) constituted by this Court on 5-3-2009. They filed IAs Nos. 2609-10 of 2010 (presently in hand) before this Court on 22-4-2009. According to the State Government, by that time 50% of the construction work of the project was complete. The report from CEC was received in this Court on 4-9-2009 and on 9-10-2009, this Court by an interim order restrained the State Government from carrying on any further constructions till further orders. By that time, according to the Government, 70-75% of the construction work of the project was completed.

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(vii) In the course of hearing of the matter, on a suggestion made by the Court, the State Government modified the layout plan increasing the soft/green area from 47% to 65.28% of the total area of the project. The revised layout plan is as under: a

Sl. No.	Description	Existing (in sq m + %)	Modified (in sq m + %)
1.	Green area	1,57,161.79 (47%)	2,18,246.51 (65.28%)
2.	Hard landscape	1,29,140.80 (38.6%)	98,544.99 (29.48%)
	(a) Boundary wall	2700.79 (0.81%)	2700.79 (0.81%)
	(b) Platforms, plinths, sculpture and surrounding paved areas	1,26,440.00 (37.79%)	95,844.99 (29.48%)
3.	Area for vehicular movement	34,850.00 (10.42%)	0.00 (Nil)
4.	Area under ornamental water feature (may be considered part of the eco friendly area)	0.00 (Nil)	6302.00 (1.88%)
5.	Area under parking with grass pavers (may be considered part of the eco friendly area)	0.00 (Nil)	4241.00 (1.27%)
6.	Utilities and facilities	3500.00 (1.05%)	3500.00 (1.05%)
7.	Memorial building and toilets	3499.50 (1.05%)	3499.50 (1.05%)
8.	Total area	3,34,334.00 (100%)	3,34,334.00 (100%)

Under the amended plan, around 7300 trees, more than 4 years of age and measuring 8-12 ft in height, belonging to the native species such as neem, peepal, pilkhan, maulsari, imli, shisham, mango, litchi and belpatra will be planted in the project area. f

5. According to the State Government, the revised plan that includes planting of trees in such large numbers would not only restore the tree cover that was in existence at the site earlier but would make the whole area far better, more beautiful and environment friendly. The applicants, however, would have none of it. On their behalf it is contended that the whole project is bad and illegal from every conceivable point of view; its construction was started and sought to be completed at a breakneck speed in flagrant violation of the laws. According to the applicants, therefore, all the structures at the project site, complete, semi-complete or under construction must be pulled down and the project site be restored to its original state. g  
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NOIDA MEMORIAL COMPLEX NEAR OKHLA BIRD SANCTUARY, IN RE 753  
(Aftab Alam, J.)

**The project and Section 2 of the FC Act**

a **6.** Mr Jayant Bhushan, learned Senior Counsel appearing for the applicants submitted that over six thousand trees were admittedly cut down for clearing the area for the construction of the project and it was, thus, clearly a case of forest land being put to use for non-forest purpose in complete violation of Section 2(ii) of the FC Act.

b **7.** Section 2 of the FC Act, insofar as relevant for the present, provides as follows:

“2. *Restriction on the de-reservation of forests or use of forest land for non-forest purpose.*—Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

- c (i) \* \* \*
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
- (iii)-(iv) \* \* \*

d *Explanation.*—For the purposes of this section ‘non-forest purpose’ means the breaking up or clearing of any forest land or portion thereof for—

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than re-afforestation,

e but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of checkposts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

The restriction imposed by Section 2(ii) is in respect of forest land. It, therefore, needs to be ascertained whether the project area can be said to be forest land where there was a forest that was cut to make the site clear for the project.

f **8.** In support of the contention that the trees that were cleared for the construction of the project comprised a forest, the applicants rely heavily on the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulpad*<sup>1</sup>, being the first in a series of landmark orders passed by this Court in an effort to save the fast diminishing forest cover of the country against the greedy and wanton plundering of its natural resources. In that order the Court gave a number of directions. One such direction, at Serial No. 5 to each of the State Governments, is as under: (SCC p. 271, para 5)

g “5. (5) Each State Government should constitute within one month an Expert Committee to:

- h (i) identify areas which are ‘forests’, irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

<sup>1</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.”

9. In pursuance of the direction of the Court in *T.N. Godavarman Thirumulpad*<sup>1</sup>, the Uttar Pradesh Government constituted the State Level Expert Committee for identifying forests and forest-like areas. The Committee in its report dated 12-12-2007 framed certain parameters for identification of forest-like areas according to which, in the plains, any stretch of land over 2 ha in area with the minimum density of 50 trees per hectare would be considered as “forest”. On 11-1-2008 (as taken note of in the order of that date) it was reported to this Court that the guidelines were issued for identification of forest-like areas and steps would be taken to identify “forest-like areas” in all the districts in the State of Uttar Pradesh within four months and such areas would be handed over to the Forest Department, excepting the private areas, if any.

10. As the process of search and identification of forest-like areas in the districts of Uttar Pradesh proceeded, the District Level Committee headed by the District Collector, Gautam Buddha Nagar, by its letter dated 26-2-2008 addressed to the Conservator of Forests and Regional Director intimated that there was no forest-like area in the district and consequently the project site was not identified as a forest or forest-like area by the State Level Expert Committee constituted in pursuance of this Court’s order dated 12-12-2006. It was in this background that the project started, according to the State Government, in January 2008. When the work on the project became noticeable from the outside the applicants filed their complaint before the CEC on 5-3-2009.

11. As the controversy erupted with regards to “large-scale construction near the Okhla Bird Sanctuary by the State Government” the Ministry of Environment and Forests (hereafter “MoEF”) asked the Chief Conservator of Forests (CCF), Central Region, Lucknow, to make a site inspection of the project and to give his report. The CCF in his report dated 10-7-2009 did not accept the stand of the State Government that there was no forest on the project site. He stated that 6000 trees were “sacrificed” in an area of 32.5 ha and that showed that the area had sufficiently dense forest cover and would qualify as “forest” according to the dictionary meaning of the word and as directed by the Supreme Court. He, however, suggested that before taking a final view on the matter a report may be called for from the Forest Survey of India (hereafter “FSI”) in order to verify the vegetation cover over the area before the construction work started there.

12. In the light of the report by the CCF, the MoEF noted that the number of cut trees, in ratio to the project area, was apparently more than three times in excess of the criterion fixed by the State Level Expert Committee for identification of forest like areas (i.e. minimum of 50 trees per hectare). As

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

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(Aftab Alam, J.)

a suggested by the CCF, therefore, the MoEF called for a report from the FSI based on satellite imagery and properly analysed by GSI application from the year 2001 onwards (vide Letter dated 17-7-2009 from the Deputy Conservator of Forests (C) to the Director, Forest Survey of India). The FSI gave its report on 7-8-2009 which we shall examine presently. In light of the report of the CCF and the report from the FSI, MoEF in its first response to the applicants' complaint before the CEC (under covering letter that is undated, received at the CEC on 12-8-2009) stated that at the project site "there was a good patch of forests and which *could* be treated as deemed forest". It further said that the report of the FSI showed that the forest cover existed there up to 2006 and the felling of trees might have taken place after that only.

c 13. In the meeting convened by the CEC on the applicants' complaint on 12-8-2009, the Chief Conservator of Forests (CCF), MoEF, Lucknow stated that the plantation done in the project area was naturalised and having regard to the number of trees that existed in the area, the project area should be seen as "deemed forest" and, therefore, it attracted the provisions of the FC Act, and any non-forest use of the land required prior approval of the Central Government. In view of the stand taken by the CCF, the CEC by its letter of d 13-8-2009 requested the MoEF to give its response on the issue.

e 14. Here it may be noted that till that stage the stand of the MoEF, based on the reports of the CCF and the FSI, though tentative, seemed to be definitely inclined towards holding that the trees that were felled for clearing the site comprised a forest/deemed forest and the construction at the project site was hit by the provisions of the FC Act. But now in a perceptible shift in its stand the MoEF informed the CEC by its Letter of 22-8-2009/24-8-2009 that in its view, the project site did not attract the provisions of the FC Act. It referred to the order of this Court dated 12-12-1996<sup>1</sup> and pointed out that the project site did not appear in the list of deemed forest land identified by the State Level Expert Committee in pursuance of the order of the Court. It concluded by saying as follows:

f "In view of the above, it is informed that the area under discussion is neither recorded as forest nor deemed forest and is actually an urban tree park. Therefore, construction work in this area does not attract the provisions of the Forest (Conservation) Act, 1980."

g 15. The Letter dated 22-8-2009/24-8-2009 from the MoEF was followed by another Letter of 2-9-2009. This was purportedly to put the observation in the previous letter that "... [C]onstruction work in this area does not attract the provisions of the Forest (Conservation) Act, 1980" in context. This letter referred to the satellite images provided by the FSI and the reports submitted by the CCF but in the end, "given the sensitivity of the matter and the high degree of public interest" left it to the CEC to draw appropriate conclusions h from the materials furnished to it.

<sup>1</sup> T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267

16. The CEC on a consideration of all the materials made available to it, including the report of the FSI (on which the applicants heavily rely), came to hold and find that the project site was not a forest or a deemed forest or a forest-like area in terms of the order of this Court dated 12-12-1996<sup>1</sup>. In its report to this Court dated 4-9-2009 it observed in this regard as follows:

“28. ... In the present case, even though as per the report of the Forest Survey of India, the area was having good forest/tree cover and the project area had more than 6000 trees, it does not fall in the category of ‘forest’ for the purpose of Section 2 of the Forest (Conservation) Act and therefore does not require any approval under the Forest (Conservation) Act. *The project area does not have naturally grown trees but planted trees. The area has neither been notified as ‘forest’ nor recorded as ‘forest’ in the government record. In the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest.* The CEC does not agree with the Regional Chief Conservator of Forests, MoEF, Lucknow that the plantation done in the area has naturalised because of natural regeneration and therefore now falls in the category of deemed forest. Most of the trees are of species such as subabul, bottle brush, bottle palm, morepankhi, *Ficus benjamina*, *Cassia siamea*, eucalyptus, fishtail palm, rubber plant, silver oak, etc. *which are not of natural regeneration. As such hardly any tree of natural regeneration exists.*”

29. As per the definition of ‘forest’ as held by the Hon’ble Supreme Court in its order dated 12-12-1996, the project area therefore cannot be treated as ‘forest’ for the purpose of the Forest (Conservation) Act.”

(emphasis added)

17. Mr Jayant Bhushan strongly assailed the finding of the CEC as erroneous. The learned counsel stated that the CEC took the view that the project area could not be described as “forest” and did not attract the provisions of the FC Act mainly because the trees in the project area that were cut down for making space for the constructions were planted trees and not naturally grown trees. He contended that the reason given by the CEC was quite untenable being contrary to the judgments of this Court where it is held that forest may be natural or man-made. He further submitted that the view that in order to qualify as forest the trees must be “naturally grown” is fraught with grave consequences inasmuch as a very large portion of the forests in India are planted forests and not original, natural forests. Further, any afforested area would also cease to be recognised as a forest if the view taken by the CEC were to be upheld.

18. The other reasons given by the CEC for holding that the project area was not a forest was that it was neither notified as “forest” nor recorded as “forest” in the government record and even in the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest.

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

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(Aftab Alam, J.)

a Mr Bhushan contended that these reasons were as misconceived as the previous one. The area was not notified or recorded as forest meant nothing since this Court had passed a series of orders with the object to bring such areas within the protection of the FC Act that were not notified or recorded as forest. In the same way the failure of the State Level Expert Committee to identify the project area as forest even though it fully satisfied the criterion set by the Committee itself for the purpose will not alter the true nature and character of the area as forest land.

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e 19. Mr K.K. Venugopal, learned Senior Counsel appearing for the State of U.P. strongly supported the view taken by the CEC. The learned counsel submitted that the omission to identify the trees at the project site as forest or deemed forest was not due to any mistake or by chance. He pointed out that in the parameters set out by the State Level Expert Committee for identification of forests or forest-like areas it was clarified that “trees mean naturally grown perennial trees” and it was further stipulated that “the plantation done on public land or private land will not be identified as forest-like area”. Mr Venugopal submitted that the guidelines made by the Expert Committee were reported to this Court and accepted by it on 12-12-2007. The project site clearly did not come within the parameters fixed by the Expert Committee and it was rightly not identified as a forest-like area. The parameters fixed by the Expert Committee for identification of forests or forest-like area were never challenged by anyone and now it was too late in the day to question those parameters, more so after those were accepted by this Court. Mr Venugopal contended that the non-inclusion of the project site as a forest or forest-like area by the State Level Expert Committee should be conclusive of the fact that the area was not forest land and the trees standing there were no forest.

f 20. Mr Bhushan contended that a tract of land bearing a thick cluster of trees that would qualify as forest land and forest as defined by the orders of this Court would not cease to be so simply because the parameters adopted by the Expert Committee were deficient and inconsistent with this Court’s orders. In support of the submission that there was actually a forest in that area that was cut down for the project he relied upon the report of the FSI dated 7-8-2009 in which the forest cover status at the project site based on IRS 1D/P6 LI88 III data is shown as follows:

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<i>Forest Cover Status in the Area of Interest (AOI) of NOIDA from 2001 to 2007</i>							
							<i>Area in ha</i>
<i>Assessment (State of Forest Report)</i>	<i>Date of satellite data (sic)</i>	<i>Very dense forest</i>	<i>Moderately dense forest</i>	<i>Open forest</i>	<i>Total forest cover</i>	<i>Non- forest</i>	<i>Total area</i>
8th (2001)	October 2000	0	3.74	10.42	14.16	32.27	46.43
h 9th (2003)	November 2002	0	6.05	10.71	18.76	29.67	46.43

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10th (2005)	November 2004	0	7.54	14.23	21.77	24.66	46.43
11th (2007)	October 2006	0	9.04	12.73	21.77	24.66	46.43

21. In the report it was also stated that the latest forest cover assessment by the FSI was based on satellite data of 2006 and it did not have any data of the later period. It further stated that the felling of trees might have taken place after October 2006. Mr Bhushan invited our attention to the order of this Court in *T.N. Godavarman Thirumulpad (98) v. Union of India*<sup>2</sup> (SCC paras 16, 18, 33, 37, 38) to show that this Court had accepted the reliability of the FSI Report based on satellite imagery.

22. Mr Bhushan also relied upon the report of the CCF, MoEF, Lucknow, a reference to which has already been made above. He also relied upon the first response of the MoEF, where it was stated that at the project site there was a “good patch of forests and which could be treated as a deemed forest” and further that the report of the FSI showed that the forest cover existed there up to 2006 and the felling of trees might have taken place after that only. Mr Bhushan lastly relied upon the Google image which has a dark patch in approximately 1/3rd of the area interpreted by him as a dense cover of trees.

23. In support of the submissions the learned counsel relied greatly on the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulpad*<sup>1</sup>. He also relied upon the decisions of this Court in *Samatha v. State of A.P.*<sup>3</sup> (SCC paras 119, 120, 121, 123) and *M.C. Mehta v. Union of India*<sup>4</sup> (SCC paras 55, 56, 57).

24. The point raised by Mr Bhushan may be valid in certain cases but in the facts of the case his submissions are quite out of context. In support of the applicants’ case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, *banjar* (uncultivable) or *parti* (uncultivated).

25. NOIDA was set up in 1976 and the lands of the project area were acquired under the Land Acquisition Act mostly between the years 1980 to

2 (2006) 5 SCC 28

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

3 (1997) 8 SCC 191

4 (2004) 12 SCC 118

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(*Aftab Alam, J.*)

- a 1983 (two or three plots were notified under Sections 4/6 of the Act in 1979 and one or two plots as late as in the year 1991). But the possession of a very large part of the lands under acquisition (that now form the project site) was taken over in the year 1983. From the details of the acquisition proceedings furnished in a tabular form (Annexure 9 to the counter-affidavit on behalf of Respondents 2 and 3) it would appear that though on most of the plots there were properties of one kind or the other, *there was not a single tree on any of*
- b *the plots under acquisition.* The records of the land acquisition proceedings, thus, complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest.* There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.
- c **26.** Further, in the second response of the MoEF, dated 22-8-2009/24-8-2009 there is a reference to the information furnished by the Deputy Horticulture Officer, NOIDA according to which plantations were taken up along with seed sowing of subabul during the years 1994-1995 to 2007-2008. A total of 9480 saplings were planted (including 314 saplings planted before 1994-1995). NOIDA had treated this area as an "urban park". It is, thus, to be
- d seen that on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project.
- e **27.** The satellite images tell us how things stand at the time the images were taken. We are not aware whether or not the satellite images can ascertain the different species of trees, their age and the girth of their trunks, etc. But what is on record does not give us all that information. What the satellite images tell us is that in October 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but
- f admitted; the State Government admits felling of over 6000 trees in 2008. How and when the trees came up there we have just seen with reference to the revenue and land acquisition proceedings records. Now, we find it inconceivable that trees planted with the intent to set up an urban park would turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly
- g about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land.
- h **28.** The decisions relied upon by Mr Bhushan are also of no help in this case and on the basis of those decisions the trees planted in the project area cannot be branded as "forest".

**29.** In the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad*<sup>1</sup> this Court held and observed as under: (SCC pp. 269-70, paras 3-4)

“3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short ‘the Act’) and the meaning of the word ‘forest’ used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

4. The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word ‘forest’ must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term ‘forest land’, occurring in Section 2, will not only include ‘forest’ as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*<sup>5</sup>, *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>6</sup> and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*<sup>7</sup>). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*<sup>8</sup> has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so

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

5 (1987) 1 SCC 213

6 1989 Supp (1) SCC 504

7 (1997) 11 SCC 605

8 (1985) 3 SCC 643

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a far, will forthwith correct its stance and take the necessary remedial measures without any further delay.”

In the above order the Court mainly said three things: one, the provisions of the FC Act must apply to all forests irrespective of the nature of ownership or classification of the forest; two, the word “forest” must be understood according to its dictionary meaning and three, the term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership.

b 30. The order dated 12-12-1996<sup>1</sup> indeed gives a very wide definition of “forest”. But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. In the order the Court said: (SCC p. 270, para 4)

c “4. ... The term ‘forest land’ occurring in Section 2, will not only include ‘forest’ as understood in the dictionary sense, *but also any area recorded as forest in the government record irrespective of the ownership.*” (emphasis added) Now what is meant by that is made clear by referring to the earlier decision of the Court in *State of Bihar v. Banshi Ram Modi*<sup>8</sup>.

d 31. In the earlier decision in *Banshi Ram Modi*<sup>8</sup> the Court had said: (SCC p. 647, para 10)

e “10. ... Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply.”

f 32. The observation in *Banshi Ram Modi*<sup>8</sup> (which again was made in the peculiar context of that case!) was sought to be interpreted by some to mean that once the land was broken in course of mining operations it ceased to be forest land. It was in order to quell the mischief and the subversion of Section 2 of the FC Act that the Court in the order dated 12-12-1996<sup>1</sup> made the observation quoted above in italics.

g 33. In *Samatha*<sup>3</sup>, this Court was dealing with cases of grant of mining leases to non-tribals in reserved forests and forests that were notified as scheduled area under the Andhra Pradesh Scheduled Areas Land Transfer

h 1 *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267

8 (1985) 3 SCC 643

3 *Samatha v. State of A.P.*, (1997) 8 SCC 191

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Regulation, 1959. It was contended on behalf of the leaseholders that the Regulation and the Mining Act do not prohibit grant of mining leases of government land in the scheduled area to non-tribals. The Forest (Conservation) Act or the Andhra Pradesh Forest Act, 1967, does not apply to renewal of leases. The observations in regard to what constitutes a forest made in SCC paras 119, 120, 121 and 123, relied upon by Mr Bhushan, were made when it was sought to be argued by the leaseholders that unless the lands are declared either as reserved forests or forests under the Andhra Pradesh Forest Act, 1967, the FC Act had no application. Hence, there was no prohibition to grant mining lease or to renew it by the State Government. The context in which the Court expanded the definition of forest is, thus, manifest and evident.

34. In *M.C. Mehta v. Union of India*<sup>4</sup>, in the paragraphs relied upon by Mr Bhushan, this Court was considering the question of permitting mining in Aravalli hills where large-scale afforestation was done by spending crores of rupees of foreign funding in an effort to repair the deep ravages caused to the Aravalli hill range over the years by mostly illegal mining. The context is once again evident.

35. Almost all the orders and judgments of this Court defining “forest” and “forest land” for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon by Mr Bhushan can be applied only to an extent and not in absolute terms. To an extent Mr Bhushan is right in contending that a man-made forest may equally be a forest as a naturally grown one. He is also right in contending that non-forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.

36. Like in this case, Mr Bhushan argued that the two conditions in the guidelines adopted by the State Level Expert Committee i.e. (i) “trees mean naturally grown perennial trees”, and (ii) “the plantation done on public land or private land will not be identified as forest like area” were not consistent with the wide definition of forest given in the 12-12-1996<sup>1</sup> order of the Court and the project area should qualify as forest on the basis of the main parameter fixed by the Committee. If the argument of Mr Bhushan is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-1996<sup>1</sup>.

4 (2004) 12 SCC 118

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

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37. In the light of the discussion made above, it must be held that the  
a project site is not forest land and the construction of the project without the  
prior permission from the Central Government does not in any way  
contravene Section 2 of the FC Act.

***The project and the EIA Notification, 2006***

38. Mr Jayant Bhushan next contended that the construction of the  
b project was started by the U.P. Government (and was sought to be completed  
in great haste!) without obtaining the prior environmental clearance from the  
Central Government or the State Level Environment Impact Assessment  
Authority in complete violation of the Notification issued by the Central  
Government on 14-9-2006 under Section 3(3) of the EP Act.

39. Before proceeding to examine the issue in detail it would be useful to  
c see the views taken by the different authorities, agencies and the MoEF on  
the question whether the law required prior environmental clearance for the  
project. It appears that once the controversy was raised, the project  
proponents, by letter dated 24-4-2009 approached the State Level  
Environment Impact Assessment Authority, Uttar Pradesh constituted under  
the EIA Notification, 2006, seeking environmental clearance for the project.  
d In reply SEIAA by its letter dated 7-5-2009 stated that having regard to the  
nature and the area of the project it was not covered by the schedule of  
Notification No. S.O. 1533(E) dated 14-9-2006 issued by the Government of  
India.

40. Before the CEC, the MoEF in its first response dated 22-8-2009/  
24-8-2009 took the stand that the project would not require any prior  
e environmental clearance under the EIA Notification, 2006. It further stated  
that in the EIA Notification, 2006 all building/construction projects/area  
development projects and townships, were categorised as Category B projects  
and the “*general condition*” prescribed in the notification was not applicable  
to construction projects. It went on to say that the project did not require any  
prior environmental clearance under the EIA Notification, 2006 even though  
f “being within the prescribed distance from a wildlife sanctuary/national park  
or inter-State boundary”. It needs to be stated here that the first response of  
the MoEF before the CEC was evidently based on the inputs received from  
the U.P. Government about the nature of the project and the extent of  
constructions involved in it.

41. In the second response before the CEC dated 2-9-2009 the MoEF did  
g not appear so sure of its earlier stand. It stated that after its earlier Letter of  
22-8-2009, 24-8-2009, the MoEF had received further information about the  
project from various sources and the fresh findings raised far-reaching issues  
of public concern that extended beyond the parameters set by the EIA  
Notification of 2006. It further stated that the certificate issued by SEIAA of  
U.P. stated that the total built-up covered area was only 9542 sq m and the  
h report of the CCF was not clear as to the extent of the covered area vis-à-vis  
concrete landscaping, pillar(s), platform(s), lawn(s), tree planting, etc. To put

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it simply, the MoEF was not fully in possession of the basic facts relating to the project and its likely impact on the environment. It left the decision in the hands of the CEC.

**42.** The CEC in its report to this Court dated 4-9-2009 held and found that the project was covered by the EIA Notification, 2006 and it required prior environmental clearance in terms of the notification. In its report, the CEC observed as follows:

“30. The CEC does not agree with the stand taken by the State Government as well as the MoEF that the project does not require environmental clearance in terms of the MoEF Notification dated 14-9-2006. The MoEF, as well as the State of Uttar Pradesh have taken this view primarily on the ground that the built-up area of the project is less than 20,000 sq m and therefore the project does not require environmental clearance. The built-up area has been calculated by the State of Uttar Pradesh on the basis of its building bye-laws. The CEC is of the view that for the purpose of environmental clearance, the building bye-laws of the State Government have no relevance at all. As per the details provided by the State Government itself, out of 33.43 ha of the project area, 3499.50 sq m is being used for memorial building and toilet blocks, 3500 sq m is being used for utilities and facilities, 1,29,140.80 sq m area is being used for hard landscape including for platforms, plinth, sculptures and surrounded paved area, path, etc. Another 34,850 sq m area is to be used for vehicular movement. The above comes to more than 50% of the project area which in CEC’s view qualify to be included in the activity area. The project cost is about ₹685 crores. As per the MoEF Notification dated 14-9-2006, for building/construction project, in the case of facilities open to the sky, the activity area is to be included in the built-up area. In the present case, after including the activity area the total built-up area, for the purpose of environmental clearance, far exceeds the threshold limit of 20,000 sq m of built-up area provided in the notification. The MoEF, on its own admission, has merely relied on the details of the built-up area as provided by the State Government without independently verifying it and has not included the area falling in the category of activity area. In any case, even if there was any doubt in the MoEF regarding the applicability of the environmental clearance in the present case, in view of precautionary principle it should have erred on the side of the caution and should have insisted for the environmental clearance.”

**43.** When the matter finally came up before the Court the MoEF was once again asked to take a clear stand on the issue whether the project was covered by the EIA Notification, 2006. The MoEF filed a brief affidavit on 21-10-2009 in which it acknowledged that the CEC in its report dated 4-9-2006 had stated that the State of U.P. should be directed to seek environmental clearance for the project from the MoEF in terms of the notification. The MoEF, however, reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of

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a the EIA Notification, 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43 ha) was less than 50 ha and its built-up area (9542 sq m) was less than 20,000 sq m. Having thus made its stand clear, the MoEF went on to say that in case the Court desired the project to be appraised from the environmental angle it would do so and submit its recommendations. It, however, put in a caveat that such appraisals were made  
b before the commencement of the construction activity at the site and in the present case the project was already in the advanced stage of construction.

44. On 22-4-2010<sup>9</sup>, this Court passed an order in which after extracting the relevant passage from the affidavit it directed the MoEF to make a study of the environmental impact of the project. The MoEF was further directed to suggest measures for undoing the environmental degradation, if any, caused  
c by the project and the amelioration measures to safeguard the environment, with particular reference to the adjacent bird sanctuary.

45. As directed by the Court, the MoEF asked the project proponents to submit the details concerning the project in the format prescribed under the EIA notification. It also asked the project proponents to have the environmental impact assessment of the project done by some expert  
d agencies. As required by the MoEF, NOIDA submitted the requisite details concerning the project and the reports on the environmental impact assessment of the project based on studies made by three different agencies (we shall have the occasion to consider those reports in the latter part of the judgment). Thereafter, the Expert Appraisal Committee (EAC) constituted by the Central Government for the purpose of the EIA notification examined the  
e project in its 88th meeting held on 28-6-2010, 29-6-2010 and gave its report which is brought on record along with an affidavit filed by the State Government on 22-7-2010. In this report the EAC made as many as 15 recommendations to check any environmental degradation or any harm to the Okhla Bird Sanctuary by the project.

46. The MoEF filed yet another affidavit before the Court on 19-8-2010  
f in which it tried to explain the distinction between Clauses 8(a) and 8(b) in the schedule to the EIA Notification, 2006 without changing its stand that the project in question did not come within the ambit of the notification.

47. In course of the oral hearing as well, Mr Raval, learned ASG, firmly maintained that the project did not come under the notification and no prior environmental clearance was required for it under the notification.  
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48. Mr Harish Salve, learned amicus curiae and Mr Jayant Bhushan, counsel appearing for the applicants, both staunchly contended that the stand of the MoEF was patently wrong and incorrect. The project clearly fell within the ambit of the EIA Notification, 2006. The CEC had taken the correct view on the issue. And to start the construction of the project and take  
h it into an advanced stage of construction without obtaining prior

<sup>9</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 6 SCC 747

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environmental clearance from the Central Government was in blatant violation of the provisions of the notification. Mr Salve also criticised the Central Government for taking a shifting and inconsistent stand on the issue. a

49. Now is the time to take a closer look at the provisions of EIA Notification No. S.O. 1533(E) dated 14-9-2006 issued by the Central Government under Section 3(3) of the EP Act and to consider the submissions advanced by the two sides on that basis. Section 3(3) of the EP Act provides as follows:

“3. *Power of Central Government to take measures to protect and improve environment.*—(1)-(2) \* \* \*

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.” c  
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50. In exercise of the powers conferred by the above provision the Central Government in the Ministry of Environment and Forests issued Notification No. S.O. 1533(E) on 14-9-2006, which insofar as relevant for the present is reproduced below: e

“MINISTRY OF ENVIRONMENT AND FORESTS  
Notification

New Delhi, the 14th September, 2006

*S.O. 1533(E).*—Whereas \* \* \*  
And whereas \* \* \* f  
And whereas \* \* \*

2. *Requirements of prior environmental clearance (EC).*—The following projects or activities shall require *prior environmental clearance* from the regulatory authority concerned, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category A in the schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category B in the said schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity: g

(i) All new projects or activities listed in the schedule to this notification; h

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a (ii) Expansion and modernisation of existing projects or activities listed in the schedule to this notification with addition of capacity beyond the limits specified for the sector concerned, that is, projects or activities which cross the threshold limits given in the schedule, after expansion or modernisation;

(iii) Any change in product mix in an existing manufacturing unit included in schedule beyond the specified range.

b 3. \* \* \*

4. *Categorisation of projects and activities.*—

(i) All projects and activities are broadly categorised into two categories — Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources;

c (ii) All projects or activities included as Category A in the schedule, including expansion and modernisation of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

d (iii) All projects or activities included as Category B in the schedule, including expansion and modernisation of existing projects or activities as specified in sub-para (ii) of Para 2, or change in product mix as specified in sub-para (iii) of Para 2, but excluding those which fulfil the general conditions (GC) stipulated in the schedule, will require prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority (SEIAA). SEIAA shall base its decision on the recommendations of a State or Union Territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category B project shall be treated as a Category A project;

e 5.-6. \* \* \*

7. *Stages in the prior environmental clearance (EC) process for new projects.*—

g (i) \* \* \*

h I. *Stage (1) Screening:* In case of Category B projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the State level Expert Appraisal Committee (SEAC) concerned for determining whether or not the project or activity requires further environmental studies for preparation of an environmental impact assessment (EIA)

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for its appraisal prior to the grant of environmental clearance depending upon the nature and location specificity of the project. The projects requiring an environmental impact assessment report shall be termed Category B1 and remaining projects shall be termed Category B2 and will not require an environment impact assessment report. For categorisation of projects into B1 or B2 except Item 8(b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

8.-12.

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SCHEDULE

(See Paras 2 and 7)

List of Projects or Activities Requiring Prior Environmental Clearance

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
8		Building/Construction projects/Area development projects and Townships		
(1)	(2)	(3)	(4)	(5)
8(a)	Building and construction projects		≥ 20,000 sq m and < 1,50,000 sq m of built-up area*	* (built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and area development projects.		Covering an area ≥ 50 ha and or built-up area ≥ 1,50,000 sq m**	** All projects under Item 8(b) shall be appraised as Category B1

Note:

General condition (GC):

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

Specific condition (SC):

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(I) Basic information

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(Aftab Alam, J.)

(II) Activity

a 1. Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.)

Sl. No.	Information/checklist confirmation	Yes/No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)		
1.2	Clearance of existing land, vegetation and buildings		
1.3	Creation of new land uses		
1.4	Pre-construction investigation e.g. bore houses, soil testing		
1.5	Construction works		
1.6	* * *		
1.31	* * *"		

f 51. In substance the EIA notification provides that all projects and activities enumerated in its schedule would require prior environmental clearance before any construction work or preparation of land for the project is started on the project or activity. The projects and activities depending upon various factors such as the potential hazard to environment, location, the extent of area involved, etc. are categorised in Categories A or B. For projects or activities falling in Category A, the competent authority to grant prior environmental clearance is the MoEF and for projects or activities falling in Category B, the State Environment Impact Assessment Authority (SEIAA). The constitution of SEIAA is provided for in Clause 3 of the notification with which we are not concerned in this case. In certain cases a project or activity, though categorised in Category B may be treated as Category A by application of the general condition [on account of its location being within a distance of 10 km from a protected area notified under the

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Wildlife (Protection) Act, etc.]. In other words, if a project or activity attracts the general condition, the competent authority to grant prior environmental clearance in that case would be the Central Government, even though, the project or activity may figure in the schedule in Category B. a

**52.** Further, projects or activities categorised as Category B may or may not require an environmental impact assessment before the grant of environmental clearance depending on the nature and location specificity of the project. The projects requiring an EIA report shall be termed as Category B1 and the remaining shall be termed as B2 and will not require an EIA report. For categorisation of projects into B1 and B2, the MoEF would issue appropriate guidelines from time to time. The schedule to the notification has a table that is divided into five columns. The first column contains the serial numbers, and the second the description of the project or activities; the third column lists those projects or activities that fall in Category A and the fourth, those falling in Category B; the fifth column against each item indicates whether any general or specific condition applies to the project or activity described in that item. In some cases where the project or the activity is shown in Column 4 as Category B, the application of the general condition is expressly indicated in Column 5 of the table. b  
c

**53.** For the project under consideration, the relevant entries in the schedule are Items 8(a) and 8(b). Both Items 8(a) and 8(b) are listed in Column 4 i.e. in Category B. In Column 5, against any of the two items, there is no mention of application of the general condition but it is expressly said that all projects in Item 8(b) would be appraised as Category B1, that is to say, for a project under Item 8(b) the prior environmental clearance must be preceded by an environmental impact assessment. d

**54.** Item 8(a) deals with building and construction projects and the threshold mark that would bring the project within the ambit of the notification is equal to or more than 20,000 sq m and less than 1,50,000 sq m of “built-up area”. It is further clarified that the aforementioned figures relate to built-up area for covered construction; in case of facilities open to the sky, the built-up area would be the activity area. Item 8(b) deals with townships and area development projects and the threshold mark for the project to come within the ambit of the notification is an area equal to or more than 50 ha or built-up area of more than 1,50,000 sq m. e  
f

**55.** Mr Jayant Bhushan, supported by the amicus curiae forcibly argued that the project under consideration would clearly fall under Item 8(a) of the schedule. He submitted that though the area of covered construction in the project was only 6999.50 sq m, the project by its very nature provided facilities open to the sky and in that case, the whole of the activity area would constitute the built-up area. He then referred to the definition of activity [that includes (i) permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan), (ii) clearance of existing land, vegetation and buildings, (iii) creation of new land uses, and (iv) pre-construction investigations e.g. bore houses, soil testing]. He contended that in view of the definition of g  
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a activity, virtually the entire area of 33.43 ha from where over 6000 trees were removed for clearing the project site would come within the “activity area” and would, thus, form the built-up area under Item 8(a) of the schedule.

b **56.** Further, since the project was located adjacent to the Okhla Bird Sanctuary, it would, without doubt, attract the general condition which provided that any project or activity specified in Category B will be treated as Category A, if located within 10 km from the boundary of protected areas notified under the Wildlife (Protection) Act, 1972. Mr Bhushan insisted that the general condition would apply to the project by virtue of its very close proximity to the Okhla Bird Sanctuary, regardless of the fact that in Column 5 of the table there is no mention of application of the general condition against Item 8(a). The application of the general condition would take the project out of Category B and put it in Category A for which the competent authority to grant prior environmental clearance is the MoEF.

c **57.** Mr Bhushan then referred to the Office Memo dated 2-12-2009 issued by the MoEF which in the course of hearing was, in all fairness, produced by Mr Raval, learned ASG, appearing for the MoEF. The office memorandum inter alia provides that “... while granting environmental clearance to projects involving forest land, wildlife habitat (core one of elephant/tiger reserve, etc.) and/or located within 10 km of the national park/wildlife sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4-12-2006 in *Goa Foundation v. Union of India*<sup>10</sup>), a specific condition shall be stipulated that the environmental clearance is subject to their obtaining prior clearance from forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife as applicable.....”. Mr Bhushan submitted that the project under consideration thus does not only require a prior environmental clearance but also a clearance from the forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife as precondition for the grant of environmental clearance by the MoEF.

d **58.** Mr Bhushan’s arguments proceed in four steps. He first puts the project in Item 8(a) of the schedule as a building and construction project. Then, in the second step, in order to cross the threshold marker he refers to the definition of “activity” to contend that since the project provides facilities open to sky its entire area of 33.43 ha would constitute the built-up area. In the third step, he brings in the general condition [even though in regard to Item 8(a) its application is not mentioned in Column 5 of the table] that would make the Central Government as the competent authority for granting prior environmental clearance for the project. And lastly, in the fourth step he refers to the Office Memorandum dated 2-12-2009 to contend that a clearance from the Standing Committee of the National Board for Wildlife was a precondition for the grant of the prior environmental clearance by the MoEF.

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**59.** Long and elaborate submissions were made from both sides in regard to the application of the general condition to this project. Mr Venugopal, Senior Counsel appearing for the State of U.P. and Mr Raju Ramachandran, Senior Counsel appearing for NOIDA submitted that the general condition would have no application to projects under Items 8(a) or 8(b) for the simple reason that in regard to those items there was no mention of the general condition in Column 5 of the table. Mr Venugopal submitted, and not entirely without substance that if the general condition were to apply to Items 8(a) and 8(b) without being mentioned in Column 5 of the table then it would not make any sense to expressly mention it in Column 5 in respect of some other projects and activities classified in Category B in the schedule.

**60.** Mr Raval, learned ASG, produced before the Court, the draft Notification No. S.O. 1324E, published in the Gazette of India Extraordinary of 15-9-2005. In the draft notification there were two general conditions, GC1 and GC2 and in regard to “(a) Construction of all projects (residential and non-residential), and (b) New Townships and Settlement Colonies”, the application of GC2 was expressly indicated in Column 5 of the table. Later on, in a meeting held on 6-7-2006, chaired by none else than the Prime Minister, it was decided to leave all construction and township projects, housing and area development projects in the hands of the State Government. It was further decided that for all projects involving more than 1,50,000 sq m of built-up area and/or covering more than 50 ha, the EIA requirements should correspond to Category A, even though the clearance would be granted by the State Government. Mr Raval submitted that in light of the decision taken in that meeting, in the final Notification issued on 14-9-2006, the application of general condition was removed in respect of Items 8(a) and 8(b) in the schedule. In view of the changes made in the two items in the final notification, Mr Raval also contended that the general condition has no application to Items 8(a) and 8(b), regardless of the project’s proximity to any sanctuary or reserved area.

**61.** But before considering the latter three limbs of Mr Bhushan’s arguments it is necessary to examine whether the project in question can be legitimately categorised as a building and construction project falling under Item 8(a) of the schedule which is the first premise of his arguments. In the schedule to the notification “building and construction projects” and “townships and area development projects” are enumerated separately, the former in Item 8(a) and the latter in Item 8(b). This would normally suggest that the notification treats those two kinds of projects separately and differently. It would, therefore, be reasonable to say that an “area development project” though involving a good deal of construction would yet not be a “building and construction project”.

**62.** When it was pointed out to Mr Bhushan that the project in question may be put more appropriately in Category 8(b) as an “area development project” rather than a “building and construction project” under Category 8(a), in reply he took a line that nullifies any distinction between the two. Mr Bhushan submitted that so far as construction projects are concerned there is

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- a no qualitative difference between Items 8(a) and 8(b) and the difference between the two items was only quantitative. Projects were categorised under Items 8(a) or 8(b) as “building and construction projects” or “townships and area development projects” not on the basis of their nature and character but depending upon the extent of construction. The learned counsel pointed out that the upper limit under Item 8(a) (1,50,000 sq m of built-up area) was the threshold mark under Item 8(b) and contended that this was a clear indication that projects with built-up area up to 1,50,000 sq m would be defined as “building and construction projects” and projects with built-up area in excess of 1,50,000 sq m would be categorised as “townships and area development projects”.

- b **63.** In support of the contention, Mr Bhushan gave the example of a “building and construction project”, consisting of a number of multi-storied buildings, the aggregate of the built-up area of which exceeds 1,50,000 sq m. Mr Bhushan submitted that since the total built-up area of the project crosses the upper limit of Item 8(a) the project would not fall within that item. But at the same time since the project is a “building and construction project” and not a “township and area development project”, it would not come under Item 8(b) and this would be indeed a highly anomalous position where a project with a smaller built-up area would fall within the ambit of the notification, whereas a project with a larger built-up area would escape the rigours of the notification.

- c **64.** The amicus, also arguing in the same vein, submitted that as far as building and construction projects are concerned there was no qualitative difference in Items 8(a) and 8(b) of the schedule to the notification. A combined reading of the two clauses of Item 8 of the schedule would show the continuity in the two provisions; 1,50,000 sq m of built-up area that was the upper limit in Item 8(a) was the threshold marker in Item 8(b). This clearly meant that building and construction projects with built-up area/activity area between 20,000 sq m to 1,50,000 sq m would fall in Category 8(a) and projects with built-up area of 1,50,000 sq m or more would fall in Category 8(b). The amicus further submitted that though it was not expressly stated, the expression “built-up area” in Item 8(b) must get the same meaning as in Item 8(a), that is to say, if the construction had facilities open to sky the whole of the “activity area” must be deemed to constitute the “built-up area”.

- d **65.** It is extremely difficult to accept the contention that the categorisation under Items 8(a) and 8(b) has no bearing on the nature and character of the project and is based purely on the built-up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different *both quantitatively and qualitatively* from a mere building and construction project. Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and

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pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park. a

**66.** The illustration given by Mr Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between Items 8(a) and 8(b). But it must be realised that the converse of the illustration given by Mr Bhushan may not be true. For example, a project which is by its nature and character an “area development project” would not become a “building and construction project” simply because it falls short of the threshold mark under Item 8(b) but comes within the area specified in Item 8(a). The essential difference between Items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder. b  
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**67.** In light of the above discussion it is difficult to see the project in question as a “building and construction project”. Applying the test of “dominant purpose or dominant nature” of the project or the “common parlance” test i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorised under Item 8(b) of the schedule as a township and area development project”. But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 ha) is less than 50 ha and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 sq m i.e. much below the threshold marker of 1,50,000 sq m. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA Notification S.O. 1533(E) dated 14-9-2006. This is not to say that this is the ideal or a very happy outcome but that is how the notification is framed and taking any other view would be doing gross violence to the scheme of the notification. d  
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**68.** Since it is held that the project does not come within the ambit of the notification, the other three arguments based on the activity area, the application of general condition and the application of the Office Memorandum dated 2-12-2009 become irrelevant and need not be gone into in this case. g

***The project and the Okhla Bird Sanctuary***

**69.** Mr Bhushan next raised the issue of the project being located virtually adjoining the Okhla Bird Sanctuary. The very close proximity of the project site to the bird sanctuary actually raises issues of serious concern and poses a dilemma. On the one hand the project proponents cannot be said to have broken any law or violated a definite order or direction of the court but h

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a on the other hand the project may possibly cause serious and irreparable harm to the bird sanctuary.

b **70.** Before the CEC the State Government took the plea that the project area was situated well outside the boundaries of the bird sanctuary and the construction of the project had caused no adverse impact on the sanctuary. It was further stated that NOIDA which was the project proponent was equally conscious about its responsibility in regard to the preservation and conservation of the habitat of the sanctuary. A management plan for the sanctuary was being prepared by the Wildlife Institute of Dehradun for which NOIDA had released ₹17,35,350.00 in favour of the Institute and NOIDA was also planning to set up a corpus for the scientific and effective implementation of the management plan.

c **71.** On this issue the MoEF in its responses before the CEC put the blame squarely on the State Government. It stated that despite its letter of 27-5-2005 followed by a number of reminders the Government of Uttar Pradesh did not submit its proposal for declaration of “eco-sensitive zone” around the sanctuaries and national parks. It further stated that the State Government failed to take any steps in this regard even after the order of this  
d Court passed on 4-12-2006<sup>10</sup> in Writ Petition (Civil) No. 460 of 2004 by which the MoEF was directed to give all the States final opportunity to send their proposals for declaration of “eco-sensitive zones” to the MoEF within four weeks. The MoEF made the accusation that in the case of the present project the State Government of Uttar Pradesh was trying to take advantage of its own omission. In its second response dated 22-8-2009, 24-8-2009,  
e however, the MoEF, though still blaming the U.P. Government for its failure to notify the “eco-sensitive zones” conceded that “till eco-sensitive zone is declared the construction work did not seem to violate any law/Act”. But it went on to say that having regard to its location the project was better suited to be made part of extension of the bird sanctuary.

f **72.** The State Government of Uttar Pradesh took the stand that no proposals were sent from its side because the MoEF failed to issue the necessary guidelines for the purpose. On behalf of the State of U.P., reference was made to a meeting called by the Director General of Forests and Special Secretary, MoEF on 13-5-2010. In that meeting it was decided that the Director General of Forests, MoEF would constitute a committee of officers to finalise the guidelines for declaration of eco-sensitive zones. A reference  
g was also made to a subsequent meeting held on 4-7-2010 at Lucknow in which the attention of the Government of India was drawn to the decision taken in the earlier meeting. Yet, no guidelines were issued by the Government of India so far.

h **73.** The CEC in its report to the Court dated 4-9-2009 put the blame on the State Government of U.P. for its omission to identify the eco-sensitive

<sup>10</sup> *Goa Foundation v. Union of India*, WP (C) No. 460 of 2004 order dated 4-12-2006

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zones but like the MoEF seemed to accept that in the absence of a decision/ notification there was no legal bar against the construction of the project on the ground that it was sited adjacent to the bird sanctuary. In its report to the Court, the CEC observed as follows: a

32. The issue regarding identification/notification of eco-sensitive zones around the national park and sanctuaries is presently pending for consideration before this Hon'ble Court. The National Board of Wildlife (NBWL) had earlier decided that area within 10 km around national parks/sanctuaries should be the eco-sensitive zone. Later on, it was decided by NBWL that eco-sensitive zone should be specific to each national park/sanctuary. The CEC had recommended that 500 m around national park/sanctuary should be declared as eco-sensitive zone. The recommendation of the CEC has not so far been accepted by the Hon'ble Supreme Court after the learned amicus curiae took a view that 500 m may not be adequate. Pursuant to this Hon'ble Supreme Court's order dated 4-8-2006<sup>11</sup> in the TWP matter, mining is presently prohibited up to a distance of one kilometre from the boundary of national parks/sanctuaries. For other projects, no restriction has so far been imposed. The MoEF has time and again requested the States/UTs to identify the eco-sensitive zones around the national parks/sanctuaries. However, the State of Uttar Pradesh has so far not prepared any proposal in this regard. *The CEC is of the view that in the absence of a decision/ notification, presently there is no legal restriction against the implementation of the project on the ground that the project is adjacent to the Okhla Bird Sanctuary.* b  
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33. However, it has to be borne in mind that the project area is hardly at a distance of 50 m from the Okhla Bird Sanctuary and that in all probability the project site would have fallen in the eco-sensitive zone, had a timely decision in this regard been taken by the State Government/ MoEF. (emphasis added) e

74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, view the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around sanctuaries and national parks to protect the sensitive and delicate ecological balance required for the sanctuaries. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court environment is not merely a statutory issue. Environment is one of the facets of the right to life f  
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11 *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 13 SCC 740

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a guaranteed under Article 21 of the Constitution<sup>12</sup>. Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in. The question of the likelihood of the project causing any adverse effects on the Okhla Bird Sanctuary must, therefore, be examined from this angle.

b 75. We may note here that Mr Venugopal presented before us some photographs trying to show the situation on the western boundary of the Okhla Bird Sanctuary at its Delhi end. In the photographs there is a road, about forty to sixty feet wide (the Kalindikunj-Irrigation Colony-Batla Road) running right next to the wire mesh fencing of the sanctuary. Next to the road is a long row of cheek by jowl concrete structures/houses that seem to lean against one another. The road has the bustling traffic of Delhi where all kinds of vehicles (and cattle!) appear jostling for space. The situation on the western boundary of the sanctuary is indeed deplorable but that is no reason to strangle the sanctuary from the NOIDA side as well.

c 76. Earlier in the judgment, it is noted that on 22-4-2010<sup>9</sup>, the Court had asked the MoEF to make a study of the environmental impact of the project and to suggest measures for undoing the environmental degradation, if any, caused by the project and the amelioration measures to safeguard the adjacent bird sanctuary. In pursuance of the Court's directions the MoEF had asked the project proponents to have the environmental impact assessment of the project done by some expert agencies. NOIDA, the project proponent got three studies made of the impact assessment of the project. One is a joint study prepared by the Salim Ali Centre for Ornithology and Natural History (SACON), Deccan Regional Station, Hyderabad and the All-India Network Project on Agricultural Ornithology, Acharya N.G. Ranga Agricultural University, Hyderabad (Annexure II of the paper book Vol. IV); the other by the Wildlife Institute of India (WII) (Annexure III of the paper book Vol. IV); and the third by a group of three individuals that was vetted by the Indian Institute of Technology, New Delhi (Annexure IV of the paper book Vol. IV).

d e f 77. SACON, in its report practically gave a clean chit to the project and made the following observations in connection with the felling of trees and the impact of the project construction on the Okhla Bird Sanctuary:

g 12 *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : AIR 1987 SC 965; *M.C. Mehta v. Union of India*, (1987) 4 SCC 463; *M.C. Mehta v. Union of India*, (1988) 1 SCC 471 : 1988 SCC (Cri) 141 : AIR 1988 SC 1115; *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, (1990) 4 SCC 449 : AIR 1990 SC 2060; *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 : AIR 1991 SC 420; *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577; *B.L. Wadehra (Dr.) v. Union of India*, (1996) 2 SCC 594; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715; *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664; *T.N. Godavarman Thirumulpad v. Union of India*, (2002) 10 SCC 606; *Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch*, (2000) 3 SCC 29 and *State of M.P. v. Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389 : 2003 SCC (Cri) 1642

h 9 *T.N. Godavarman Thirumulpad v. Union of India*, (2010) 6 SCC 747

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- The Okhla Bird Sanctuary is primarily an urban wetland and supports primarily water birds, majority of them migrating and using in the winter season. These are confined to the water bodies and peripheral marshy vegetation and were not nesting or roosting on the trees of the adjacent parks. The extent of terrestrial habitat in the sanctuary is very small or insignificant. a
- The entire development works including removal of trees and construction had taken place outside the boundary of the sanctuary and the construction and felling of trees in the project site has not altered or interfered with the wetland ecosystem of the OBS and the area was undisturbed. b
- The birds in the wetland of Okhla Bird Sanctuary are estimated during the month of January by the Wildlife Wing of the U.P. Forest Department during winter, which is the period for the migratory birds. The estimation of birds are as under: c

2007-2008	:	17,111
2008-2009	:	21,272
2009-2010	:	22,004
- The clearing of the project site for construction and landscaping was started in the month of January 2008 and continued till 9-10-2009. The bird estimates during migratory season clearly show that there has been no reduction in the number of birds in the sanctuary despite developmental activities in the park. This clearly shows that the construction and felling of trees in the project site has no impact on OBS. d
- It appears that the existence of high tension line along the boundary wall of the project site before the start of the project might have been a barrier for movement of the birds from OBS as high electromagnetic influence would restrict the movement of birds. Hence, the construction and the felling of trees in the project site has minimal influence on the OBS. e

In view of the above, we are of the opinion that felling of trees and construction have no perceptible impact on the OBS habitat.” f

SACON suggested certain proactive environmental measures (see paper book Vol. IV, p. 110) that would form part of this judgment.

**78.** The other report by the Wildlife Institute of India (WII) is not so sanguine about the project’s impact on the bird sanctuary. In the WII Report under the heading “Assessment of the Impact” it was observed as under: g

“... From this, it is concluded that the erstwhile woodland would have been used by 51-101 species of terrestrial birds and was an extended habitat for the wildlife of the Okhla Bird Sanctuary, primarily terrestrial birds. Some of these birds may be using the erstwhile woodland for breeding as well....” h

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a ... The erstwhile woodland was acting as a buffer against these disturbances. The project area which was in continuation with the vegetation along the left afflux bund was providing a green belt approximately 2 km long and 218 m wide on an average. Before the felling of trees this patch might have acted as a protective green belt of approximately 190 m width with a tree density of 203.5 trees/ha (density of trees felled) which is now reduced to approximately 28 m (between the western wall of the project and OBS boundary of left afflux dam).  
b From this it is concluded that the sanctuary lost its buffer of around 33.43 ha that will have significant impact on the OBS and its tranquillity....

c ... Such carbon sequestration value of the erstwhile woodland was lost, though NOIDA has already taken up ameliorative steps in the form of afforestation in and around the project site....

d ... With the loss of buffer and increased artificial light at the project site, it is likely that the migratory bird population may get affected in long run. Bird friendly diffused light with blue tinge may reduce the negative impacts, though much research on this aspect is required.”

WII also suggested certain mitigation measures (see paper book Vol. IV, p. 134) that would form part of this judgment.

e **79.** III, New Delhi in its review of the report prepared by the group of three people does not record any serious negative finding in regard to the effects that the project may have on the sanctuary. Finally, the Expert Appraisal Committee (EAC) constituted by the Government of India, MoEF in its 88th meeting held on 28-6-2010, 29-6-2010, reviewed the project in question in the light of the aforementioned reports and made a number of recommendations (paper book Vol. III, p. 32) that would form part of this judgment.

f **80.** It is significant to note that none of the expert bodies has taken the view that the project is so calamitous or ruinous for the bird sanctuary that it needs to be altogether scrapped in order to save the sanctuary. The expert bodies have given recommendations which allow the completion of the project subject to certain conditions. On behalf of the State of U.P. it is unequivocally stated that all the conditions laid in the reports of the expert bodies are acceptable to the State Government/NOIDA in their entirety. In the light of the two study reports and the report submitted by the EAC, we see no justification for directing the demolition of the constructions made in the project, as prayed for on behalf of the applicants. We would rather allow the project to be completed, subject, of course to the conditions suggested by the three expert bodies and further subject to the directions contained hereinbelow.

g **81.** It may be noted that the report of WII has focused on the felling of trees resulting in the disappearance of the woodland that acted as a protective buffer for the bird sanctuary and its first recommendation is to compensate the loss of vegetation. It has secondly focused on the increased artificial light  
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at the project site, which is likely to affect the migratory bird population in the long run. Apart from this, we feel that the extent of stone and concrete constructions in the name of “hard landscaping” is highly out of proportion. In the modified layout plan, the project proponents have reduced the area under hard surface to 35.54% of the total project area. In our opinion, even that is unacceptable from the environmental point of view. The area under hard surface, whether covered, uncovered (including pathways and boundary wall, etc.) or of any kind whatsoever must not exceed 25% of the total project area; of the rest, 25% should be used for soft/green landscaping and the remaining, preferably 50% must have a thick cover of trees of the native variety, a list of which is given by the State of U.P. [Annexure 4(b), paper book Vol. IV]. The plantation of trees should be especially dense towards the Okhla Bird Sanctuary on the western side of the project area. Any construction work should commence only on completion of the planting of the trees.

**82.** In order to ensure full compliance with the recommendations of the expert bodies (which form part of the judgment) and the directions of this Court, the construction of the project needs to be overseen by an expert committee. One member of the committee, preferably an ornithologist will be nominated by the MoEF, the other member will be nominated by the CEC in consultation with the amicus and the Chairman-cum-CEO of NOIDA will be the member-secretary of the committee. The committee should be constituted within two weeks from today.

**83.** It is made clear that the above directions are given in the peculiar facts of this case and nothing said in the judgment shall form precedent when the court is hearing the matter of the “buffer zones”.

**84.** Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute. We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organisation under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or at least by agencies appointed and recommended by it.

**85.** The IAs stand disposed of with the above observations and directions.

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**Appendix I (by SACON)**

**86. “7. Suggested proactive environmental measures**

*a* Although there appears to be no perceptible impact, as a precautionary approach, we suggest following measures for the overall improvement of the OBS:

*b* 1. The periodical removal of water hyacinth should be ensured for better quality of water.

*c* 2. Artificial nest boxes should be placed along the western boundary of the sanctuary and adjoining parts to enhance breeding potential of birds.

*d* 3. Periodical monitoring of water quality parameters should be undertaken to enhance wetland dependent species and their population.

*e* 4. Regular monitoring of population of avifauna should be undertaken. On the terrestrial habitat also monitoring of small mammals may be carried out.

*f* 5. Extensive planting of native species suitable for urban habitat should be done more than 10 times in and around the project area. This will in turn help in sustainability of key bird species. It is noteworthy to mention that NOIDA Authority has already planted 1,70,000 saplings.

*g* 6. For the scientific management of the OBS, the prescriptions of the management plan under preparation by the Wildlife Institute of India, Dehradun should be followed with necessary financial support.

*h* 7. Inside the sanctuary, battery operated vehicles should be used for visitors.

*i* 8. For the effective protection and management of the OBS, the sanctuary should be suitably fenced.

*j* 9. In view of its unique location and interspersed ecological settings of various landscape elements, it is suggested that the proposed park may have an ecological interpretation centre.”

**Appendix II (by WII)**

**87. “5. Suggested mitigation measures**

To mitigate the loss of tree cover and the change in landscape structure due to the construction of the park and subsequent anticipated increase in disturbance due to the increased human activities adjacent to the OBS, following mitigation measures have been suggested:

*(1) Revegetation of the project site to compensate the loss of vegetation.*—Ameliorative measures have already been taken up by NOIDA by planting both native and exotic species within the project area and on the eastern flank of left afflux bund of Yamuna river/OBS at close spacing. However, emphasis should be given to propagate only the native species.

(2) *Reduction of adverse impact on the OBS.*—It is suggested that buffer at the north and north-eastern side of the sanctuary to reduce direct disturbance to the OBS may be created. The area north of the wire bund of the OBS is a promising site for water birds which prefer shallow water or grass growth particularly geese and waders. It is suggested that the waterlogged Yamuna floodplain north to the OBS and up to the DND flyover having an area of 130 ha (Fig.1) may be included with the OBS or protection to it as the buffer under the provision of WPA, 1972 be provided.

The strip of woodland with an area of 24 ha immediately to the north of the project area (Fig.1) needs to be protected as buffer of the OBS also and its land use needs to be maintained unaltered. Being in close proximity of the OBS it will have an ameliorative effect on the sanctuary. It would also provide additional habitat to the terrestrial bird species of the OBS.

Efforts should also be made to keep the intensity of artificial light and noise at the project site to a bare minimum during night, especially after sunset in migratory season of birds (October-March). Bird friendly diffused light with blue tinge during night, may reduce the negative impacts if any on OBS, though much research on this aspect is required.

It is suggested that at the periphery of the OBS, fence wherever not existing be created and the breach in the existing fence be mended on priority.

(3) *Eliciting support from the Government of Delhi for the conservation of OBS.*—As the OBS is a inter-State protected area having open access from all sides it is imperative that the Government of Delhi may also be persuaded to take active part in its management.

(4) *Ensuring financial commitment for the improved conservation management of the park.*—As per the order of the Honourable Supreme Court granted for other development project adjacent to protected area (e.g. IA No. 856 of 2006), 5% of the total cost of the project be deposited with the Forest Department, Government of U.P. to improve the ecosystem structure and functions, water bird habitat, public amenities and interpretation centre and improved management of the OBS.”

#### *Appendix III (by EAC)*

88. “During discussions following points emerged:

(i) NOIDA Authority, while making presentation, informed that the project involves the renovation, preservation and beautification of park on a total plot area of 33.43 ha. The total built-up area of the covered construction is 6999 sq m. Before the development of site there were 6803 trees of different species out of which 6241 trees were cut and 562

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trees were shifted to other parks. Further, they informed that the following components of the project have already been completed:

<i>a</i>	(a) Boundary wall and gate	90%
	(b) Construction of monument building	60%
	(c) Landscaping and plantation	80%
	(d) Pavements	75%

*b* The other infrastructural works proposed by the NOIDA Authority for environmental safeguards/measures and for effective EMP are use of treated waste water, solid waste management, energy saving, tree plantation and parking, etc. The other works which are important in the context of Okhla Bird Sanctuary are control of noise, glare and efficient traffic management.

*c* (ii) Possibility should be explored to increase the greenery and plant broad-leaf native trees along the pathways inside and outside the park. This will help in the reduction of surface runoff.

*d* (iii) The water quality and water balance are key elements and require detailed management and monitoring. No fresh water/groundwater should be used for gardening/horticulture purposes. The requirement of water should be met from self-recycling treated sewage without placing of strain on the supply system for the nearby residential and commercial areas.

*e* (iv) Treated waste water from Sector 54 sewerage treatment plant is proposed for horticulture purposes. It must also be utilised as much as possible for such purposes as toilet flushing and pavement/floor washing. The aforesaid purposes will need tertiary treatment of sewage.

*e* (v) No more than 20% of rain water shall be discharged out of the project site into the existing drain. The rain water harvesting system should be designed based on the soil characteristics and highest level of groundwater table.

*f* (vi) The species of trees inside the park and in buffer zone both on Okhla Bird Sanctuary side and road side should be of indigenous types that do not disturb the water balance of the area. The grass and artificial plantations which are not native should be avoided.

*g* (vii) Adequate noise barriers in the form of thick plantation of appropriate species of trees and bushes laid in a tiered form to create a green screen on either side of the bund road should be provided. A no horn zone should be declared and maintained around the Okhla Bird Sanctuary. The development of green belt and tree plantation shall be carried out in consultation with the Indian Council of Forest Research and Education, Dehradun.

*h* (viii) Solar energy should be utilised for illumination of common areas, lighting of gardens and paved footpaths, etc.

**2013 SCC OnLine NGT 84**

**The National Green Tribunal, Central Zonal Bench, Bhopal**  
(BEFORE M. CHOCKALINGAM, J.M. AND AJAY A. DESHPANDE, E.M.)

In the matter of

1. Aradhana Bhargav, W/o Shri Premnarayan R/o Purana Chapakhana Road, Chhindwara, Madhya Pradesh
2. Medha Patkar, D/o Vasant Khanolkar, R/o Narmada Ashish, Navalpura, off Kasrawat Road, Badwani, Madhya Pradesh
3. Kunj Bihari Patel, S/o Lakhanlal, R/o Bhovana Khairi, Chhindwara, Madhya Pradesh
4. Patiram Verma, S/o Murtu Verma, R/o Bhamanwara, Chhindwara, Madhya Pradesh
5. Seela M. Mahapatra, D/o Sailabala Mahapatra, R/o D-52, Second Floor, Sector-10, Vasundhara, Gaziabad, Uttar Pradesh ... Applicants;

*Versus*

1. Ministry of Environment and Forest, Government of India, through Secretary Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi
2. Central Water Commission, through Chairman, Sewa Bhawan, R.K. Puram, New Delhi-110066
3. State of Madhya Pradesh through Chief Secretary, Vallabh Bhawan, Bhopal-462003 Madhya Pradesh
4. Water Resource Department, Government of Madhya Pradesh, through the Engineer-in-Chief, Narmada Bhawan, Tulsi Nagar, Bhopal, Madhya Pradesh ... Respondents.

Application No. 11/2013, (P.B. 46/2013 THC)  
Decided on August 12, 2013

Counsel for Applicant:

Shri Sanjay Parikh, Sr. Advocate, Shri Abhimanue Shreshtha, Advocate, Ms. Sridevi Panikkar, Advocate and Ms. Sadhana Pathak, Advocate

Counsel for Respondents:

Shri Ravindra Shrivastava, Sr. Advocate, Shri C.D. Singh, Advocate, Shri Sachin K. Verma, Advocate, Shri Om Shankar Shrivastava, Advocate, Shri Sunny Choudhary, Advocate and Ms. Parul Soni.

**ORDER/JUDGMENT**

**M. CHOCKALINGAM, J.M.:**— In pursuance of an order made by the Principal Bench, National Green Tribunal (NGT), New Delhi, this application was taken on file as Application No. 11/2013 (CZ) by this Bench.

**2.** The applicants, claiming as persons interested in the protection of environment and ecology and also the persons personally being affected have filed this application under the provisions of the NGT Act, 2010 whereby they have challenged the validity of the environment approval made in communication No. 12/6/81/-ENV-5/IA dated 21.04.1986 and the communication J-12011/23/2002-IA-I dated 30.11.2005 alongwith a direction that they are invalid and also a declaration that the commencement of the Bench diversion project without prior environmental clearance

under the EIA notification, 2006, was totally illegal and also for a direction to the MoEF that no construction or other activity related to the said project should be done without prior environmental clearance, to restore the ecology and for awarding proper damage compensation to all the affected persons.

**3.** The case of the applicants, as could be seen from the averments made by the application can be stated thus. The proposed project envisaged construction of earthen dam on river Pench, a tributary of river Kanha in Godavari basin in village Machagora in Chourai Tehsil of Chhindwara District, Madhya Pradesh. It was intended to provide irrigation in net CCA 70,918 hectares with annual irrigation of 96,519 hectares which would increase the level of ground water and hence, it is a major irrigation project listed in Schedule of both EIA notification 1994 and 2006. Thus, requiring prior environmental clearance from the Central Government. In April 1986 i.e. prior to the enactment of Environmental Protection Act, the then project proposed by the Central Water Commission was accorded environmental approval by the Environmental Appraisal Committee, Department of Environment & Forest and Wild Life Impact Division, Government of India. But the construction of the project was not commenced. The estimated cost of project was 184 crores in 1987 increased to 543.20 crores in 2003. Since the construction work was started only in November 2012, the cost of the project had gone up further. From the year 1988 to 2005, approximately 12.56 crores were spent on development of approach road, residential quarters, office, rest house building and hutment at site survey work of dam, drilling of dam site and establishment and miscellaneous work. About 5607.28 hectare private land and 895.40 hectare government land would go into submergence by which 31 villages would be affected. An area of 10.58 hectares land was acquired for approach road to dam site and payment thereof was made on 31.03.1988. An area of 16.98 hectares was acquired for RBC upto 3 Kms in March and May, 1993. The land acquisition for dam site RBC and HBC and rehabilitation sites are yet to be completed since they were undertaken only in the year 2005. No environment management plan was prepared. The project was monitored last in the month of August 1997 and no progress was made since at the time the site inspection was done by the Additional Director, Regional Office, MoEF on 26<sup>th</sup>-27<sup>th</sup>.08.1997. In the meanwhile, EIA notification 2006 came into effect where 29 projects were asked to take environmental clearance which also included the project in question. By a clarification that the environmental clearance for the project which was cleared by the MoEF before EIA notification 1994 and where no construction/other operations were commenced till 01.08.1998 will be invalid. In all such cases, fresh environmental clearance was to be obtained if those projects came into 29 categories listed within the EIA notification 1994. It is pertinent to point out that the environmental clearance granted to the proposed project was revoked by a communication dated 22.10.2001 by a communication addressed by the Regional Office, MoEF to the Central Water Commission. In the meanwhile, the project was transferred to Water Resource Department, Madhya Pradesh. Surprisingly, on a letter written by the Chief Engineer, Wiaganga Basin Water Resource Development MP the MoEF directed the Regional Office, MoEF, Bhopal to conduct a site inspection which was carried on by the Additional Director, Bhopal in the presence of the five officers of the project proponent. The site inspection report revealed that the salient features of the project had changed and estimated cost had also increased and the plant needed revision and also the plants for catchment area, treatment and command area development which were vital for the project were still to be prepared. No environmental management plan prepared and there was no major progress at the dam site and thus, in short, the environmental conditions were not complied. Apart from that there were other illegalities and violations. From the said report, it was quite evident that the environmental clearance granted in 1986 was revoked, even otherwise, the project required fresh clearance in view of the communication dated

23.07.1998 issued by MoEF. But for the reasons best known to MoEF, vide a letter dated 30.11.2005 it was informed to the Chief Engineer, Wiaganga Basin Water Resource Development, MP that in view of the inspection report, a project do not require fresh environmental clearance. Pursuant to the same, in April 2006, the Water Resource Division of the Water Commission accorded investment clearance for the project at the cost of Rs. 583.50 crores and the project was included in the accelerated irrigation programme in the year 2007–2008. Various notices were issued for the supply of materials for construction by the project proponent and other related activities had been undertaken only in November, 2012.

4. It is also the pleaded case of the applicants that the approval granted in 1986 was granted by Environment Protection Act, 1986 which came into force when there was no procedure or parameter as existed under the present scheme for grant of environmental clearance. With the issuance of the EIA notification 1994, the procedure for grant of environmental clearance was already done by the MoEF and the same was replaced by EIA notification 2006. A perusal of both the notifications would clearly indicate that the major irrigation projects such as the project in question required environmental clearance from the Central Government/MoEF under both the notifications. On 4<sup>th</sup>-5<sup>th</sup> November, 2012, the second applicant joined the agitation for forceful and legal rehabilitation for the purpose of taking over their lands for the proposed project. At that time, a letter was handed over by the Collector, Chhindwara informing her that the construction work of the proposed project started on 04.11.2012 and all the requisite permission was obtained from the Water Resource Department, MP. True copies of certain documents related to the proposed projects were handed over to her wherefrom she came to know all the above facts about the proposed project, the environmental approval granted by the Environment Appraisal Committee in the year 1986, subsequent revocation in the year 2001 and also the further communication that fresh approval was not necessary. It is also specifically pleaded that since the environmental approval in the present project was granted in the year 1986, it cannot be said to be valid for more than the prescribed period either under the EIA notification 1994 or under the EIA notification 2006. It is pertinent to point out that the original environmental approval granted was also revoked. Thereafter, no question of any inspection of the said project would arise. Equally the opinion given by the Additional Director, MoEF dated 30.11.2005 was also bereft of any support from law and was bad for more reasons. At no stretch of imagination and no reasons, the MoEF can come forward that no new environmental approval is necessary for proposed project and thus, the construction and related activities started by the project proponent from 04.11.2012 were thoroughly illegal. The proposed project has not been granted approval under the Water or the Air Pollution Control Act. The proposed project is closely situated to Pench National Park which is situated in Seoni District of Madhya Pradesh. The Pench National Park has been included in the umbrella of Project Tiger and the 19<sup>th</sup> Project Tiger Reserve in the year 1992. The original environmental approval was granted in the year 1986 and the question whether such a project in the vicinity of Tiger Project could be given do not arise but the proposed project required the environmental clearance under the EIA Notification 2006 and thus, it would be quite clear that the project undertaken by the project proponent is in violation under the Environment Protection Act, 1986 and also other acts enumerated under Schedule-I of the NGT Act, 2010. Apart from that, the environmental approval granted on 21.04.1986 do not contemplate and cater to all conditions and parameters under which the river Pench project need to be evaluated in view of the sustainable development and hence, in view of the changed circumstances also, the project required environmental clearance under EIA notification 2006. The project proponent has illegally commenced the construction on 04.11.2012 without valid prior environmental clearance thus, is continuously violating the provisions of the

Environment Protection Act, 1986 and other Acts enumerated under the Schedule-I of the NGT Act, 2010. Since, the construction and other related activities are going on and thus, the cause of action is continuing cause of action and is applicant is well within limitation. Since, in view of the averments above, the applicants have sought for reliefs as shown above.

**5.** On service of notice, the respondents appeared through their Counsels and filed their replies putting forth their defence to the main application.

**6.** The respondent no. 3 and 4 made application No. 447/2013 seeking dismissal of the main application on the ground of delay alleging that the application has not been preferred within the period prescribed by the provisions of NGT Act. The respondent therein, who are the applicants in the main petition filed their reply.

**7.** Hence, the preliminary objection raised by the respondents on the question of limitation was first taken up for consideration.

**8.** Advancing arguments on behalf of the respondent no. 3 and 4, the Learned Counsel would submit that the main application filed under Section 14 and 15 of the NGT Act was hopelessly barred by limitation. The Department of Environment, Forest and Wild Life, Government of India granted environmental approval to the Pench Diversion Project on 21.04.1986 subject to certain safeguards to be implemented during the execution of the project. The MoEF in order to ascertain as to whether the project related work was commenced prior to 1994, made an inspection by the dam site. The report dated 30.09.2005 pursuant to the inspection made it clear that the project related activities such as preconstruction infrastructure work pertaining to development of approach road, residential quarter, office, rest house building at the site, drilling dam site were already initiated in the year 1987–1988 and six bridges alongwith approach roads were constructed upto 1992–1993. On the strength of the inspection report, MoEF conveyed to the Water Resources Department, Govt. of MP vide letter dated 30.11.2005 that the project do not require fresh environmental clearance and the conditions stipulated in the environmental clearance dated 21.04.1986 should be strictly complied with. While, the matter stood thus, the applicants have brought forth this application *inter alia* initially seeking a direction that the communication of the environmental clearance dated 21.04.1986 and a subsequent communication dated 30.11.2005 whereby it was ordered that the project did not require fresh environmental clearance and the stipulated condition in the environmental clearance dated 21.04.1986 should be strictly complied with, were invalid. The other reliefs are in the nature of consequential reliefs which may or may not flow, if the declaration asked for above was not granted. Thus, for all legal and practical purposes, the need for declaration on the environmental approval of the year 1986 and subsequent communication of the reiteration in 2005 are the main reliefs and subject matter of adjudication. The grounds as set out by the applicant would clearly indicate that they have tried to impugn the subsequent communication dated 30.11.2005 on the ground that the environmental approval of 1986 had lapses and the project required fresh clearance. This issue, in so far as the records stand today and as far as the respondents are concerned seeking a common ground is concluded by the stand that no fresh clearance is required and subsequently, the activity of execution and development of project is not illegal. In order to adjudicate upon the first and foremost area of adjudication would centre around the validity of the environmental approval of 1986 and it is reiteration in 2005. Thus, for the purpose of the substantial relief, the existence of these two letters would substituted the cause of action in as much as the question would be as to whether the jurisdiction of the Tribunal to adjudicate upon the validity of the above two documents, by virtue of the statute of limitation was barred or not.

**9.** Pointing to Section 14(3) and 15(3) of the NGT Act, 2010, the Learned Counsel

would submit that an analysis of the statute providing the period of limitation, it would be quite clear that the application filed by the applicant was barred by time. The close reading of the above provisions would make it abundantly clear that there is a bar, if it is not within limitation and the special period of limitation for application falling under Section 14(1) is a period of six months which is further extendable for a period not exceeding 60 days and also the starting point for the period of limitation is on the date of which such cause of action first arose. It is well known that the expression 'cause of action' means all such bundles of facts which a suitor is required to prove in court of law in order to succeed in getting a particular relief. In that view of the matter, so long as the applicants do not prove that environmental approval dated 21.04.1986 and the subsequent communication dated 30.11.2005 are not valid, they cannot maintain the application. Therefore, the cause of action is strictly relatable to the existence of these two letters. The use of the words 'first arose' in the said provisions are of immense significance. These words, not only are the indicators of the unambiguous legislative intent and scheme expressed in plain words, but statutorily fix the starting point of the period of limitation. These words, no doubt, relate to the earliest point of time of inception of the cause of action. The plain and unambiguous words of statute scheme and intention should be given effect to. This is further re-enforced by the use of the words "from the date" which again would imply that there is a definite occurrence of the cause of action. It is pertinent to point that similar language is used for the Section 15(3) of the Act also. The contention put forth by the applicant side that there is a continuing cause of action is thoroughly misplaced and untenable in law. The applicants are well aware that the application in the present form is not within the period of limitation. In respect of the aspect of limitation, the applicants have tried to explain the same by averring that the project proponent had illegally commenced the construction on 04.11.2012 without valid prior environmental clearance and thus, was continuously violating the provisions of the Environmental (Protection) Act, 1986 and other Acts enumerated under Schedule-I of the NGT Act and since, the construction and other related activities were going on, the cause of action was continuing and the application is well within limitation. For the purpose of reckoning the limitation of Section 14(1) and 15(3) of the Act, the averments made by the applicant as above were wholly irrelevant and of no consequence since the concept of continuing cause of action is foreign to the expressed provisions of the statute of limitation engrafted under Section 14(1) and 15(3) of the Act. The NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14(1) and 15(3) of the Act which will certainly exclude the general law of limitation. The assumption that the project proponent has illegally commenced the construction on 04.11.2012 was factually incorrect and misleading. The plain and simple language of Section 14(1) i.e. unless it is made within the period of six months from the date on which the cause of action/dispute first arose negates the principles of continuing cause of action. If the plea of continuing cause of action is accepted within the limitation, the statute would be eschewed of the important and vital words namely "first arose". On the facts of the present case, Section 22 of the Limitation Act will have no effect. Though, the same being a part of the general law of limitation since it would stand excluded by the special provision of limitation. In the special law, under Section 14(1) and 15(3) of the Act. The NGT Act is a special law enacted for the effective and expeditious disposal of cases related of Environment (Protection) Act and conservation of forest and other natural resource. Hence, the law provides the period of limitation which would be have overriding effect over the Limitation Act which is general law. If the plea of the applicants of principles of continuing cause of action for the purpose of bringing a dispute under Section 14(1) within the limitation or reliefs under Section 15 (1) within the limitations of 15(3) is to be accepted, then it would lead to the serious, anomalous and undesirable consequences. Apart from that it would be contrary to the

express prescription of the statutory limitation under the NGT Act. If the theory of continuing cause of action is to be accepted, any action or application or proceeding may be instituted at any point of time on an occurrence of a small fact which may be construed as part of cause of action. This would mean even if the project which nearing completion with investment of huge public expenses can be called into question. But this is not the intent of the NGT Act. Thus, it can be well stated that the limitation stand concluded by any circumstance at the earliest in point of time would have to be considered as relevant dated for computation of limitation. The averment made in the application that the construction has commenced on 04.11.2012 was contrary to the pleadings made by the application and the documents relied on by them. The applicants have specifically averred about environmental approval for the project in April 1986 and that the construction of the project was estimated at the cost of 184.04 crores in 1987 which increased to 543.20 crores in 2003, etc., the environmental clearance granted to the project was revoked by a communication dated 22.10.2001 by the Regional Office, MoEF, Bhopal to the Central Water Commission. From the averments of those facts pleaded by the applicants, it is highly apparent that the construction commenced in 1988 and the inspection report made by the committee clearly shows that the commencement of the project in the 1987-1988 what was started in on 04.11.2012 was only spillway work. It is also clearly averred in the reply affidavit and thus, this date 04.11.2012 cannot said to be date of commencement of work and thus viewed from any angle, the delay was enormous and application is liable to be rejected. The applicants, for the reasons well known to them, preferred not to challenge the environmental clearance dated 21.04.1986 though their lands were being acquired in the year 1992 for the construction neither of the project nor even after 30.11.2005 when the environmental clearance granted in the year 1986 was reaffirmed by the Government of India. Under the circumstances they should not be allowed to challenge the environmental clearance granted at this belated stage and thus, the application made by the applicants is barred by limitation. In support of his contention, the Learned Counsel relied on the following decisions:

- (i) *S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582.
- (ii) *General Manager, Telecom v. M. Krishnan*, (2009) 8 SCC 481.
- (iii) *Jesurethinam v. Ministry of Environment & Forest, Union of India*, 2012 (2) FLT 811 (NGT).
- (iv) *Sanskar Dastidar v. Shrimati Banjula Dastidar*, (2006) 13 SCC 470.
- (v) *Ms. Medha Patkar v. MoEF* Appeal no. 01 of 2013 (PB, NGT).
- (vi) *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.
- (vii) *Consumer Federation Tamil Nadu v. Union of India*, Appeal No. 33 of 2011 (PB NGT).
- (viii) *State of Madhya Pradesh v. Narmada Bachao Andolan*, (2011) 7 SCC 639.

**10.** Answering to the above contentions and also in support of the case of the applicants that the application is well within time, the Learned Senior Advocate, Shri Sanjay Parish would submit that the application by the respondents seeking rejection of the main application as barred by limitation is misconceived in law. The applicants, *inter alia* in Para 9 of the application has averred that the project proponent has illegally commenced construction on 04.11.2012, without valid prior environmental clearance, thus is continuously violating the provisions of Environmental (Protection) Act, 1986 and other Acts enumerated in the Schedule-I of the NGT Act. Since the construction and other related activities were going on, the violation continued. Thus, the cause of action was continuing cause of action and the application was well within limitation. Thus, it would be quite clear that the applicants have contended that there was a continuing wrong and the project proponent, without environmental clearance had commenced and were continuing with the construction activity on the impugned

project. The applicants came to know about the commenced of the civil work for construction of the project in question only from the letter dated 05.11.2012 given by the Collector, Chhattisgarh, to the applicant no. 2 alongwith the letter true copies of certain documents relating to the project were also provided. Those documents consists of the letter dated 21.04.1986, from MoEF letter dated 22.11.1990 and a letter 30.11.2005, from the Ministry of Tribal Affairs and MoEF's letter dated 30.11.2005. Only thereafter, the applicants filed the RTI application on 05.12.2012 seeking other documents. A reply was received on 22.12.2012 stating that as per the RTI Act, 2005 under sub-section (1) of Section 8 would cease to be exempted, if 20 years have lapsed, the incident to which information relates and the file records were not available. However, a copy of environmental clearance dated 21.04.1986 was enclosed free of cost. Subsequently, the Regional Office, MoEF, Bhopal by its reply dated 14.01.2013 sent a copy of site inspection report dated 30.09.2005. Only from the same applications, came to know about the revocation of the environmental clearance dated 21.04.1986. The said application under RTI and replies are filed by the applicants. The applicants thus, came to know about the civil work having started at the project site from the letter dated 05.11.2012 by the Collector and the documents given alongwith the said letter. The applicants gathered knowledge of the revocation of the environmental clearance about the site inspection report from the letter dated 30.09.2005 received in reply dated 13.01.2012 in the RTI application dated 05.12.2012 and it was on that basis the instant application was filed on 15.02.2013. It is pertinent to point out that at the outset, the applicants got necessary knowledge by which their right to file the present application accrued before this Tribunal only on 05.11.2012 and subsequently on 14.01.2013. The Tribunal passed orders dated 12.03.2013, 10.04.2013, 01.05.2013 and 29.05.2013 for production of documents related to revocation of environmental clearance. Thereafter, the Tribunal directed the Director to appear on the next hearing date. The documents were not produced.

**11.** On 10.06.2013 and 13.06.2013, the said documents were submitted by MoEF without supporting affidavit. The MoEF submitted only three documents, letter dated 30.03.2001, 22.10.2001 and 06.09.2001. The documents dated 19.06.2001 which mentioned that the environmental clearance had lapsed was not produced. When the attention of the Tribunal was drawn to this fact, the direction was issued for production of said documents on the next hearing on 30.07.2013. The respondents had not only concealed the fact of lapsing of environmental clearance dated 21.06.1986 but also the respondent no. 3 and 4 filed contrary in the affidavit. The applicant side mentioned specifically about the revocation of the environmental clearance dated 21.04.1986. The respondent MoEF in its reply filed in May 2013 had stated that it is a matter of record and not disputed. The respondent no. 2 also handed over the reply to the applicants dated 30.07.2013 in which it has been stated that it was again a matter of record related to respondent no. 1 and replying respondent had not required any comments. Apart from that, the respondent no. 3 and 4 in their affidavit dated 21.04.2013 has specifically stated that the environmental clearance dated 21.04.1986 was never revoked and the State Government of Madhya Pradesh had never received any letter or order or communication from the MoEF revoking the environmental clearance and the applicants have made the bald statement. Thus, from the said reply, it would be clear that the respondent no. 3 and 4, categorically made a statement that they did not receive any letter from the MoEF revoking the environmental clearance dated 21.04.1986. On the contrary, the said letter dated 22.10.2001 produced subsequently in June, 2013 clearly showed that on 21.03.2013, the status report was submitted by Water Resource Department of Madhya Pradesh to MoEF and the letter dated 19.06.2001 regarding lapse of environmental clearance was subsequently addressed to the Secretary, Water Resource Department. All the above clearly show that

respondent no. 1 initially concealed the relevant documents while respondent no. 3 and 4 made misleading and false statement on oath before the Tribunal. The concealment of relevant documents from the Tribunal and making false statement amounts to playing fraud on the Tribunal. This is so deliberately done to avoid correct and proper adjudication of the Tribunal regarding environmental clearance on the question of limitation. Thus, the applicants submits that the cause of action in the instant case was continuing wrong and which further arose when MoEF filed its affidavit in May 2013 and also in June, 2013 when documents were filed and on 30.07.2013 when document dated 19.06.2001 was given to the Tribunal containing the fact that the environmental clearance had lapsed. Thus, the application filed by respondent no. 3 and 4 that the present application is barred by limitation is devoid of merits.

**12.** The Learned Counsel would further contend that in our country, the rural and other area where projects were implemented, the people are largely unaware of the legal complications. They become aware of the problem when the activities start at the site. Even in that situation they had no means to know whether it is legal or otherwise. It is pertinent to point out that damage to environment is a continuing wrong and constitute public injury. Hence, it should not be forgotten that broadly, the Tribunal has to act within the parameters of Article 21 of the Constitution as well as the precautionary principle, polluter pay principle and doctrine of sustainable development as provided under Section 20 of the NGT Act.

**13.** Arguing on the concept of continuing cause of action, the Learned Counsel would submit that a wrongful act is of such a character that the injury caused by it continues and then the act constitutes a continuing wrong. If once a cause of action arises and the acts complained of continuously repeated, the cause of action continues and goes on de die in diem. In support of the contentions, the Learned Counsel relied on the judgments:

- (i) *Balakrishna Salvaram Pujari Waghmare v. s. Shree Dhyaneshwar Maharaj Sansthan*, AIR 1959 SC 798.
- (ii) *State of Bihar v. Deokaran Nenshi*, (1972) 2 SCC 890 : AIR 1973 SC 908.
- (iii) *Commissioner of Wealth Tax v. Suresh Seth*, (1981) 2 SCC 790 : AIR 1981 SC 1106.
- (iv) *Bhagirath Kanoria v. State of M.P.*, (1984) 4 SCC 222.
- (v) *Firm Ganpat Ram Rajkumar v. Kalu Ram*, 1989 Supp (2) SCC 418.
- (vi) *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath*, (1991) 2 SCC 141.
- (vii) *Union of India v. Tarsem Singh*, (2008) 8 SCC 648.
- (viii) *State of Madhya Pradesh v. Yogendra Shrivastava*, (2010) 12 SCC 538.
- (ix) *Goa Foundation v. Union of India* (MA No. 49/2013 in Application No. 26/2012; dated 18.06.2013).
- (x) *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.
- (xi) *Olga Telis*, (1985) 3 SCC 545.
- (xii) *Ram Chandra Shankar Deodhar v. State of Maharashtra*, (1974) 1 SCC 317.
- (xiii) *Pallav Seth v. Custodian*, (2001) 7 SCC 549 at 572.
- (xiv) *Ashok Leyland Limited*, (2004) 3 SCC 1.
- (xv) *Lala Balmukund*, (1975) 1 SCC 725.
- (xvi) *Bailamma v. Poonaprajana House Building Co-operative*, (2006) 2 SCC 416.
- (xvii) *Yusufbhai v. State of Gujarat*, (1991) 4 SCC 531.
- (xviii) *Re: Sinclair (Deceased) Loyda Bank Plc v. Imperial Cancer Research Fund*, (1984) 3 All ER 362.

**14.** The Learned Counsel would further submit that the applicants are aggrieved persons and concept of aggrieved persons has been enlarged in the NGT Act, 2010. Now the injury which is being caused and brought to the notice of the Tribunal in the application is a public injury as it could be distinguished from private injury. The right to environment under Article 21 of the Constitution and any damage to environment constituted violation of Article 21 of Constitution. It is well settled that the fundamental right cannot be waived or given up. Any damage to the environment is violation of Article 21 of the constitution construed as only public injury. So long as damage to the environment continues, the public injury also continues alongwith cause of action. Locus of public in general (as against individuals) also continues. If there is continues injury affecting the fundamental right continuously, it cannot be said that cause of action would cease as it would amount to waiver or giving up of the fundamental right under Article 21 of the Constitution. The relief for enforcement of fundamental right cannot be refused solely on the ground of laches, delay or the alike. The Supreme Court of India, in *Lala Balmukund*, (1975) 1 SCC 725 has held that only such construction of limitation should be preferred which preserves the remedy than the one which bars or defeats the remedy. It is true that the letter dated 19.06.2001 and 22.10.2001 have used the term 'lapsed' which means 'come to an end' of the environmental clearance dated 21.04.1986. The project proponent was also required to take environmental clearance under EIA Notification 1994 by way of direction in the said letter. The letter dated 30.11.2005 has no validity sanctity after environmental clearance dated 21.04.1986 lapsed and both in the notifications dated 23.07.1998 as well as in the MoEF letter dated 19.06.2001 and 22.10.2001 it was directed that the project proponent should take a fresh environmental clearance under the EIA notification 1994 and its amendment. Therefore, the letter dated 30.11.2005 was void ab initio and thus, the application made by the applicants seeking the reliefs was well within time.

**15.** As could be seen above from the contentions put forth on both sides, the Tribunal has to answer the question of limitation.

**16.** Admittedly, the environmental approval to the Pench Diversion Project for construction of earthen dam across the river Pench near village Machagora in Chourai Tehsil of Chhindwara District, Madhya Pradesh at a cost of Rs. 1788.72 Crores was granted by the Department of Environment Forest and Wild Life on 21.04.1986 subject to certain conditions in respect of safeguards to be implemented during the inspection of the project. The Tribal Development Division, Ministry of Welfare accorded approval on 22.11.1990 for the proposed rehabilitation plan for the Scheduled Tribes bring displaced due to the construction of the project in question. The EIA notification 1994 was issued by MoEF. A communication was issued by MoEF on 23.07.1998 wherein it was stated that the environmental clearance granted to the project enlisted in Schedule-I prior to the EIA Notification 1994, above referred to wherein construction and other operations had started till 01.08.1998 to be invalid and also made it clear that it was mandatory for such projects to obtain fresh environmental clearance. Pursuant to the said communication, the Regional Office of MoEF, Bhopal by a communication dated 22.10.2001 informed that the environmental clearance granted in the year 1986 for the project remained lapsed. Following the letter by the Chief Engineer, Wiaganga Basin, Water Resource Department, MP to the MoEF, a site inspection was conducted by the Regional Office and the report dated 30.09.2005 was submitted. After receipt of the report, the Additional Director, MoEF sent a communication dated 30.11.2005 that the proposed project did not require fresh environmental clearance. The Planning Commission, Water Resource Division has also accorded investment clearance for the project at the rate of Rs. 583.40 Crores by a communication dated 10.04.2005.

**17.** It is also not a matter in controversy that the activities such as pre construction

infrastructure and survey and investigation work pertaining to the work such as development of approach road, residential quarters, office, rest house building at the site, drilling at the dam site were already initiated and moreover number of bridges and asphalted approach road was also constructed and the said fact could be noticed in the inspection report dated 30.09.2005 referred to above from which it would be clear that all those activities had taken place prior to the date of inspection. While the matter stood thus, the applicants five in number claiming to be the persons personally aggrieved on their behalf and on behalf of the other villagers filed this application on 15.02.2013 seeking for the reliefs.

**18.** On the point of limitation, Para 9 of the main application specifically avers as follows:

*"9.1 That the project proponent has illegally commenced the construction on 04.11.2012, without valid prior environment clearance, thus is continuously violating the provisions of Environment (Protection) Act, 1986 and other Acts enumerated in the Schedule-I of the NGT Act. Since, the construction and other related activities are going on, the violation continues, thus, the cause of action is continuing cause of action and the application is well within limitation.*

**19.** The applicants have sought for:

- (i) A declaration that no construction or other related activities of the Pench Diversion Project could commence without the prior environmental clearance under EIA Notification 2006 and the commencement of the project was illegal along with a direction to MoEF to ensure that without prior environmental clearance, no activities continued.
- (ii) A declaration that the environmental clearance dated 21.04.1986 and the communication dated 30.11.2005, were not valid.
- (iii) A direction to the concerned person or authorities responsible for the alleged illegal commencement of construction to restore ecology alongwith other consequential reliefs like stay on construction, appropriate damage compensation, etc.

**20.** It is the specifically pleaded case of the applicants that the project proponent has illegally commenced the work only on 04.11.2012 without valid prior environmental clearance, that there is continuing wrong as the project proponent without environmental clearance has commenced and are continuing with the construction activity of the impugned project, that the applicants came to know about the commencement of the spillway construction in respect of the project only from the letter dated 05.11.2012 given by the Collector, Chhindwara, MP to the applicant no. 2 and only from the documents provided, the applicants came to know about the approval granted in the year 1986 and also that no fresh environmental clearance was required from the letter dated 30.11.2005 and in so far as the remaining facts, the applicant came to know through their Right to Information Application and thus, the applicants have rested their case in so far as the question of limitation is concerned on the expression "continuing cause of action".

**21.** On the contrary, it is contended by the respondent side that the applicants have sought for a declaration that the environmental approval dated 21.04.1986 and subsequent communication dated 30.11.2005 are invalid and also declaration that the activities without a prior environmental clearance under EIA notification 2006 is invalid alongwith other consequential reliefs and hence, the applicant must be able to show that the reliefs sought for were within the prescribed period of limitation as envisaged by the NGT Act a special enactment. The concept of continuing cause of action put forth by the applicant side was foreign to the plain and expressed provisions on limitation engrafted under Section 14(3) and 15(3) of the NGT Act, 2010.

**22.** From the above contentions, it would be quite clear that the main controversy

between the parties centres around the expression 'cause of action', as engrafted under the relevant provisions of the NGT Act.

**23.** Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 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 on 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 application 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."*

**24.** From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule-I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

**25.** Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I or for restitution of the property damage or for restitution of environment for such area or areas, the applicant could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

**26.** As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of NGT Act, one should have the cause of action which consisting of bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.

(i) *Black's Law Dictionary* defines Cause of Action as: "Cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

(ii) In "*Words and Phrases*", the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

(iii) As per *Halsbury Laws of England* (Fourth Edition) "Cause of action" has been

defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.

- (iv) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself.

**27.** It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT presided over by the Hon'ble Justice Shri Swatanter Kumar, Chairperson, NGT, New Delhi in Appeal No. 01 of 2013 *Ms. Medha Patkar v. Ministry of Environment & Forest, Union of India* on the point of limitation:

*"The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, dander of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view."*

**28.** The contentions put forth by the applicants that the construction activities of the project commenced on 04.11.2012 has to be rejected since subsequent to the grant of environmental approval by the Department of Environment Forest and Wild

Life by the Government of India in the 1986. As could be seen from the inspection report of the year 2005, as referred to the above, that the project a related activities such as pre construction infrastructure and survey and investigation work pertaining to the work such as development of approach road, residential quarter, official rest house building at dam site, drilling work at dam site and also six bridges alongwith asphalted approach road was constructed. Even both the letters written by the Chief Engineer to MoEF dated 25.07.2001 and 30.04.2001 would make it evident that the project work commenced in the year 1986–1987. The communication of the Executive Engineer dated 01.09.2001 would also indicate that the project work commenced in 1987 and was continuing. Needless to say again, the above activities were part and parcel of the Pench Diversion Project in question. Under such circumstances, the contention put forth by the appellant side that the construction work did not commence earlier but only on 04.11.2012 has to be got rejected.

**29.** Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in *Jesurethinam v. Ministry of Environment, Union of India*, reported in 2012 (2) FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

**30.** Equally so is the contention put forth by the applicants that the cause of action arose only on 04.11.2012, the date on which the applicants came to know about their right. Even assuming to be so, it cannot be countenanced in law. The application proceeds on the footing as if the applicants came to know about the project activities on 04.11.2012 when the applicant no. 2 was served with a letter on 05.11.2012. The above plea has to be negatived for more than one reason. The said letter dated 05.11.2012 by the Collector, Chhindwara to the applicant no. 2 marked as Exhibit A-1 reads as follows:

*"Yesterday on 4<sup>th</sup> November, 2012, the Civil Work for the construction of the Dam in Bahnwada area of Chaurai Division. I received your letter dated 4<sup>th</sup> November, 2012 at the construction site. On points mentioned in the letter, I request that the construction of the dam in the Chhindwara District is being done by the State Administration for the benefit of the farmers. Water Resource Department has taken all the requisite permission for the implementation of the ambitious project. For your easy reference and perusal the copies of the letters received from the department is being made available with this letter....."*

Nowhere it is stated in the letter that construction work commenced on 4<sup>th</sup>-5<sup>th</sup> November, 2012. From the reading of the letter, it would be quite clear that it was a reply to a letter given by the applicant no. 2 to the Collector, Chhindwara at the dam site. On query as to the non production of the letter of applicant no. 2, a copy of the letter was produced at the time of arguments. The letter of applicant no. 2 would clearly indicate that the agitation in respect of the dam project was going on for a period of more than seven years. Admittedly, out of 5 applicants, a few are the residents of that area where the project was undertaken and the lands of a few of the applicants were also acquired by the State for the said purpose and proceedings in respect of the acquisition was pending from the time of acquisition in 1990. Under such circumstances, it would be futile on the part of the applicants to say that they came to know about the project and all necessary particulars thereon only from 05.11.2012, the date of reply by the Collector, Chhindwara.

**31.** In his sincere attempt of supporting his case, the Learned Counsel for the applicants would urge that though, the environmental clearance for the project in question was granted on 21.04.1986, the MoEF Regional Office, Bhopal revoked the environmental clearance on 22.10.2001 though the word 'lapsed' at one state on the revocation at the other stage was employed by the MoEF by two different communications. The effect of the same was to put an end to environmental clearance originally granted in the year 1986. If so, the same could not be revoked by any action or letter as done in the present case on 30.11.2005 and hence, the only way known to law by which the construction of the project in question would have commenced under the EIA Notification 2006. Hence, the applicants asked for a declaration that the said Pench Diversion Project should not commence without the prior environmental clearance under the EIA Notification 2006 and the commencement of the project was totally illegal. Thus, the reliefs asked for was within the prescribed period of limitation since the illegal activities which were injurious to the environmental and ecology was continuing. The applicants have also sought for awarding appropriate damage compensation to all persons who have suffered physically, mentally and financially due to the illegal construction undertaken by the project proponent. Much reliance was placed by the Learned Counsel on the judgment of *Goa Foundation v. Union of India* MA No. 49/2013 in Application No. 26/2013 rendered by the Principal Bench, NGT, New Delhi. The Learned Counsel also took this Bench to different parts of the judgment. There cannot be any quarrel on proposition of law settled in that judgement. To examine what is cause of action, the Tribunal must read the entire petition as a whole and the material facts are thus pleaded and provided for the purpose of obtaining the reliefs and if the applicants disclose even a small cause of action that the claim cannot be rejected. The said judgement of the Principal Bench cannot be applied with the present facts of the case for two reasons. The question that arose before the Hon'ble Principal was on the maintainability of the application and not on the question of limitation. Secondly, the application therein sought reliefs that the respondent authorities should discharge their duties by way of exercise of power given under enactments stated in the Schedule-I of the NGT Act, 2010 for preservation and protection, etc. In the instant case, the applicants have asked for declaration in respect of environmental clearance dated 21.04.1986, communication dated 30.11.2005 and also a declaration on the strength that there was no environmental clearance and declaration that the activities of Pench Diversion Project could not commence without prior environmental clearance under EIA Notification 2006 and all other reliefs were only consequential. Thus, without going into the legality or otherwise, by environmental approval dated 21.04.1986, communication dated 30.11.2005, the question in respect of their declaration referred to above cannot be investigated or considered or a decision arrived at. Thus, the cause of action, as could be seen from the averments in the applications was directly relatable to the existence of the letters dated 21.04.1986, environmental clearance and letter dated 30.11.2005. In the considered opinion of the Tribunal, the concept of continuing cause of action cannot be made applicable to the present factual position that too when there is a specific bar against the entertaining the application, if it is not within a period of limitation prescribed under Section 14(1) and 15(3) of NGT Act. At no stretch of imagination, neither the environmental approval dated 21.04.1986 nor the subsequent communicated dated 30.11.2005 can be assailed after long lapse of years. The words "first arose" in Section 14(1) and 15(3) which are indicators of the unambiguous legislative intent. While the expressed provisions of the statute of provision under Section 14(1) and 15(3) of the NGT Act is so clear, the concept of continuing cause of action as put forth by the applicants has not application. The statutory prescription of the special period of limitation under the said provisions would not only stand indicative but also exclude the said concept of continuing cause of action. If the theory

of continuing cause of action is to be accepted, the words "first arose" in the above provisions will lose its import and significance. Having sought for a declaration that environmental approval dated 21.04.1986 and also the communication dated 30.11.2005 were invalid, now the applicants cannot be permitted to say that the environmental clearance dated 21.04.1986 was put an end by the subsequent communication in the year 2001 and thus, there was no environmental approval existed, cannot be countenanced. So long as the applicants have sought for a declaration as stated above, no doubt, the application is barred by time. As stated above, the applicants who are living nearby and whose lands have also been taken for the purpose of the project in question cannot now be permitted to say, after long lapse of a decade, that they came to know, that too the existence of their right only in November, 2012. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected.

**32.** True it is that the application in the present form has to be rejected for the above reasons as one not within the period of limitation. It is not that the applicants are helpless or remediless. Apart from questioning the very grant of environmental approval in the year 1986, the communication dated 30.11.2005 whereby it was stated that no fresh environmental clearance was required, the applicants, in extenso, have averred that the construction and also the related activities by the project proponent was violative of not only the provisions of the Environment (Protection) Act, 1986 and other Acts enumerated in Schedule-I of NGT Act, 2010. Specific allegations have been made by them stating that they are aggrieved individually and collectively, directly and indirectly by the loss of ecology and by environmental degradation and that injury, harm and damage were caused to them and all whom they represent in view of the violations of all environmental law and for which they are also entitled for damages and compensations. Hence, there cannot be any impediment for the applicants to bring to the notice of the legal forum the activities which are violative of the provision of the said enactments apart from seeking direction in respect of the discharge of the obligations and duties by exercise of powers vested on the authorities under the said enactments. They can seek the enforcement of all the rights relating to environment. The Tribunal is vested with the original and appellate jurisdiction which is wide. Speaking on the wide jurisdiction of the Tribunal, both original and appellate, Hon'ble Justice Shri Swatanter Kumar, Chairperson, (Principal Bench), NGT, New Delhi had an occasion to consider the power and jurisdiction of the Tribunal in Application

No. 26/2012 referred to above, has held as follows:

*"22. The contents of the application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment. It could even be an anticipated action substantially relating to environment. Such cases would squarely fall within the ambit of Section 14(1). Next, in the light of the language of Section 14(1), now we have to examine what is the substantial question relating to 'environment'. Section 2(1)(c) of the NGT Act explains the word 'environment' as follows:*

*"environment' includes water, air and land and the interrelationship, which exists among and between water, air and land and human being, other living creatures, plants, micro-organism and property."*

*Section 2(m) defines the term 'substantial question' relating to environment as follows:*

*"It shall include an instance where—*

- (i) there is a direct violation of a specific statutory environmental obligation by a person by which,-*
  - (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*
  - (B) the gravity of damage to the environment or property is substantial*
  - (C) the damage to public health is broadly measurable;*
- (ii) the environmental consequences relate to a specific activity or a point source of pollution."*

*23. the legislature, in its wisdom, has defined the word 'environment' in very wide terms. It is inclusive of water, air, land, plants, micro-organisms and the inter-relationship between them, living and non-living creatures and property. Similarly, 'substantial question relating to environment' also in an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the deminimis principle. In Inre Net Books Agreement (1962) I WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the cause and its issues relating to environment.*

*24..... The essence of legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the schedule Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.*

**33.** Thus, the Tribunal is of the considered opinion that it is a fit case where liberty

has to be given to the applicants to file a fresh application, if so advised, for necessary reliefs within the framework of NGT Act, 2010.

**34.** Accordingly, the application is dismissed as not maintainable since it is barred by limitation. No cost.

**35.** Liberty is given to the applicants to file a fresh application for necessary reliefs within the framework of NGT Act, 2010.

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**W.P. (C) 2066/2014 and CM APPL. 4326/2014**

**Maruti Suzuki India Ltd. v. Ministry of Environment and Forests**

**2014 SCC OnLine Del 3264**

(BEFORE MANMOHAN, J.)

Maruti Suzuki India Ltd. .... Petitioner

Mr. Mukul Rohatgi, Senior Advocate with Ms. Ruchi A. Mahajan, Ms. Shanta C. and Mr. Nikhil Rohatgi, Advocates  
v.

The Ministry of Environment And Forests & Ors. .... Respondents

Mr. Rajeeve Mehra, ASG with Mr. Sachin Datta, CGSC and Mr. Rajiv Ranjan Mishra, Advocate for R-1.

Mr. Manjeet Singh, Addl. AG with Ms. Nupur Chaudhary, Advocate for R-2.

W.P. (C) 2066/2014 & CM APPL. 4326/2014

Decided on May 26, 2014

## **JUDGMENT**

### **MANMOHAN, J: (Oral)**

1. Present writ petition has been filed by the petitioner-Maruti Suzuki India Ltd. with the following prayers:-

*"(i) Issue a writ or order or direction in the nature of mandamus to Respondent No. 1 ordering the Respondent No. 1 to act on the Representations of the Petitioner (Given as ANNEXURE P-1 and WP(C) 2066/2014 page 1 of 7 dated 28 January 2014 and ANNEXURE P-2 dated 25 February 2014) without any delay;*

*(ii) Issue a writ or order or direction in the nature of mandamus directing Respondent No. 1 and 2 to adopt a clarification that is harmonious with the dominant purpose of the Schedule to the EIA Notification 2006 inasmuch as the prescription of the area thresholds given in Items 8(a) and (b) of the Schedule to the EIA Notification 2006 cannot be extended to any and all activities and projects;*

*(iii) Issue a writ or order or direction in the nature of certiorari to Respondent No. 2 quashing the Impugned Directions of the Respondent No. 2 (Given as ANNEXURE P-3 and dated 28<sup>th</sup> February 2014).*

*(iv) Issue a writ of mandamus or any other writ or order or direction restraining the Respondent No. 2 from issuing any further orders or directions with respect to the Petitioner's projects or activities (Given in Paragraph 3) pending further clarifications from Respondent No. 1.*

*(v) Grant any ad interim ex-parte reliefs in the aforementioned terms; and*

*(vi) Issue any other appropriate writ, order or directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."*

2. The relevant facts are that petitioner is engaged in the activity of automobile

manufacturing and has various projects throughout India.

3. Respondent No. 1 is the Ministry of Environment & Forests of the Government of India and is responsible for the promulgation and implementation of the Environmental Impact Assessment Notification (S.O. 1533) dated 14<sup>th</sup> September, 2006 ('EIA Notification 2006').

4. Respondent No. 2 is the Haryana State Environment Impact Assessment Authority which is an authority constituted by the respondent No. 1 in exercise of its powers under Section 3(3) of the Environment (Protection) Act, 1986 and the EIA Notification 2006 by respondent No. 1's Notification S.O. 899 (2) (E) dated 21<sup>st</sup> April, 2008 (and amended and superseded by respondent No. 1's Notifications S.O.568(E) dated 23<sup>rd</sup> March, 2012 and S.O. 937 (E) dated 05<sup>th</sup> April, 2013).

5. Respondent No. 2 is also a delegate of respondent No. 1 and is responsible for the grant of prior Environmental Clearance (for short 'EC') in the State of Haryana for Category 'B' projects and activities as listed in the Schedule to the EIA Notification 2006 promulgated by respondent No. 1.

6. Respondent No. 3 is the Haryana State Expert Appraisal Committee which has been constituted by the respondent No. 1 (in consultation with the Government of Haryana) in exercise of its powers under Section 3(3) of the Environment (Protection) Act, 1986 and the EIA Notification 2006 by respondent No. 1's Notification S.O. 899(2)(E) dated 21<sup>st</sup> April, 2008 (and amended and superseded by respondent No. 1's Notification S.O. 568(E) dated 23<sup>rd</sup> March, 2012). Respondent No. 3 functions under the supervision and directions of the respondent No. 2, which in turn, is a delegate of the respondent No. 1. Respondent No. 3 assists in the functioning of respondent No. 2 and is responsible for making recommendations to the respondent No. 2 regarding the grant of EC for Category 'B' projects and activities.

7. Mr. Mukul Rohtagi, learned senior counsel for petitioner submits that in accordance with the EIA Notification 2006, only those projects and activities, clearly and specifically listed in the Schedule to the EIA Notification 2006 require EC. According to him, projects and activities not listed in the Schedule are exempted from its regulatory ambit. The petitioner contends that though the petitioner's activity was specifically included in the Draft Environmental Impact Assessment Notification S.O. 1324(E) dated 15<sup>th</sup> September, 2005, yet it was omitted from the Schedule to the EIA Notification 2006. He contends that this omission clearly suggests that petitioner's activity would not be covered by the EIA Notification 2006.

8. Mr. Rohatgi points out that even the Supreme Court in *Re: Construction of Park at NOIDA near Okhla Bird Sanctuary*, reported in (2011) 1 SCC 744 had commented on the ambiguity in the Notification and observed that "*The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness*" confusion in fact, continues to remain unattended to by respondent No. 1.

9. Mr. Rohatgi states that in any event, the petitioner has been obtaining the requisite environmental clearances and approvals such as Consents to Establish and the Consents to Operate under the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 from the Haryana State Pollution Control Board (for short 'HSPCB') for its various projects.

10. Mr. Rohatgi further states that the petitioner has now without prejudice to its rights and contentions sought EC after the formation of such view by respondent No. 2. He, however, states that the petitioner despite a 'without prejudice' application of EC dated 14<sup>th</sup> February, 2013 for the petitioner's project at Rohtak is being sought to be prosecuted under Sections 15 and 19 of the Environment (Protection) Act, 1986 for failure to obtain prior EC. In this regard, he refers to the Minutes of the 67<sup>th</sup> Meeting of the respondent No. 2 dated 28<sup>th</sup> February, 2014 and 01<sup>st</sup> March, 2014 where the respondent No. 2 has in Item 14 of the minutes of the abovementioned meeting ordered:-

*".....[1] The Principal Secretary, Environment may be requested to initiate credible action on the violation by invoking powers under Section 19 of the Environment Protection Act, 1986 for taking necessary legal action under Section 15 of the EP Act for the period for which the violation has taken place, against MSIL, EMG Department, Palam Gurgaon Road, Gurgaon, Haryana for commencing construction of "Industrial Building for testing of Vehicles" at Plot No. 1, Section 33-B, 33-C IMT, Rohtak, Maruti Suzuki India Limited Rohtak without obtaining prior EC under the EIA Notification. The Principal Secretary, Environment may also be requested to provide the evidence of credible action taken against the project proponent.*

*[2] The matter relating to the violation shall be put by the project proponent to the Board of Directors of MSIL for consideration of its environmental related policy/plan of action as also a written commitment in the form of a formal resolution to be submitted to the SEIAA within a period of 60 days of the date of this letter ensuring that the violations will not be repeated; failing which it will be presumed the project proponent is not interested in pursuing the project further and the project file will be closed..."*

11. However, Mr. Rajeeve Mehra, learned ASG who appears for respondent No. 1 states that respondent No. 2 relies upon clarification dated 21<sup>st</sup> October, 2009 on the subject matter of "Environmental Clearance to Special Economic Zone (SEZ) Projects-Reg." issued by the respondent No. 1 to contend that in case the built-up area of a project or activity is > 20,000 sq. mts., then irrespective of the nature of the project or activity, the project or activity would require EC under Item 8(a) and 8(b) of the Schedule to the EIA Notification 2006 i.e. "Building and Construction Projects" and "Township and Area Development Projects".

12. Mr. Manjeet Singh, Additional AG for respondent No. 2 states that though the said respondent has raised preliminary objection to the maintainability of the present writ petition, yet it supports an amicable resolution of the disputes. He states that if the legality and validity of the EIA Notification 2006 is upheld and the petitioner as well as its directors undertake that the petitioner shall obtain ex-post facto EC and comply with the terms and conditions stipulated in the EC as well as further undertake to obtain EC for all their future projects in Haryana, the said respondent would consider not initiating any criminal action against the petitioner and/or its board members/officials for not procuring prior EC with regard to the present project being executed by the petitioner in the State of Haryana.

13. In rejoinder, the petitioner submits that the circular clearly pertains to SEZs and does not in any way, support the respondent No. 2's view that all projects and activities having a built-up area of > 20,000 sq. mts., irrespective of the nature of the project or activity, would require EC.

14. Having heard learned counsel for parties, this Court is of the view that the EIA Notification 2006 applies to all projects with a built up area of > 20,000 sq. mts.

irrespective of the nature of the project or activity. Omission of some words/expressions from the draft EIA Notification 2006, which are superfluous, would not assist the petitioners. Moreover, deletion of words/expressions from a draft Notification is not equivalent to a deletion of words/expressions from an existing statute or Notification. Also internal notings of Government officials cannot be a guide to interpretation when the Notification is otherwise free from ambiguity.

15. However, in the present case, petitioner cannot be said to have acted with malafide intent in not applying for prior EC as firstly there was no authoritative judgment on the said issue and secondly, upon the petitioner being asked to seek prior EC, despite its bonafide belief that EIA Notification 2006 was not applicable to its projects, did in fact apply for EC in compliance with HSPCB direction for its projects in Haryana as far back as 14<sup>th</sup> February, 2013, i.e., prior to filing of the present writ petition.

16. In any event, Mr. Mukul Rohatgi, learned senior counsel for petitioner undertakes that petitioner shall obtain *ex post facto* EC and comply with all terms and conditions stipulated by the EC as well as obtain necessary EC for all its future projects in Haryana. The statement made by Mr. Mukul Rohatgi is accepted by this Court and petitioner as well as its Board of Directors are held bound by the same. Accordingly, this Court is of the view that the ends of justice would be met in the present instance by directing respondent No. 2 to consider petitioner's application for grant of *ex post facto* EC for its projects in Haryana.

17. Also, upon perusal of the paper book, it transpires that in the 29<sup>th</sup> Meeting of the State Environment Impact Assessment Authority, Haryana held on 2<sup>nd</sup> July, 2010 under similar facts and circumstances respondent No. 2 itself was of the view that no prosecution under Sections 15 and 19 of the Environment (Protection) Act, 1986 be initiated. The relevant portion of the Item No. 10 of the Minutes of aforementioned meeting reads as under:-

*"The SEAC has considered this case and appointed a Sub-Committee also which did not recommend the prosecution in view of the circumstances of the case. The SEAC accordingly agreeing with the report of the Sub-Committee did not recommend any prosecution in this case."*

18. Consequently, the respondents are directed not to initiate any criminal action against the petitioner and/or its Board Member/officials. This Court once again reiterates that present order has been passed on the peculiar facts and circumstances of this case and the same shall not be treated as a precedent. With the aforesaid observations, present writ petition and application are disposed of.

Order dasti.

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(BEFORE DR A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.)

L.C. HANUMANTHAPPA (SINCE DEAD) a

REPRESENTED BY HIS LEGAL  
REPRESENTATIVES

.. Appellant;

*Versus*

H.B. SHIVAKUMAR

.. Respondent. b

Civil Appeal No. 6595 of 2015<sup>†</sup>, decided on August 26, 2015

**A. Civil Procedure Code, 1908 — Or. 6 R. 17 — Amendment in plaint — Further relief added by way of amendment — If barred by limitation on date of grant of amendment — Determination of — Doctrine of relation back i.e. relating back the amendment to the date when the suit was originally filed — Applicability of — Governing principles as to, summarised** c

— Appellant filing a suit on 9-3-1990 for permanent injunction against respondent-defendant — In appeal against dismissal of said suit, High Court vide judgment dated 28-3-2002 remanding the matter to trial court after allowing amendment in plaint regarding addition of further relief as to declaration of title to suit property — Said amendment was granted subject to plea of limitation that could be raised by defendant in its additional written statement d

— In original written statement filed on 16-5-1990 defendant had clearly denied plaintiff's title to suit property — Thus, in view thereof, held, right to sue for declaration of title first arose on 16-5-1990 — In this way, period of limitation of 3 yrs for filing suit for declaration of title, as provided under Art. 58, Limitation Act, 1963, continued from 16-5-1990 till 15-5-1993 — Hence, relief as to declaration of title added by amendment in 2002, was barred by limitation — Suit rightly dismissed by High Court on ground of limitation e

— As regards applicability of doctrine of relation back to present amendment, held, said doctrine is not applicable to present case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there were no special or extraordinary circumstances in instant case warranting application of doctrine of relation back whereby a legal right that had accrued (on ground of limitation) in favour of defendant should be taken away f

— Doctrines and Maxims — Relation back — Applicability of, in case of amendment in pleadings — Limitation Act, 1963 — Ss. 3, 5 and Art. 58 — Property Law — Ownership and Title — Right to sue for declaration of title — When arose — Denial of title in written statement by defendant — Specific Relief Act, 1963, Ss. 34 and 35 g

<sup>†</sup> Arising out of SLP (C) No. 15513 of 2015. From the Judgment and Order dated 5-3-2015 of the High Court of Karnataka at Bangalore in RFA No. 796 of 2009 h

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**B. Limitation Act, 1963 — Art. 58 — Suit for declaration or amendment of pleadings to incorporate relief of declaration —**  
**a Commencement of limitation period — Change in statutory language as contained in Art. 120 of 1908 Act which provided that limitation would commence when “right to sue accrues” while Art. 58 vide 1963 Act providing therefor when “right to sue first accrues” — Incorporation of word “first” — Impact of, reiterated**

**b** — Held, while enacting Art. 58 of the 1963 Act, the legislature has designedly made a departure from the language of Art. 120 of the 1908 Act — The word “first” has been used between the words “sue” and “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  
**c** accrued

— Limitation Act, 1908 — Art. 120 — Property Law — Ownership and Title — Right to sue for declaration of title — When arose — Denial of title in written statement by defendant — Contract and Specific Relief — Specific Relief Act, 1963, Ss. 34 and 35

**d** Dismissing the appeal, the Supreme Court  
*Held :*

All amendments ought to be allowed which satisfy the two conditions: (*a*) of not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties. Thus, amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the  
**e** amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The  
**f** ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not? Thus courts will, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. There may be an exceptional class of cases where despite the  
**g** fact that a legal right had accrued to the defendant by lapse of time, yet this consideration is outweighed by the special circumstances of the case, for example, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded. That however, is not true in the present case. (Paras 15, 19 and 20)

**h** 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 “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will

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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. (Para 13)

In the present case, first, in the original written statement itself, which is dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. (Para 29)

Article 58 of the Limitation Act, 1963 would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. There can be no doubt that the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. Thus, the present amendment of the plaint is indeed time-barred. As regards the applicability of doctrine of relation back to the present amendment, the said doctrine would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, there is no infirmity in the impugned judgment of the High Court. (Paras 29 and 14)

*Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484; *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363; *Charan Das v. Amir Khan*, (1919-20) 47 IA 255 : (1921) 13 LW 49; *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*, 1957 SCR 438 : AIR 1957 SC 357; *K. Raheja Constructions Ltd. v. Alliance Ministries*, 1995 Supp (3) SCC 17; *Vishwambhar v. Laxminarayan*, (2001) 6 SCC 163; *Siddalingamma v. Mamtha Shenoy*, (2001) 8 SCC 561; *Sampath Kumar v. Ayyakannu*, (2002) 7 SCC 559; *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander*, (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777; *Prithi Pal Singh v. Amrik Singh*, (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473, explained and applied

*H.B. Shivakumar v. L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860, affirmed

*Kisandas Rupchand v. Rachappa Vithoba Shilwant*, ILR (1909) 33 Bom 644, held, approved

*L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR), approved

*Bolo v. Koklan*, (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338; *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar*, ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30; *Gobinda Narayan Singh v. Sham Lal Singh*, (1930-31) 58 IA 125 : (1931) 33 LW 707; *Rukhmabai v. Lala Laxminarayan*, AIR 1960 SC 335 : (1960) 2 SCR 253; *Bakshish Singh v. Prithipal Singh*, 1995 Supp (3) SCC 577, cited

*Prithi Pal Singh v. Amrik Singh*, 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504, held, affirmed

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Advocates who appeared in this case :

- P. Vishwanatha Shetty, Senior Advocate (S.K. Kulkarni, M. Gireesh Kumar, Mahesh Thakur and Ankur S. Kulkarni, Advocates) for the Appellants;  
a Dr Aditya Sondhi, Senior Advocate (Chandan S. Rao, Vikas Mehta and Ms Anushree Menon, Advocates) for the Respondent.

**Chronological list of cases cited**

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|   | 2. (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473, <i>Prithi Pal Singh v. Amrik Singh</i>  | 347a                       |
|   | 3. (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484, <i>Khatri Hotels (P) Ltd. v. Union of India</i>                                       | 339a, 347e                 |
| b | 4. (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777, <i>Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander</i> | 346b-c                     |
|   | 5. 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504, <i>Prithi Pal Singh v. Amrik Singh</i>   | 347c                       |
|   | 6. (2002) 7 SCC 559, <i>Sampath Kumar v. Ayyakannu</i>  | 344e-f                     |
|   | 7. RFA No. 415 of 1999, decided on 28-3-2002 (KAR), <i>L.C. Hanumanthappa v. H.B. Shivakumar</i>                                    | 336g, 338e, 338f-g, 347d-e |
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|   | 9. (2001) 6 SCC 163, <i>Vishwambhar v. Laxminarayan</i>   | 342e-f, 346g-h             |
|   | 10. 1995 Supp (3) SCC 577, <i>Bakshish Singh v. Prithipal Singh</i>   | 347b                       |
|   | 11. 1995 Supp (3) SCC 17, <i>K. Raheja Constructions Ltd. v. Alliance Ministries</i>  | 342c                       |
|   | 12. AIR 1960 SC 335 : (1960) 2 SCR 253, <i>Rukhmabai v. Lala Laxminarayan</i>   | 340a-b                     |
|   | 13. 1957 SCR 595 : AIR 1957 SC 363, <i>Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil</i>                                      | 341b-c, 342b-c, 344e       |
| d | 14. 1957 SCR 438 : AIR 1957 SC 357, <i>L.J. Leach &amp; Co. Ltd. v. Jardine Skinner &amp; Co.</i>                                   | 341d, 341g, 344e           |
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|   | 16. ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30, <i>Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar</i>     | 340a                       |
| e | 17. (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338, <i>Bolo v. Koklan</i>   | 339g-h                     |
|   | 18. (1919-20) 47 IA 255 : (1921) 13 LW 49, <i>Charan Das v. Amir Khan</i>   | 341c                       |
|   | 19. ILR (1909) 33 Bom 644, <i>Kisandas Rupchand v. Rachappa Vithoba Shilwant</i>  | 340f                       |

The Judgment of the Court was delivered by

**ROHINTON FALI NARIMAN, J.**— Leave granted.

2. The present case arises out of cross-suits filed by the parties. On 9-3-1990, one L.C. Hanumanthappa filed a suit against one H.B. Shivakumar for permanent injunction restraining the defendants, his servants and agents from disturbing the peaceful possession and enjoyment of the suit schedule property. In this suit, namely, OS No. 1386 of 1990 filed before the City Civil Court, Bangalore, the plaintiff averred that he is the absolute owner, and in lawful possession and enjoyment of the suit property. He also averred in the said suit that the schedule property is clearly distinguishable and could be identified without difficulty. According to the plaintiff, the cause of action arose when the defendant tried to trespass on the schedule property two days before the suit was filed.

3. Within a few days from the filing of this suit, the defendant in the first suit filed a suit being suit number OS No. 1650 of 1990 in the City Civil Court at Bangalore against one L.C. Ramaiah and the said Shri Hanumanthappa stating that the defendants had attempted to trespass into the suit schedule property about 15 days prior to the suit being filed, and asked

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for a permanent injunction against the said defendants restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property. The plaintiff also claimed to be the owner in possession of the suit schedule property. a

4. In the written statement to OS No. 1386 of 1990 dated 16-5-1990, the defendant not only referred to his own suit which had by then already been filed, but specifically stated as follows:

“4. The boundaries furnished by the plaintiff to old Survey Site No. 13, in the plaint schedule is totally false and that has nothing to do with the boundaries mentioned in his document. b

5. The plaintiff has failed to establish any relationship between old Site No. 13 and Corporation No. 12/2, as claimed by him in the plaint.

6. The allegations that at the time of the purchase of the schedule property by the plaintiff, western boundary was a building site bearing No. 14 and however subsequently the said portion left for building site has been converted as road and is being used as such since several years are false and further it is false to state that the east of the schedule property bearing Building Site No. 12 is situate and the same was belonging to one H. Venkataramanappa and however, the said site has been sold by him and now the said property is owned by one Sri Ahmadullah Khan and he has constructed a building thereon, as alleged in Para 2 of the plaint. c  
d

7. The plaintiff has purposefully distorted the boundary of his old Site No. 13 to bring substantially the boundaries of Site No. 15, old 3, CTS No. 1157 (city survey) which exclusively belongs to the defendant.

\* \* \*

13. The suit for injunction is not maintainable in that, he has failed to establish title with possession over old Site No. 13, and that is not establishing any connection between old Site No. 13, and new Site No. 12/2, alleged to be assigned by Bangalore City Corporation on about 6-6-1989.” e

5. It can thus be seen that on 16-5-1990 itself the plaintiff in OS No. 1386 of 1990 was put on notice that his suit for injunction was not maintainable as he had failed to establish title over the suit schedule property. f

6. Both the suits were tried together, and by a judgment dated 10-3-1999, the Court of Additional City Civil Judge at Bangalore decreed OS No. 1650 of 1990 and dismissed OS No. 1386 of 1990. In the first appeals filed against the said judgment, the High Court of Karnataka by its judgment dated 28-3-2002<sup>1</sup> allowed RFA No. 415 of 1999, and dismissed RFA No. 456 of 1999, and remanded the matter back to the trial court for fresh consideration. g  
The High Court while remanding the matter observed as follows:

“10. The trial court had also appointed the Commissioner. The Commissioner after inspecting the properties has given his report. The Commissioner has also been examined as PW 2. From looking into the pleadings and the evidence adduced by the parties, it is crystal clear that h

<sup>1</sup> L.C. Hanumanthappa v. H.B. Shivakumar, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

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a the dispute is in respect of the identity of two properties and to declare right and title over the properties. The respondent in this case has not disputed the sale deed which stands in the name of the appellant. Since the defendant is disputing existence of the suit schedule property, the present application is filed for declaration of his title. The respondent has resisted the application, contending that the relief sought for by the appellant is barred by limitation and that relief sought by way of limitation. However, such a plea can be raised by the respondents by filing additional written statement. Considering the fact that the dispute in respect of an immovable property and question of identification of two properties have been involved, as the defendant is also not disputing the sale deed of the appellant, this Court to allow the application filed by the appellant for amendment of plaint seeking additional evidence.

b  
c *11.* Accordingly, RFA No. 415 of 1999 is allowed. The judgment and decree passed in OS No. 1386 of 1990, is set aside. The matter is remanded to the trial court to hold fresh enquiry after giving reasonable opportunities to both the parties. The defendant is entitled to file an additional written statement and also entitled to raise the question of limitation. The trial court shall dispose of the suit within six (6) months from today in accordance with law. The judgment and decree passed in OS No. 1650 of 1990, which is the subject-matter of RFA No. 415 of 1999 is concerned, there is no need for this Court to disturb the decree of injunction and that the decree that may be passed in OS No. 1386 of 1990 by the trial court will have a bearing on the judgment and decree in OS No. 1650 of 1990. In the event of the appellant succeeding in OS No. 1386 of 1990, the judgment and decree passed in OS No. 1650 of 1990 in favour of Shivakumar for bare injunction will be unenforceable against the appellant Hanumanthappa. However, it is made clear till the disposal of OS No. 1386 of 1990, the respondent-plaintiff Shivakumar in OS No. 1650 of 1990 is hereby directed to maintain status quo. If such an order is not passed, the respondent-plaintiff Shivakumar may proceed with the construction and if he is allowed to construct and in the event the appellant succeeds in OS No. 1386 of 1990, then it will lead to multiplicity of proceedings. Therefore, it is necessary to direct the respondents to maintain status quo.”

f  
7. On 1-4-2002, the plaintiff in OS No. 1386 of 1990 then sought to amend the plaint in terms of the said judgment by adding Para 5-A to the plaint in which the plaintiff stated:

g  
h “5-A. The plaintiff submits that the defendant has no manner of right, title and interest in the plaint schedule property. The defendant has denied the title of the plaintiff in respect of the suit schedule property. Hence, it is just and essential to declare that the plaintiff is absolute owner in possession of the schedule property. If the declaration as sought is not granted, the plaintiff who is the absolute owner from 5-5-1956 and enjoying the property as absolute owner thereof, will be put in great loss and prejudice. On the other hand no hardship or prejudice will be caused to the defendant if the declaration as sought is granted.”

8. A decree for declaration of title to the suit schedule property was then added as a prayer to the amended plaint. On 1-8-2002, the defendant filed an additional written statement in which the defendant stated that the said plea based on a new cause of action, namely, declaration of title, was time-barred. a

9. After remand, by its judgment and decree dated 16-4-2009, the City Civil Court at Bangalore decreed the suit OS No. 1386 of 1990. It turned down the plea of limitation by stating that since in the original written statement the defendant had admitted the title of plaintiff Hanumanthappa, and only in the written statement dated 1-8-2002 was title denied for the first time after the amendment of the plaint was moved, the relief of declaration claimed by the plaintiff would be within the period of limitation. b

10. In RFA No. 796 of 2009, by the impugned judgment dated 5-3-2015<sup>2</sup>, the High Court reversed the said judgment on limitation stating that the original written statement filed on 16-5-1990 had clearly stated that the plaintiff did not have the necessary title to the suit schedule property, and as the amendment of the plaint was moved long after three years from 16-5-1990, it was clear that it was time-barred. OS No. 1386 of 1990 was thus dismissed on limitation alone. The High Court also turned down the plea with reference to Section 22 of the Limitation Act, 1963 stating that on the facts of the present case limitation could not be extended because the wrong in the present case was not a continuing wrong. c

11. The learned counsel for the appellant has argued that once an amendment to the plaint is allowed, it necessarily relates back to the date on which the plaint was originally filed, and since the amendment was allowed in the present case by the judgment dated 28-3-2002<sup>1</sup>, the said amendment related back to 9-3-1990 when the suit was originally filed. He further argued that the suit was based on title, and the title of the plaintiff was admitted in Para 2 of the original written statement, as was held by the trial court in its judgment dated 16-4-2009. He, therefore, submitted that the impugned judgment ought to be set aside. However, he did not press the plea of continuing wrong on the facts of the present case. d

12. The learned counsel for the respondent, on the other hand, argued that the plaintiff's title was clearly denied in the original written statement and three years having elapsed from the said date, the amendment was obviously time-barred. Further, the judgment dated 28-3-2002<sup>1</sup> itself made it clear that the amendment was allowed subject to the plea of limitation being raised. He further argued that the amendment made introduced a completely new cause of action based on fresh facts and therefore any amendment made could not possibly relate back as such amendment would be clearly time-barred. e

13. We have heard the learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already f

<sup>2</sup> *H.B. Shivakumar v. L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860

<sup>1</sup> *L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR) g

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a existing relief for grant of permanent injunction. In *Khatri Hotels (P) Ltd. v. Union of India*<sup>3</sup>, this Court while construing Article 58 of the Limitation Act held as follows: (SCC pp. 138-39, paras 25-30)

“25. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

‘THE SCHEDULE

PERIOD OF LIMITATION

[See Sections 2(j) and 3]

First Division—Suits

b

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
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PART III — Suits Relating to Declarations

\* \* \*

**58.** To obtain any other declaration. Three years When the right to sue first accrues.’

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26. Article 120 of the Schedule to the Limitation Act, 1908 (for short ‘the 1908 Act’) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
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**120.** Suit for which no period of limitation is provided elsewhere in this Schedule. Six years When the right to sue accrues.’

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

(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.

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28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Koklan*<sup>4</sup> and it was held: (IA p. 331)

‘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

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<sup>3</sup> (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

<sup>4</sup> (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338

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>5</sup> and *Gobinda Narayan Singh v. Sham Lal Singh*<sup>6</sup>. a

29. In *Rukhmabai v. Lala Laxminarayan*<sup>7</sup>, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (AIR p. 349, para 33)

‘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 jeopardizes the said right.’ b c

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 ‘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.” d

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16-5-1990 when in the very first written statement the defendant had pleaded, in Para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order 6 Rule 17 of the Code of Civil Procedure. e

15. As early as in the year 1909, the Bombay High Court in *Kisandas Rupchand v. Rachappa Vithoba Shilwant*<sup>8</sup>, held as follows: (ILR p. 655) f

“... All amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would g

5 ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30

6 (1930-31) 58 IA 125 : (1931) 33 LW 707

7 AIR 1960 SC 335 : (1960) 2 SCR 253

8 ILR (1909) 33 Bom 644

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a cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not?"

b 16. This statement of the law was expressly approved by a three-Judge Bench of this Court in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*<sup>9</sup> SCR pp. 603-04.

17. Twenty years later, the Privy Council in *Charan Das v. Amir Khan*<sup>10</sup>, stated the law as follows: (IA p. 262)

c "... That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases ... where such considerations are outweighed by the special circumstances of the case...."

d 18. This statement of the law was cited with approval in *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*<sup>11</sup> SCR pp. 450-51.

e 19. The facts in the aforesaid case were that the plaintiffs had, on the basis of the material facts stated in the plaint, claimed damages on the basis of the tort of conversion. It had been held by the courts below that on the pleading and on the evidence such claim must fail. At the stage of arguments in the Supreme Court, the plaintiff applied to the Supreme Court for amendment of the plaint by raising an alternative plea on the same set of facts, namely, a claim for damages for breach of contract for non-delivery of the goods. The respondents in that case resisted the said plea for amendment, stating that a suit based on this new cause of action would be barred by limitation. This Court, while allowing the said amendment, stated that no change needs to be made in the material facts pleaded before the court all of which were there in support of the amended prayer. In any case, the prayer in the plaint as it originally stood was itself general and merely claimed damages. Thus, all the allegations which were necessary for sustaining a claim of damages for breach of contract were already there in the plaint. The only thing that was lacking was the allegation that the plaintiffs were in the alternative entitled to claim damages for breach of contract. In the facts of the said case, this Court held: (*L.J. Leach case*<sup>11</sup>, SCR p. 450 : AIR p. 362, para 16)

g "16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken

h 9 1957 SCR 595 : AIR 1957 SC 363

10 (1919-20) 47 IA 255 : (1921) 13 LW 49

11 1957 SCR 438 : AIR 1957 SC 357

into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.”

20. It is clear that this case belonged to an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration was outweighed by the special circumstances of the case, namely, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded.

21. Similar is the case with *Pirgonda Hongonda Patil*<sup>9</sup>. Here again it was held that the amendment did not really introduce a new fact at all, nor did the defendant have to meet a new claim set up for the first time after the expiry of the period of limitation.

22. In *K. Raheja Constructions Ltd. v. Alliance Ministries*<sup>12</sup>, this Court was seized with a belated application to amend a plaint filed for permanent injunction. Seven years after it was filed, an amendment application was moved seeking to amend the plaint to one for specific performance of contract. In turning down such amendment on the ground that it was time-barred, this Court held: (SCC pp. 18-19, para 4)

“4. It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent.”

23. Similarly, in *Vishwambhar v. Laxminarayan*<sup>13</sup>, in a suit originally filed for recovery of possession, an amendment was sought to be made after the limitation period had expired, for a prayer of declaration that certain sale deeds be set aside. This was repelled by this Court as follows: (SCC pp. 168-69, paras 9-10)

“9. On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis, the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14-11-1967 and 24-10-1974, recover possession of the

<sup>9</sup> *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363

<sup>12</sup> 1995 Supp (3) SCC 17

<sup>13</sup> (2001) 6 SCC 163

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a properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is, in such circumstances, are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immovable property of the minor. In sub-section (3) of the said section, it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs. In all probability, realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, Plaintiff 2 Digamber attained majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on 20-7-1978. Though the suit was filed on 30-11-1980 the prayer seeking setting aside of the sale deeds was made in December 1985. Article 60 of the Limitation Act prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digamber the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar, it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not

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have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaintiff the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaintiff could not come to the rescue of the plaintiff. a

10. From the averments of the plaintiff, it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaintiff and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaintiff was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance, the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaintiff was allowed and not earlier than that.” b  
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24. In *Siddalingamma v. Mamtha Shenoy*<sup>14</sup>, this Court held while allowing an amendment of the plaintiff in a case of bona fide requirement of the landlord that the doctrine of relation back would apply to all amendments made under Order 6 Rule 17 of the Code of Civil Procedure, which generally governs amendment of pleadings, unless the court gives reasons to exclude the applicability of such doctrine in a given case. No question of limitation was argued on the facts in that case which would therefore be in the category of cases which would follow the line of judgments which state that costs can usually compensate for an amendment that is made belatedly but within the period of limitation, it not being an exceptional case such as those contained in the two judgments *L.J. Leach & Co. Ltd.*<sup>11</sup> and *Pirgonda Hongonda Patil*<sup>9</sup> cited above. d  
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25. In *Sampath Kumar v. Ayyakannu*<sup>15</sup>, this Court was faced with an application for amendment made 11 years after the date of the institution of the suit to convert through amendment a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. This Court held: (SCC pp. 562-64, paras 7 & 9-11) f

“7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new g

14 (2001) 8 SCC 561

11 *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*, 1957 SCR 438 : AIR 1957 SC 357

9 *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363 h

15 (2002) 7 SCC 559

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suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

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9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

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10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. (See observations in *Siddalingamma v. Mamtha Shenoy*<sup>14</sup>.)

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11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new

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relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.”

26. It is clear that on the facts in the above case the amendment was allowed subject to the plea of limitation which could be taken up by the defendant when the trial in the case proceeds.

27. In *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander*<sup>16</sup>, this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The suit had been filed on 11-2-1991. An amendment application was moved under Order 6 Rule 17 of the Code of Civil Procedure on 16-12-2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held: (SCC pp. 602-03, paras 24-25 & 32)

“24. In the present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

25. Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.

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32. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in *Vishwambhar v. Laxminarayan*<sup>13</sup>, if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate

16 (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777

13 (2001) 6 SCC 163

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back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case.”

a 28. In *Prithi Pal Singh v. Amrik Singh*<sup>17</sup>, this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held: (SCC p. 583, para 11)

b “11. In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order<sup>18</sup> passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge<sup>19</sup> has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time.”

c 29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff’s title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff’s title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002<sup>1</sup> had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.*<sup>3</sup>, the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff’s title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment<sup>2</sup> of the High Court. The present appeal is accordingly dismissed.

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17 (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473

18 *Bakshish Singh v. Prithipal Singh*, 1995 Supp (3) SCC 577

19 *Prithi Pal Singh v. Amrik Singh*, 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504

h 1 *L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

3 *Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

2 *H.B. Shivakumar v. L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.954 OF 2019

Builders' Association of India (BAI) ..Petitioner  
Versus  
Union of India ..Respondent

Mr. Anshuman Srivastava I/by Mr. Rushabh M. Sheth, Advocate for the Petitioner.

Mr. R. S. Apte, Senior Advocate a/w Mr. Girish Paryani, Advocate for the Respondent.

CORAM : B. R. GAVAI &  
DAMA SESHADRI NAIDU, JJ.  
DATE : 29<sup>th</sup> MARCH, 2019

P.C.

1] It is the contention of the Petitioner that in the Notification dated 14<sup>th</sup> September 2006, issued by the sole Respondent, the term 'Building and Construction projects area' was not defined and it was vague.

2] It is submitted that the said notification came up for consideration before the Hon'ble Supreme Court in the case of Anand Arya and another Vs. Union of India and others reported in 2011 (1) SCC 744. A reliance is placed on the following observations of the Hon'ble Apex Court in para 84, which are as under :-

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“84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness.”

3] It is submitted that after the aforesaid observations were made by the Hon'ble Apex Court, sole Respondent issued a further notification dated 4<sup>th</sup> April 2011, vide which for the first time, the term 'build up area' is defined.

4] It is the contention of the learned counsel for the Petitioner that between 2006-2011, the local authorities as well as the sole Respondent granted clearances to the projects on the basis of the local Development Control Rules, since the definition of built up area was not there.

5] It is submitted that however, the Hon'ble Supreme Court in the case of M/s. Goel Ganga Developers India Pvt. Ltd. Vs. Union of India and others with connected matters decided on 10<sup>th</sup> August 2018 has observed thus :-

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“13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.”

6] It is the contention of the Petitioner that due to the aforesaid observations of the Hon'ble Apex Court all the projects which were executed by the members of the Petitioner's Association during 2006-2011, which were otherwise legal, are now capable of being termed as illegal with retrospective effect.

7] It is the contention of the Petitioner that the Petition under Article 32 was also filed by the Petitioner before the Hon'ble Apex Court, which Petition came to be withdrawn vide order dated 12<sup>th</sup> February 2019, with liberty to approach this Court.

8] In effect, in our considered view, what the Petitioner seeks from this Court is a clarification that the observations made by the Hon'ble Apex Court in the case of *M/s. Goel Ganga Developers India Pvt. Ltd. (supra)* by a Bench consisting of two Hon'ble Judges

(937)-WPL-954-19.doc.

of the Hon'ble Supreme Court are *per-incuriam* the observations of the Hon'ble Apex Court in the case of *Anand Arya and another (supra)*.

9] With great respect, the judicial propriety would not permit us to venture into such an exercise. The Writ Petition is therefore rejected.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]

ITEM NO.32

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 10078/2019

(Arising out of impugned final judgment and order dated 29-03-2019  
in WPL No. 954/2019 passed by the High Court of Judicature At  
Bombay)

BUILDERS' ASSOCIATION OF INDIA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION and I.R. and IA No.65285/2019-PERMISSION TO FILE  
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES )

Date : 03-05-2019 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK GUPTAFor Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Anshuman Srivastava, Adv.  
Mr. E. C. Agrawala, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Issue notice.

In the meantime, no coercive steps shall be taken.

(SUSHIL KUMAR RAKHEJA)  
AR CUM PS(ANAND PRAKASH)  
BRANCH OFFICER

**2021 SCC OnLine SC 1133**

**In the Supreme Court of India**

(BEFORE R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.)

Civil Appeal No. 595 of 2021

Sai Baba Sales Pvt. Ltd. ... Appellant(s);

*Versus*

Union of India and Others ... Respondent(s).

With

Civil Appeal No. 5768 of 2021

Civil Appeal No. 595 of 2021 and Civil Appeal No. 5768 of 2021

Decided on November 26, 2021

The Judgment of the Court was delivered by

**HRISHIKESH ROY, J.:**— Heard Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellant in Civil Appeal No. 595/2021. Mr. Lonkar Nitin representing the Original Applicant before the National Green Tribunal. Ms. Aishwarya Bhati, learned Additional Solicitor General of India appears for the Ministry of Environment & Forest. The Government of Maharashtra and the State Pollution Control Board are represented by Mr. Rahul Chitnis and Mr. Mukesh Verma, learned counsel respectively.

**2.** These two appeals are filed under Section 22 of the National Green Tribunal Act, 2010 (for short "the NGT Act") assailing the judgment and final order dated 18.1.2021 in the OA No. 83/2019. Under the impugned judgment, the NGT held that further construction cannot be made without environment impact assessment, but protected the constructions already made by the appellant, M/s Sai Baba Sales Pvt. Ltd. ("Project Proponent") on the basis of the Environmental Clearance ("EC" for short) issued by the Pimpri Chinchwad Municipal Corporation ("PCMC" for short) as per the notification dated 9.12.2016. The Original Applicant, on the other hand, is aggrieved by the decision of the NGT to protect the standing construction and limiting the impact of the impugned judgment on further construction to be made by the project proponent.

**3.** The main issue that arises for consideration in these matters is whether the Project Proponent herein possesses a validly granted Environmental Clearance (EC) under the Environmental Impact Assessment (EIA) notification dated 14.9.2006. The 2006 EIA notification provided that the projects above 20,000 sq. meter and below 1,50,000 sq. meter should obtain an EC from the State Environment Impact Assessment Authority (SEIAA) of the Ministry of Environment, Forest and Climate Change (MoEFCC).

**4.** For deciding the issue, the necessary facts in brief are that the Project Proponent initially conceived a project of 15,040 sq. mtrs. (below the EC threshold limit of 20,000 sq. mtrs.) and it approached the PCMC for a lay out order which was a prerequisite, to obtain an EC from the SEIAA of the MoEFCC. The application was processed and the Building Permission Department of the PCMC granted the commencement certificate to the Project Proponent for an area of 15,040 sq. mtrs. and approved the plan under the sanction letter dated 14.5.2013. With such permission, the Project Proponent could construct the permitted structures, and since the built up area was less than the threshold limit of 20000 sq. mtrs., the EC permission was not needed for the intended construction.

**5.** The Project Proponent builder then applied and was granted additional FSI as it intended to expand the project to one with built up area of 49,012 sq. mtrs. and for

this they approached the PCMC for a lay out order, which as noted earlier was essential to obtain an EC from the SEIAA of the Ministry of Environment, Forest and Climate Change (MoEFCC). The required approval was issued by the Corporation on 28.11.2016.

**6.** Under the Ministry's notification dated 9.12.2016, the EIA regime was altered to indicate that the EC could be obtained from the Environmental Cell of a local authority, such as the PCMC. The State of Maharashtra opted for the new regime and adopted the environmental condition stipulated in the MoEFCC notification dated 9.12.2016. This was followed by the communication of the MoEFCC on 7.7.2017 which clarified that separate environmental clearance is not required for projects upto 1,50,000 sq. mtrs. built up area in respect of municipal corporations in Pune and Konkan division.

**7.** The Project Proponent then filed an application for EC under the 2016 notification which was considered by the Environmental Cell of the PCMC which appraised the project, as contemplated in the notification dated 9.12.2016. The necessary permission for construction to the builder was issued on 28.11.2017, stipulating the environmental conditions for buildings and constructions and this permission was accorded as per the amended regime under the notification dated 9.12.2016 of the MoEFCC and consequential one dated 13.4.2017 of the Maharashtra Government.

**8.** While the matter stood thus, the NGT while considering the challenge by certain applicants to the exemption from EC, in a batch matter, quashed certain portions of the MoEFCC notification dated 9.12.2016. The NGT in the analogous judgment dated 8.12.2017 in the OA No. 677/2016 (*Society for Protection of Environment and Biodiversity v. Union of India*) and other cases, directed the MoEFCC to revisit its notification dated 9.12.2016 and to take appropriate steps to amend/rectify certain clauses in the Ministry's notification, in terms of the NGT's judgment.

**9.** Nearly two years after the Project Proponent secured construction permission on 8.12.2017 from the PCMC, the OA No. 83/2019 was filed by the Pune resident (respondent No. 10) with the allegation that the Project Proponent had made construction without obtaining any EC. In this proceeding the NGT constituted a three Member Committee comprising the SEIAA - Maharashtra, the State PCB and the Municipal Commissioner, Pune. The Committee, after spot verification, in its Report dated 18.8.2020 noted that construction of total built up area of 22930.17 sq. mtrs. is already completed for Building Nos. A, E, B, D and the Club House. Thereafter, the NGT considered the submission of the original applicant, who contended that while the authority to grant EC is SEIAA as per the EIA notification dated 14.9.2006, the EC for the project in question was granted by the PCMC. The NGT in its order on 17.11.2020, in the first round, opined that the constructions were irregular and remedial measures were directed for the project in question.

**10.** The above order of the NGT was challenged before this Court and the Project Proponent's CA No. 3893/2020 was allowed on 11.12.2020 whereby, the NGT's order was set aside and the matter was remitted back to the NGT to afford hearing to the appellants and to pass a fresh order.

**11.** The case of the Project Proponent as can be seen from the pleadings was that he had initially commenced construction on 14.5.2013 with a sanction plan of 15040.05 sq. mtrs., which, being lesser than the threshold limit of 20,000 sq. mtrs, did not require a prior EC. Thereafter, for the proposed expansion of the project, for total constructed area of 49,012 sq. mtrs., the Project Proponent approached the concerned authority on 7.11.2016 for issuance of "Proposed Development Certificate", which is a prerequisite to apply for EC, and the said certificate was granted on 28.11.2016 for the purpose of obtaining the EC from the SEIAA. But at that stage, by virtue of the MoEFCC notification dated 9.12.2016, the concerned local authority was designated as the sanctioning authority for projects between 20,000 sq. mtrs. and

50,000 sq. mtrs. and accordingly under the changed regime the Project Proponent applied to PCMC on 10.7.2017 and was sanctioned EC by the competent local authority, on 28.11.2017.

**12.** It is the further contention of the Project Proponent that when the NGT on 8.12.2017 had invalidated certain portions of the 2016 notification, it did not issue any order nullifying those ECs which were granted by the local authority under the altered regime.

**13.** The original applicant on the other hand, contended that when the NGT struck down certain provisions of the MoEFCC's 2016 notification, the 28.11.2017 EC granted by the Municipal Corporation, would not legitimize the construction and therefore the Project Proponent should be prevented from proceeding with the construction and also be penalized for the unauthorized construction.

**14.** The NGT then observed that because of the invalidation of certain clauses in the 2016 notification, the EC obtained from the PCMC is unacceptable and accordingly rendered a finding that the Project Proponent had failed to obtain the valid EC. The maintainability challenge of the OA on the ground of limitation was however rejected by observing that the cause of action arose only in 2017 when the builder allegedly exceeded the threshold limit of 20,000 sq. mtrs. Accordingly, the authorities were directed to take coercive action against the Project Proponent for construction done after 8.12.2017, when the NGT's judgment was rendered in the OA No. 677/2016. However, even with such finding having regard to the regime that existed at the relevant time and adverting to the ratio in *Goan Real Estate and Construction Ltd. v. Union of India*,<sup>1</sup> the NGT held that the construction already raised should be protected. However, further construction should be permitted only after securing the EC from the competent authority, under the current regime.

**15.** The picture which emerges from the above discussion is that when the Project Proponent initially wanted to apply for the EC it had obtained the requisite layout sanction for applying to the SEIAA. As such, it was operating well within the applicable procedure, prior to the amendment. After grant of such sanction, while the construction was underway, the amendment came about on 9.12.2016 whereby, the local authority such as the Municipal Corporation was made the competent authority to grant EC. In the changed circumstances, the Project Proponent necessarily had to apply to the PCMC as during the interregnum before the NGT's judgment on 8.12.2017, SEIAA was not the competent authority to consider application for EC. The Project Proponent was therefore, complying with the regime set out by the amended notification. It is apposite to note that the Committee appointed by the NGT, in its report dated 11.8.2020 had clearly indicated that when the Project Proponent had received the EC on 28.11.2017, the competent authority to issue the EC was the Environmental Cell of the PCMC. Thus, it is the discernible understanding as part of the NGT's own expert Committee that the Project Proponent had obtained the EC from the competent authority of the relevant time i.e. the PCMC. Interestingly, the constituted Committee also included a member of the SEIAA.

**16.** Moreover, only after the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016, the State of Maharashtra issued a clarification on 29.1.2018 directing that the Municipal authorities should not process pending applications. But neither the decision of the NGT nor of the Maharashtra Government categorically gave any guidance as to the implication on the EC obtained by the Project Proponent, on the strength of which, a substantial measure of construction was already made. It is also necessary to note that in the subsequent notification issued on 14.11.2018 and 15.11.2018 by the MoEFCC, the power to grant EC continued to vest in the local authority such as the PCMC, with the only change being that it is the municipality itself and not its Environmental Cell which is empowered to grant the EC. For the sake

of completion, it may be recorded that the said notifications of the MoEFCC is stayed by the Delhi High Court on 26.11.2018 in the WP(C) No. 12517/2018.

**17.** It is important to bear in mind that the Committee constituted by the NGT to report on the building project did not underscore any major deviation but instead found that the Project Proponent had made substantial compliance by obtaining the EC from the competent local authority. Moreover the OA, neither before the NGT or this Court, ever contended that appraisal done by the PCMC's Environmental Cell was defective or any different from one done by SEIAA. Both processes are also similarly structured. This may be the reason why the NGT in the impugned judgment itself protected the already made construction. However, the Project Proponent was restrained from making any further construction without obtaining clearance from the statutory EC and adhering to the environmental norms.

**18.** The project of the appellant comprises six buildings of which three were constructed in full, and the super structure of the fourth building is completed and only the internal works remains to be done. In the fourth building, 40 out of the 64 apartments have already been sold. In this context, it would be appropriate to advert to the submission of Ms. Aishwarya Bhati, the learned ASG who had clearly stated that at the relevant time, the competent authority to grant EC is the PCMC and not the SEIAA and therefore the internal works for the fourth constructed building, can be allowed to be completed.

**19.** Considering the above circumstances, the NGT rightly protected the already erected buildings and this protection in our view, should not be impacted by the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016 whereby certain portions of the MoEFCC's 9.12.2016 notification were invalidated and direction was issued to the Ministry to revisit the said notification. Importantly, neither the NGT's invalidation order nor the subsequent clarifications by the State of Maharashtra, have suggested any adverse action against the pre-existing structures. As the expert body exclusively occupying the environmental field, the NGT has assessed the factual circumstances to consciously lean towards protecting the already constructed structures. Nothing more need be added on this aspect. It is also not necessary in this appeal to venture into the question of the retrospective implication of the invalidation of certain parts of the 2016 Notification for other project proponents, which may have gained their ECs in the interregnum.

**20.** In situations of this nature, the Doctrine of *Legitimate Expectation* is attracted. The principle of the rule of law as explained in *De Smith's Judicial Review*, such as, Regularity, Predictability and Certainty in Government's dealings with the Public, must operate in the present matter. The Project Proponent can legitimately expect a certain degree of stability in the manner in which environmental regime is set and how the applications are processed. The actions of the authorities are expected to adhere to the prevalent norms only, without the element of uncertainty for the executed project.

**21.** In the above context we may benefit by referring to the seminal case of *Attorney General of Hong Kong v. Ng Yuen Shiu*<sup>2</sup>, where Lord Fraser speaking for the Privy Council, appositely observed thus,

"... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty."

**22.** This Court in *Sethi Auto Service Station v. Delhi Development Authority*<sup>3</sup>, speaking through Justice D.K. Jain, has cited other opinions and elucidated on the concept of *legitimate expectation*, in the following manner,

"24. The House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service*, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation.

**Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either**

(a) \*\*\*\* \*  
(b) by depriving him of some benefit or advantage which either : (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decisionmaker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.”

(emphasis supplied)

**23.** The Doctrine of *Legitimate Expectation* is further explained in *Food Corporation of India v. Kamdhenu Cattle Feed Industries*<sup>4</sup> where for a Three-Judge Bench of this Court Justice J.S. Verma observed thus:—

“The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

**24.** The more compelling public interest might possibly diminish the degree of *legitimate expectation* for a party but a balance has to be found. In the present matter the appellant has acted on the EC and made substantial investments. They cannot be pushed to a precipice and be made to fall. Doing so would be inequitable particularly when, the appellant has scrupulously adhered to the applicable legal framework during the concerned period. Moreover, third-party interests have also cropped up in the interregnum.

**25.** A Project Proponent is not expected to anticipate the changes in EC regimes, especially as a result of judicial interventions, and keep revisiting the sanctioned clearances by the competent authority or even raze down validly constructed structures. Neither can it be expected to knock the doors of an authority, not empowered at the relevant time, to process its applications. Such a scenario would render the process akin to a *Sisyphian task*, eternally inconclusive and never ending.

**26.** As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate to endorse the same, by accepting the submission of the appellant's Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh

clearance from the competent authority, as per the currently applicable framework. It is ordered accordingly.

**27.** With the above order, the appeals are disposed of without any order on cost.

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<sup>1</sup> (2010) 5 SCC 388

<sup>2</sup> (1983) 2 AC 629 : (1983) 2 WLR 735

<sup>3</sup> (2009) 1 SCC 180

<sup>4</sup> (1993) 1 SCC 71

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LPA 895/2010

Delhi Pollution Control Committee v. Splendor Landbase Ltd.

2012 SCC OnLine Del 400

(BEFORE PRADEEP NANDRAJOG AND PRATIBHA RANI, JJ.)

LPA 895/2010

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Splendor Landbase Ltd. .... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates  
With

LPA 1/2011 & CM No. 6781/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Sachdeva Buildon Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 6/2011 & CM No. 6779/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Vardhman Properties Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 7/2011 & CM No. 6780/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Vardhman Properties Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 8/2011 & CM No. 6782/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Vardhman Properties Ltd. & Ors. .... Respondents

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay  
Goswami, Advocates

With

LPA 9/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Manish Buildwell Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 10/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Manish Buildwell Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

With

LPA 11/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Vardhman Land Developers Pvt. Ltd. & Anr. .... Respondents

None

With

LPA 22/2011 & CM No. 6824/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Pankaj Buildwell Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 23/2011 & CM No. 6832/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Rajesh Projects India Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 24/2011 & CM No. 8168/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Best Realtors (India) Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,

Advocates for UOI

With

LPA 25/2011 & CM No. 6828/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Best City Developers (India) Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 26/2011 & CM No. 6831/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Home Linkers Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 27/2011 & CM No. 6833/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Rajesh Projects India Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 28/2011 & CM No. 6826/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Vardhman Properties Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 45/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

v.

Jindal Biochem Pvt. Ltd. & Ors. .... Respondents

Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 46/2011 & CM No. 8164/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

As Buildwell Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 47/2011 & CM No. 6825/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Maitri Mutual Benefits Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 48/2011 & CM No. 6823/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Nirvan Hire Purchase Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 50/2011 & CM No. 6827/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Nipun Builders & Developers Pvt. Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 51/2011 & CM No. 6829/2011 (Cross Objections)

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Vardhman Properties Ltd. & Ors. .... Respondents

Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With

LPA 53/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.  
ESS CEE CEE & Associates (India) Pvt. Ltd. .... Respondent  
Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay  
Goswami, Advocates  
With  
LPA 54/2011 & CM No. 6004/2011 (Cross Objections)  
Delhi Pollution Control Committee .... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.  
Fargo Estates Pvt. Ltd. .... Respondent  
Mr. Ankit Jain, Advocate  
With  
LPA 58/2011 & CM No. 6830/2011 (Cross Objections)  
Delhi Pollution Control Committee .... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.  
Vardhman Properties Ltd. & Ors. .... Respondents  
Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI  
With  
LPA 94/2011  
Delhi Pollution Control Committee .... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.  
DLF Retailer Developers Ltd. .... Respondent  
Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates  
With  
LPA 95/2011  
Delhi Pollution Control Committee .... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.  
Laxmi Buildtech Pvt. Ltd. & Anr. .... Respondents  
Mr. Kailash Vasdev, Sr. Advocate with Ms. Neoma Vasdev Gupta, Ms. Ekta Mehta  
and Ms. Joanne Pudussery, Advocates for respondent No. 1.  
Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI  
With  
LPA 96/2011  
Delhi Pollution Control Committee .... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.  
Manish Buildwell Pvt. Ltd. & Ors. .... Respondents  
Mr. Sanjay Goswami, Advocate for R-1  
Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With  
LPA 97/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Brightways Housing & Development Ltd. & Anr. .... Respondents

Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates  
for R-1.

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad,  
Advocates for UOI

With  
LPA 98/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

DLF Commercial Developers Ltd. .... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With  
LPA 99/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Galleria Property Management Services Pvt. Ltd. .... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With  
LPA 100/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Prosperous Estates Pvt. Ltd. .... Respondent

None

With  
LPA 101/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Regency Park Property Management Services Pvt. Ltd. ....  
Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

With  
LPA 102/2011

Delhi Pollution Control Committee ..... Appellant

Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.

Paliwal Developers Ltd. .... Respondent

Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

- With  
LPA 103/2011
- Delhi Pollution Control Committee ..... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.
- Ridge View Construction Pvt. Ltd. .... Respondent  
Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates.
- With  
LPA 104/2011
- Delhi Pollution Control Committee ..... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.
- R.C. Sood & Co. Pvt. Ltd. .... Respondent  
Mr. Shobhit Chandra, Advocate
- With  
LPA 709/2011
- Delhi Pollution Control Committee ..... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.
- Lodhi Property Co. Ltd. .... Respondent  
Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates
- With  
LPA 710/2011
- Delhi Pollution Control Committee ..... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.
- Bharti Realty Ltd. .... Respondent  
Mr. Dushyant Manocha and Ms. Tarunima Vijra, Advocates
- With  
LPA 866/2011
- Delhi Pollution Control Committee ..... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.
- Anush Finlease & Construction Pvt. Ltd. .... Respondent  
Mr. Ajay Kumar and Mr. Naveen Tayal, Advocates  
And  
LPA 867/2011
- Delhi Pollution Control Committee ..... Appellant  
Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.  
v.
- Tirupati Infraprojects Pvt. Ltd. .... Respondent  
Mr. Ajay Kumar and Mr. Naveen Tayal, Advocates  
LPA 895/2010; LPA 1/2011; CM No. 6781/2011 (Cross Objections); LPA 6/2011;  
CM No. 6779/2011 (Cross Objections); LPA 7/2011; CM No. 6780/2011 (Cross  
Objections); LPA 8/2011; CM No. 6782/2011 (Cross Objections); LPA 9/2011; LPA  
10/2011; LPA 11/2011; LPA 22/2011; CM No. 6824/2011 (Cross Objections); LPA

23/2011; CM No. 6832/2011 (Cross Objections); LPA 24/2011; CM No. 8168/2011 (Cross Objections); LPA 25/2011; CM No. 6828/2011 (Cross Objections); LPA 26/2011; CM No. 6831/2011 (Cross Objections); LPA 27/2011; CM No. 6833/2011 (Cross Objections); LPA 28/2011; CM No. 6826/2011 (Cross Objections); LPA 45/2011; LPA 46/2011; CM No. 8164/2011 (Cross Objections); LPA 47/2011; CM No. 6825/2011 (Cross Objections); LPA 48/2011; CM No. 6823/2011 (Cross Objections); LPA 50/2011; CM No. 6827/2011 (Cross Objections); LPA 51/2011; CM No. 6829/2011 (Cross Objections); LPA 53/2011; LPA 54/2011; CM No. 6004/2011 (Cross Objections); LPA 58/2011; CM No. 6830/2011 (Cross Objections); LPA 94/2011; LPA 95/2011; LPA 96/2011; LPA 97/2011; LPA 98/2011; LPA 99/2011; LPA 100/2011; LPA 101/2011; LPA 102/2011; LPA 103/2011; LPA 104/2011; LPA 709/2011; LPA 710/2011; LPA 866/2011; and LPA 867/2011

Decided on January 23, 2012

PRADEEP NANDRAJOG, J.

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal (s).

2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take action afresh and guided by the decision of the learned Single Judge.

3. The buildings with respect where to action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a '*consent to establish*' as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '*the Water Act*') and '*consent to operate*' as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '*the Air Act*').

4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.

5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under: -

" 2. Definitions.- In this Act, unless the context otherwise requires,-

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h) .....

(i) .....

(j) .....

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

#### 25. Restrictions on new outlets and new discharges.-

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

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

(b) .....

(c) .....

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

(2) .....

(3) .....

(4) .....

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to

establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) .....

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) .....

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

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

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

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

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under: -

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) 'air pollutant' means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) 'emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) 'industrial plant' means any plant used for any industrial or trade purposes and

emitting any air pollutant into the atmosphere;

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

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

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

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

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) .....

(6) .....

(7) .....

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

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

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

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

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression

*'establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being discharged but would also encompass if 'sewage effluent' was discharged and with reference to the definition of 'sewage effluent' as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of 'trade effluent' as per Section 2(k) of the Water Act. Noting the definition of the words 'operation' and 'process' in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that *collective operation or process of bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes*. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of 'trade effluent' as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided in Sub-Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under: -

"29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

(i) Section 25(1) of the Water Act is intended to cover not just 'industry' which discharges 'trade effluent' but any 'process or operation' that results in a discharge of 'sewage' not limited to trade effluent.

(ii) The words 'operation or process' occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.

(iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.

(iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

(v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.

(vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.

(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced."

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word 'establish' and had only the word 'operate' in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under: -

"41. The position under the Air Act may be summarized:

(i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of 'air pollution' under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21 (1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, 'no person could establish or take any steps to establish any industry, operation or process,..... which is likely to discharge sewage or trade effluent'. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass '*any industry, operation or process*'?

18. The Water Act does not define, 'industry', 'operation' or 'process'. As held in the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa v. N.C. Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. v. Commissioner of Income Tax*, the ordinary dictionary meaning of 'industry' or an 'industrial undertaking' would not include the activity of construction. The word 'operation' is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Leslie Brown Ed.) as follows:

"operation: An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, esp one forming a step in a process."

19. The same dictionary defines 'process', as noted by the learned Single Judge, as under: -

"process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end."

20. As noted herein above, applying purposive construction, the learned Single Judge

has held, in para 15, that the two words 'operation' and 'process' have to be given their widest amplitude and meaning. The purposive construction applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of '*operation*' and '*process*', and ignore the sweep of the span of the two words. We do so. Operation is defined as an *activity or an act of a practical or technical nature*, with emphasis of the acts forming '*a step in a process*'. The word '*process*' is a going on action or a continuous series of actions '*directed at a particular end*'. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression '*establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent*' would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 *Commissioner of Income Tax Orissa v. N.C. Budhiraja & Co.* and 2010 (320) ITR 420 (Delhi) *Ansal Housing & Construction Ltd. v. Commissioner of Income Tax*, where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of 'environment' therein being defined to include water, air and land and the inter

relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: 'Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any industrial plant in an Air Pollution Control Area. Section 2(k) defines an 'industrial plant' to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words 'establish or' have been inserted prior to the word 'operate', we need to re-look into the issue.

31. Highlighting the definition of the words 'industrial plant' as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words 'industrial plant' to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.

32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression 'industrial plant', which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression 'industrial plant'. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of 'to operate' is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra*, 1994 (4) SCC 276 *J.K. Synthetics Ltd. & Birla Cement Works v. Commercial Taxes Officer* 1997 (6) SCC 479 *India Carbon Ltd. v. State of Assam* to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being

empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to

be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 *Mafatlal Industries Ltd. v. UOI*, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

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2021 SCC OnLine SC 1247

In the Supreme Court of India  
(BEFORE INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.)

Electrosteel Steels Limited ... Petitioner(s);  
*Versus*

Union of India and Others ... Respondent(s).

Civil Appeal Nos. 7576-7577 of 2021 [Arising out of SLP (C.) Nos. 11226-11227 of 2020]

Decided on December 9, 2021

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.: — Leave granted.

2. These Appeals are against an order dated 16<sup>th</sup> September 2020 passed by a Single Bench of the High Court of Jharkhand in W.P. (C) No. 1873 of 2018 and W.P. (C) No. 4850 of 2018, discontinuing the interim orders earlier passed by the High Court, allowing the Appellant to operate its unit under the supervisory regulatory control of the Respondent - Jharkhand State Pollution Control Board, hereinafter referred to as "JSPCB", which had been in force for over two years.

3. The Appellant owns and runs a 1.5 MTPA integrated steel plant in Bokaro District in Jharkhand. The said steel plant in Bokaro, which employs 3,000 regular employees and 7000 contractual employees, produced steel worth Rs. 4,200 crores in the financial year 2019-20.

4. The Appellant claims that about 30,000 persons other than those actually employed by the steel plant as regular or contractual employees depend on the steel plant for their livelihood.

5. Corporate Insolvency Resolution Process (CIRP) had commenced against the Appellant under the Insolvency and Bankruptcy Code 2016. As successful Resolution Applicant, Vedanta Ltd. took over the Appellant on or about 4<sup>th</sup> June 2018 upon payment of Rs. 5,320 crores for discharge of its debts.

6. Pollution and consequential deterioration of environment has been assuming alarming proportions, and has become a cause of universal concern. Fumes, smoke, emission of green house gases by use of motors and machines and operation of mills, factories and plants cause environmental degradation.

7. Under the aegis of the United Nations discussions and deliberations have been held to protect and improve environment and prevent pollution.

8. In 1972, the United Nations Conference on the Human Environment was convened in Stockholm to work out ways and means to protect and improve the environment. In course of deliberations, it was felt that there was need to enact law to tackle environmental pollution. India participated in the conference and strongly voiced environmental concerns.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "*the 1986 Act*", has been enacted as a consequence of decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972.

10. The statement of objects and reasons for enactment of the 1986 Act declares that the Act has been prompted by concern over environment, that has grown the world over, since the sixties.

11. Sub-Section (1) of Section 3 of the 1986 Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the

purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

12. Sub-section (2) of Section 3 of the 1986 Act enables the Central Government to take, *inter alia*, the following measures:

*“(i) co-ordination of actions by the State Governments, officers and other authorities—*

*(a) under this Act, or the rules made thereunder; or*

*(b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

*Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances;*

*(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*

*(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*

*(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;*

*(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*

*(xii) collection and dissemination of information in respect of matters relating to environmental pollution;*

*(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*

*(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.”*

13. Sub-section (3) of Section 3 of the 1986 Act provides as follows:

*“The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred*

*to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."*

14. Subject to the provisions of the 1986 Act, the Central Government has power under sub-section (1) of section 3 to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

15. Section 5 of the 1986 Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the 1986 Act, the Central Government may, in exercise of its powers and performance of its functions under the 1986 Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

16. In exercise of powers conferred by Sub-Section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 the Central Government issued the Environmental Impact Assessment Notification dated 27<sup>th</sup> January 1994 directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernisation of any activity or a new project listed in Schedule I of the Notification shall not be undertaken in any part of India, unless it has been accorded Environmental Clearance (EC) by the Central Government in accordance with the procedure specified in the Notification.

17. Under Clause (2)(1) of the said Notification, any person who desires to undertake any new project listed in Schedule I is required to submit an application to the Secretary, Ministry of Environment and Forests (MoEF), New Delhi in the pro forma specified in Schedule II, accompanied by a project report which is to include the EIA (Environmental Impact Assessment) Report/Environment Management Plan (EMP) prepared in accordance with the guidelines issued by MoEF. Another Environmental Impact Notification was issued in 2006, for grant of Terms and Environmental Clearance *inter alia* for projects which had started work on site.

18. The EIA Report submitted with the application of the project proponent is to be evaluated and assessed by the Impact Assessment Agency (IAA), that is MoEF, and if deemed necessary, it may consult a Committee of Experts constituted in the manner prescribed in Schedule III. The Committee of Experts shall have full right of entry and inspection of the site. The Impact Assessment Agency is to prepare a set of recommendations based on technical assessment of documents and data, furnished by the project proponent, supplemented by data collected during visits to sites, interaction with the affected population and environmental groups, if necessary. The summary of the reports, the recommendations and the conditions, subject to which EC is given shall, subject to public interest, be made available to the parties concerned or environmental groups on request. The IAA may solicit comments of the public within the specified period by arranging public hearings for that purpose. The public shall, subject to public interest, be provided access, to the summary of the EIA Report/Environment Management Plan (EMP). The clearance granted for commencement of the construction or operation of the plant, is to be valid for five years. Clause IV of the Environmental Impact Assessment Notification provides for the monitoring of the implementation of the conditions of EC and/or the recommendations and conditions laid down by IAA.

19. A minor amendment was made to the said Environmental Impact Assessment Notification dated 27<sup>th</sup> January 1994, by a Notification dated 10<sup>th</sup> April 1997, which

prescribes a detailed procedure for public hearing.

20. By a notification being S.O. 327(E), dated 10<sup>th</sup> April 2001, published in the Gazette of India, Extra., Pt.II, Sec.3(ii), dated 12<sup>th</sup> April 2001, the Central Government has delegated the powers vested in it under Section 5 of the 1986 Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority for the violations of the standards and rules relating to biomedical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the Environment (Protection) Act, 1986 subject to the condition that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest.

21. On or about 8<sup>th</sup> January 2007, the Appellant applied to the Ministry of Environment, Forest and Climate Change, Government of India, hereinafter referred to as "MoEF&CC" for grant of EC to establish 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District.

22. In its application, the Appellant stated that 1350 acres of land were required for establishing the said plant at the Mauza South Parbatpur of Chandankiyari Block of Bokaro District and that no forest land was involved in the project.

23. By a letter No. F. No. J-11011/137/2006-1A-II (i) dated 21<sup>st</sup> February 2008, the Appellant was granted EC. After obtaining EC, the Appellant applied to the JSPCB, for grant of 'Consent to Establish' (CTE) under the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as the Air Pollution Act, and Water (Prevention and Control of Pollution) Act 1974, hereinafter referred to as the Water Pollution Act.

24. On 5<sup>th</sup> May 2008, the JSPCB granted CTE to the Appellant to establish the 3 MTPA integrated steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District. The CTE was granted on the basis of the EC granted by the MoEF&CC.

25. The CTE was extended from time to time till 4<sup>th</sup> May 2011. Even though CTE was granted to the Appellant to establish a steel plant at Mauza South Parbatpur of Chandankiyari Block of Bokaro District, the Appellant established steel plant in Mauza Bhagabandh in the Chas Block in Bokaro District, 5.3 Kms away from the site for which EC and CTE had been granted.

26. A Circular No. J-11013/41/2006-1A.2(i) dated 22<sup>nd</sup> January, 2010 was issued by the Ministry of Environment and Forest (MoEF) of the Government of India which provided as follows:

*"Instances have come to the notice of this Ministry wherein the project proponents have changed the project site after the said project has been granted environmental clearance or after the public hearing has been held. The project proponents have approached this Ministry to revalidate the environmental clearance so granted without undergoing afresh the procedure prescribed for obtaining environmental clearance. The matter has been considered in the ministry. The change in project site would lead to change in project affected people as well as the change in study area and the impact zone. As such the Environment Impact Assessment Report and Public Hearing conducted for a particular location cannot be taken valid for the changed location.*

*Accordingly, it has been decided that any shift in project site location after holding of public hearing will be deemed to be a new proposal and will be appraised afresh as per the procedure prescribed under EIA Notification 2006 provided the respective Expert Appraisal Committee is satisfied that the shift is so minor as to have no change in EIA/EMP, duly recorded in the minutes and prior approval of advisor (In-charge)/SEIAA for Category 'A'/Category 'B' projects respectively is*

*obtained for not holding the public hearing for the changed location afresh.*

*This issues with the approval of the Competent Authority."*

27. By a communication being Reference No. 1142 dated 4<sup>th</sup> May 2010, the District DFO (District Forest Officer) Bokaro requested JSPCB to take action against the Appellant for setting up its integrated steel plant on forest land in Mauza Bhagabandh of Chas Block of Bokaro District, in violation of the Forest Conservation Act 1980 and Indian Forest Act 1927. The DFO, Bokaro reported encroachment of 220.88 acres of notified forest land by the Appellant to JSPCB.

28. It appears that cases had been initiated against the officials of the Appellant under the Indian Forest Act, 1927, Forest Conservation Act, 1980 and the Bihar Public Land Encroachment Act, 1955 which have been quashed by the Jharkhand High Court, by an order dated 25<sup>th</sup> January 2011.

29. On or about 23<sup>rd</sup> September 2010 the Appellant applied for Consent to Operate (CTO) under the Air Pollution Act and the Water Pollution Act for its 350 m<sup>3</sup> blast furnace. Later on 9<sup>th</sup> September 2011, the Appellant applied for CTO in respect of its entire plant.

30. By a letter dated 2<sup>nd</sup> December 2011, addressed to the Appellant, the MoEF confirmed that the lay out of the Appellant's 3 MTPA Integrated Steel Plant was well within the Environment Impact Area and that the affected people had the opportunity to participate in a public hearing.

31. By letter dated 18<sup>th</sup> May 2012, the JSPCB reported encroachment by the Appellant upon forest land and alleged violation by the Appellant of the Forest Conservation Act, 1980 to the MoEF&CC, New Delhi. The MoEF&CC was also informed of the unauthorized shifting of the integrated steel plant from Mauza South Parbatpur of Chandankiyari Block of Bokaro District to Mauza Bhagabandh of Chas Block of Bokaro District in violation of the conditions of Environment Clearance granted by the MoEF&CC.

32. Pursuant to the report of JSPCB, MoEF&CC issued a Show Cause Notice dated 6<sup>th</sup> June 2012 to the Appellant under Section 5 of the 1986 Act. The Appellant submitted its reply to the Show Cause Notice on 20<sup>th</sup> June 2012.

33. On 10<sup>th</sup> September 2012, the Appellant once again applied to JSPCB for CTO for one year under the Water Pollution Act and Air Pollution Act. According to the Appellant, several reminders were sent to MoEF&CC requesting MoEF&CC to intimate JSPCB of the outcome of the Show Cause Notice issued to the Appellant. However, JSPCB has not been informed of the decision of MoEF&CC.

34. The Appellant filed a Writ Petition being W.P. No. 2247/2012 in the Jharkhand High Court for orders on JSPCB to grant the Appellant CTO. The said writ petition was disposed of by an order dated 5<sup>th</sup> November 2012, the operative part whereof is set out hereinbelow:—

*"Respondent 1 & 2 to consider the petitioner's application and as assured by them, if so required, give an opportunity of hearing to the petitioners and after taking into consideration the facts and provisions of law and the related decisions, shall dispose of the petitioner's application within five weeks from the date of receipt/production of a copy of this order."*

35. On or about 27<sup>th</sup> November 2013, the application of the Appellant for CTO was rejected on the ground that the Appellant had shifted the site of its steel Plant and had encroached upon forest land in violation of the Forest Conservation Act, 1980. The operative part of the order dated 27<sup>th</sup> November 2013 reads:—

*"at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of*

*Pollution) Act, 1981 & u/s 25(4) of Water (Prevention and Control of Pollution) Act, 1974 by "refusing" the CTO to the unit for the reason aforesaid."*

36. The Appellant filed an application for contempt being Contempt Case (C) No. 939 of 2013 in W.P.(C) No. 2247 of 2012 in the Jharkhand High Court. Pursuant to an order dated 29<sup>th</sup> November 2013 in the Contempt Petition, the JSPCB disposed of the applications for grant of CTO to the Appellant.

37. By a letter dated 17<sup>th</sup> April 2013, the MoEF&CC had called for a status report from the State of Jharkhand in respect of forest land encroached by the Appellant. The Forest Department submitted a report to the MoEF&CC on 13<sup>th</sup> May, 2014.

38. Thereafter, by a letter dated 20<sup>th</sup> October 2014, the MoEF&CC, New Delhi directed the Department of Forest, Environment and Climate Change, Government of Jharkhand to take action against the Appellant for violating the provisions of Indian Forest Act, 1927 and Forest Conservation Act, 1980. In compliance with the aforesaid order, JSPCB directed the Appellant to close down its plant under Section 31(A) of the Air Pollution Act and Section 33(A) of Water Pollution Act.

39. By a Memo No. 521 dated 6<sup>th</sup> February 2015, the Department of Forest, Environment and Climate Change, Government of Jharkhand directed the DGP, Jharkhand, Ranchi and the Deputy Commissioner, Bokaro to take action against the Appellant in the light of the letter dated 20<sup>th</sup> October, 2014 of the MoEF&CC, Government of India and to submit an action taken report.

40. The aforesaid order of JSPCB was challenged by the Appellant by filing a Writ Petition being WP(C) No. 2033 of 2015 in the Jharkhand High Court. By an order dated 5<sup>th</sup> February 2016 the High Court set aside the order of the JSPCB holding that the same had been passed in violation of principles of natural justice. The High Court however, held that JSPCB would be at liberty to pass an order in accordance with law after giving the Appellant an opportunity of hearing.

41. Thereafter, a show cause notice dated 25<sup>th</sup> April 2016, was issued to the Appellant. The Appellant replied to the show cause notice on 28<sup>th</sup> September 2016, contending that the Appellant had not set up its plant on any forest land and that all pollution control measures had been taken. However, the Principal Chief Conservator of Forests (PCCF), Jharkhand had by a communication No. 2966 dated 8<sup>th</sup> August 2016 informed JSPCB that the Appellant had encroached forest land. Thereafter JSPCB once again called upon the Appellant to show cause in the light of information provided by the PCCF, Jharkhand. The Appellant by a letter dated 28<sup>th</sup> September 2016 reiterated that there was no forest land in the plant premises.

42. JSPCB passed an order No. B-319 dated 13<sup>th</sup> February 2017 disposing of the show cause notice in the light of the direction dated 5<sup>th</sup> February 2016 of the Jharkhand High Court and the applications for CTO. JSPCB granted CTO to the Appellant which was valid till 31<sup>st</sup> December, 2017.

43. The MoEF&CC and the State Environment Impact Assessment Authorities had, in the meanwhile been receiving proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of Reference and Environmental Clearance for projects which had started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance.

44. The MoEF&CC deemed it necessary that all entities not complying with the environmental regulation under Environment Impact Assessment Notification, 2006, be brought to comply with the environmental laws in expedient manner, for the purpose of protecting and improving the quality of the environment and reducing environmental pollution.

45. The MoEF&CC deemed it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than

leaving them unregulated and unchecked, which would be more damaging to the environment.

46. In furtherance of this objective, the Government of India deemed it essential to establish a process for appraisal of cases of violation of norms, and prescribing such adequate environmental safeguards that would deter violation of the provisions of Environment Impact Assessment Notification, 2006 and ensure that damage to environment was adequately compensated for.

47. In *Indian Council for Enviro-Legal Action v. Union of India*<sup>1</sup>, the Supreme Court analyzed relevant provisions of environmental laws and concluded that damages might be recovered under the provisions of the 1986 Act, inter alia, to implement measures that were necessary or expedient for protecting and promoting the environment. This Court affirmed that the power of the Central Government under Section 3 of the 1986 Act was wide and included the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures could also be looked into from the principle "polluter pays."

48. In exercise of power under Section 3(1) and Section 3(2)(v) of the 1986 Act read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification being S.O. 804(E) dated 14<sup>th</sup> March 2017 which provides for grant of ex post facto EC for project proponents who have commenced, continued or completed a project without obtaining EC under the 1986 Act or the EIA notification issued under it.

49. Paragraphs 3, 4 and 5 of the said notification, read as follows:

*"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.*

*(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.*

*(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."*

50. On or about 24<sup>th</sup> August 2017, the Appellant applied for CTO for five years. On

13<sup>th</sup> November 2017, JSPCB issued a Show Cause Notice to the Appellant pointing out alleged contraventions of the conditions of Consent to Operate (CTO) earlier granted to the Appellant. The Appellant was called upon to show cause whether conditions of the CTO had been contravened while the application of the Appellant for CTO for five year was pending.

51. On 23<sup>rd</sup> November 2017, the Appellant submitted its online reply to the Show Cause Notice showing compliance of the conditions of the CTO.

52. By a communication No. 2105 dated 18<sup>th</sup> December 2017 JSPCB requested MoEF&CC to inform JSPCB of the decision on the show cause notice issued to the Appellant under Section 5 of the 1986 Act for revocation of the EC for non compliance of the conditions for grant of EC for the integrated plant at Parbatpur, Jharkhand.

53. Aggrieved by the failure of JSPCB to issue/renew the CTO to the Appellant, pursuant to its application made on 24<sup>th</sup> August 2017, the Appellant filed a writ petition being W.P.(C) No. 1873 of 2018 in the Jharkhand High Court on or about 12<sup>th</sup> April 2018 seeking directions on the JSPCB to issue CTO to the Appellant.

54. By an order dated 16<sup>th</sup> July 2018, the High Court directed the JSPCB to take a final decision on the application of renewal/grant of CTO filed by the Appellant on 24<sup>th</sup> August 2017 within the time stipulated in the said order.

55. The High Court further passed an interim order directing that the Appellant be allowed to operate its unit under the supervisory and regulatory control of the JSPCB, who might carry out periodical check as to adherence by the Appellant of pollution control laws.

56. JSPCB passed an order dated 21<sup>st</sup> August, 2018, rejecting at that stage the request of the Appellant for CTO, subject to the decision of MoEF&CC on the show cause notice issued to the appellant. The operative part of the said order is set out hereinbelow:

*"at this stage subject to final outcome of the decision of MoEF&CC, New Delhi with respect to show cause notice dated 6.6.2012, we dispose the application for CTO in exercise of power conferred u/s 21(4) of Air (Prevention and Control of Pollution) Act, 1981 & u/s 25(40 of Water (Prevention and Control of pollution) Act, 1974 by "refusing" the CTO to the unit for the reason aforesaid."*

57. The Appellant, thereafter approached the High Court with a prayer for amendment of Writ Petition No. 1873 of 2018. By an order dated 25<sup>th</sup> August 2018, the High Court allowed the application for amendment of the Writ Petition and directed the respondent to file their response to the amended writ petition. The High Court further directed:—

*"10. So far as interim relief is concerned, this court finds that the order passed by the respondent-Jharkhand State Pollution Control Board dated 23.08.2018 appears to be directly dependent on the final decision which is yet to be taken by the Ministry of Environment, Forest & Climate Change on the show cause issued to the petitioner as back as in the year 2012. As per the submission made by the counsel appearing on behalf of Union of India, they are shortly going to take a final decision in the matter after hearing the petitioner. Accordingly the operation, implementation and execution of the order dated 23.08.2018 passed by Jharkhand State Pollution Control Board is hereby stayed till 27.09.2018 and the interim order dated 16.07.2018 is hereby extended till 27.09.2018.*

*11. So far as decision of the Ministry of Environment, Forest & Climate Change are concerned, considering the fact that the unit of the petitioner is running unit and large number of employees are working in this unit of the petitioner, this court consider it appropriate that the issue regarding the environmental clearance of the petitioner should be decided at the earliest.*

*12. It is further observed that it is open to the petitioner to approach the Union*

*of India with their proposal/application for regularization of the alleged violation, without prejudice to their rights (including right, title, interest, possession and nature of property of the petitioner) and advance submissions before the respondent authority of Union of India pursuant to the show cause notice issued to them dated 6.6.2012 and the appropriate authority may, if possible, simultaneously consider the aforesaid application of the petitioner for regularization along with the show cause reply of the petitioner such that entire dispute is decided and the petitioner may also have a clarity about the fate of its unit. The decision which is to be taken by the Union of India be brought on record by either of the parties by filing supplementary affidavit latest by 25.09.2018.*

13. I.A. No. 7610 of 2018 and I.A No. 7613 OF 2018 are hereby disposed of.

14. *It is made clear that this court has not gone into the merits of the claim of the petitioner and it will be open to the respondent no 3 to take decision as per law."*

58. By the aforesaid order dated 25<sup>th</sup> August 2018, the High Court directed MoEF to take a decision on the application of the Appellant for EC as also a decision regarding violation by the Appellant of the provisions of EC by encroachment upon forest land by shifting the location of the plant.

59. On 31<sup>st</sup> August 2018, MoEF&CC issued a show cause notice No. F. No. J-11011/137/2006-1A Pt.II (i) dated 31<sup>st</sup> August 2018 to the Appellant for violating the provisions of the EC by shifting the location of its plant and encroaching upon forest land.

60. The Respondent No. 1 was also accorded personal hearing on 10<sup>th</sup> September 2018. On 12<sup>th</sup> September 2018 Mr. Gyanesh Bharti who presided over the personal hearing was transferred from MoEF&CC.

61. On 20<sup>th</sup> September 2018 the Respondent No. 1 issued an order bearing No. F. No. J-11011/137/2006-1A.II(I) revoking the EC of the Appellant on the ground that the Appellant had encroached upon 220 acres of forest land and had shifted the location of its plant from Parbatpur to Bhagabandh, violating the conditions stipulated in the EC.

62. The Appellant filed Writ petition being W.P. (C) No. 4850 of 2018 in the Jharkhand High Court challenging the revocation of the EC granted to the Appellant.

63. On 27<sup>th</sup> September 2018 the High Court passed an interim order staying the operation, implementation and execution of the impugned order dated 20<sup>th</sup> September 2018. The Court prima facie found that the impugned order, passed in violation of principles of natural justice, had serious repercussions on the unit of the Appellant which was a running unit, and had caused prejudice to the Appellant.

64. On 4<sup>th</sup> October 2018, the Appellant applied for ex post facto Forest Clearance (FC) without prejudice to its rights and contentions. On 27<sup>th</sup> November 2019 the Appellant applied for a "revised" EC without prejudice to its rights and contentions. In the meanwhile, the Interim order passed by the High Court on 27<sup>th</sup> September 2018 was extended from time to time. Such extensions were granted on 10.10.2018, 5.11.2018, 11.12.2018, 8.1.2019, 23.1.2019, 16.5.2019, 25.7.2019 and 17.10.2019.

65. On 17<sup>th</sup> December 2019, MoEF&CC passed an order according ex post facto in principle approval for the forest diversion/clearance proposal of the Appellant. The operative part of the said order reads:—

*"After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee and approval of the same by the competent authority of the MoEF&CC, New Delhi, the Central Government hereby accords ex-post facto 'in-principle' approval under Section-2 of the Forest (Conservation) Act, 1980 for diversion of 184.23 ha of forest land*

(174.39 ha encroached (ex-post facto) and 9.84 ha virgin land) in favour of M/s Electrosteel Steels Limited in the State of Jharkhand subject to fulfilment of following conditions:—

(i) Legal status of the diverted forest land shall remain unchanged;...”

66. By an order dated 26<sup>th</sup> February 2020, the Jharkhand High Court directed that the pendency of W.P. (C) No. 4850 of 2018 and W.P. (C) No. 1873 of 2018 would not come in the way of consideration by the MoEF&CC of grant or refusal of restoration of EC and it would be open to the Ministry to take appropriate decision in accordance with law. The interim orders in force were extended.

67. Thereafter by a letter dated 2<sup>nd</sup> March 2020, the Appellant requested MoEF&CC to consider the application of the Appellant for revised EC. In the meanwhile, the interim orders passed by the High Court were further extended. The interim orders were extended by orders passed on 26.2.2020, 7.4.2020 and 29.5.2020.

68. The Writ Petition was called for hearing on 19<sup>th</sup> June 2020 whereupon it was submitted on behalf of the Respondent No. 1 that the revised EC application of the Appellant would be placed before the Expert Appraisal Committee (EAC) for consideration on merit and Violation Committee would decide on the action to be taken against the Appellant for violation of Environment (Protection) Act, 1986.

69. On 6<sup>th</sup> August 2020 and 7<sup>th</sup> August 2020, the case of the Appellant was placed before the EAC at its 35<sup>th</sup> meeting. The Appellant was invited to present its proposal online before the Committee.

70. After detailed deliberation, the EAC appraised the proposal on merits and recommended issuance of Standard Terms of Reference along with Specific Terms of Reference for undertaking Environmental Impact Assessment (EIA) and preparation of Environment Management Plan (EMP). The EAC noted that the plant was a running unit and the EC was subject to the conditions imposed in the Terms of Reference.

71. On 4<sup>th</sup> September 2020, the Jharkhand High Court extended the interim orders till 8<sup>th</sup> September 2020 while awaiting response from the Respondents. On 8<sup>th</sup> September 2020, the High Court reserved orders on the extension of interim orders dated 16<sup>th</sup> July 2018 and 27<sup>th</sup> September 2018 while listing the writ petitions for final hearing on 16<sup>th</sup> September 2020.

72. On 15<sup>th</sup> September 2020, the Respondent No. 1 filed an affidavit stating that it had no objection to extension of the interim orders considering that the steel plant employed a large workforce. At the hearing on 16<sup>th</sup> September 2020 JSPCB also consented to extension of the interim order. However, the High Court passed the impugned order dated 16<sup>th</sup> September 2021 dis-continuing the earlier interim orders on, *inter alia*, the following grounds:

- (i) The Expert Appraisal Committee of the MoEF&CC had, after detailed deliberations, found that the Appellant had been in violation of the EIA Notification 2006 and general condition no. (ii) of the EC dated 21.02.2008.
- (ii) The MoEF&CC had while issuing ToR for grant of EC recommended action against the Appellant under Section 19 of the 1986 Act for past violations. Extension of the interim orders would amount to staying action.
- (iii) In *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, this Court had deprecated ex post facto Ecs but passed certain directions in exercise of powers under Article 142 of the Constitution.

73. By an Office Memorandum, being F. No. 22-21/2020-1A III, dated 7<sup>th</sup> July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for Identification and Handing of violation cases under EIA Notification 2006.

74. The said Office Memorandum, *inter alia*, reads:

“The Ministry had issued a notification number S.O.804(E), dated the 14<sup>th</sup> March,

2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. v. Synochem Organics Pvt. Ltd. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar v. Central Ground Water Authority, vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire v. Chief Secretary, Government of Maharashtra, vide order dated 24.05.2021 has directed that "... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the list of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."

75. The Standard Operating Procedure formulated by the said Office Memorandum dated 7<sup>th</sup> July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in *Alembic Pharmaceuticals* (supra).

76. In terms of the Standard Operating Procedure, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

77. By an interim order passed on 15<sup>th</sup> July 2021 in WP(MD) 11757 of 2021 in *Fatima v. Union of India*, the Madurai Bench of Madras High Court has stayed the operation of the Standard Operating Procedure.

78. By an order dated 25<sup>th</sup> August 2021, MoEF&CC rejected the application of the Appellant for the time being. The application has, in effect, been kept in abeyance.

79. The MoEF apparently did not take any decision on the application of the Appellant for EC, since the Standard Operating Procedure issued by it has been stayed by the Madurai Bench of Madras High Court, by the said order dated 15<sup>th</sup> July 2021, citing the judgment of this Court in *Alembic Pharmaceuticals* (supra).

80. The Appellant has filed an application being I.A No. 125221 of 2021 in this appeal seeking directions on the Respondent No. 1 to process the Appellant's application dated 5<sup>th</sup> August 2020 for revised EC.

81. There can be no doubt that the need to comply with the requirement to obtain

Environment Clearance is non-negotiable. A project can be set up or allowed to expand subject to compliance of the requisite norms. Environmental clearance is granted on condition of the suitability of the site to set up the project from the environmental angle, and existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations, it is imperative that pollution laws be strictly enforced. Under no circumstances, can industries which pollute be allowed to operate unchecked and degrade the environment.

82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.

83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.

84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

85. As held by a three Judge Bench of this Court in *Lafarge Umiyam Mining Private Limited v. Union of India*<sup>3</sup> ("Lafarge") reported in (2011) 7 SCC 338:

*"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."*

86. In *Alembic Pharmaceuticals* (supra) this Court observed:—

*"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.*

87. In *Alembic Pharmaceuticals* (supra), this Court deprecated ex-post facto clearances, but this Court did not pass orders for closure of the three industries concerned, on consideration of the consequences of their closure. This court proceeded to observe and held:—

*44. The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs until 14 May 2003 in the case of Alembic Pharmaceuticals Limited, 17 July 2003 in the case of United Phosphorous Limited, and 23 December 2002 in the case of Unique Chemicals Limited. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index<sup>4</sup> report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution<sup>5</sup>. In the Interim Assessment of CEPI for 2011, the report indicates similar critical figures<sup>6</sup> of pollution in the Ankleshwar area. The CEPI scores for 2013<sup>7</sup> and 2018<sup>8</sup> were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.*

*45. Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5 November 1998 permitting applications for ECs to be filed by 31 March 1999, which was extended subsequently to 30 June 2001. On 14 May 2002, the deadline was extended until 31 March 2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to*

*the notice of this Court in Goa Foundation (I) v. Union of India<sup>2</sup>. Fourth, though in the context of the facts of the case, this Court in Lafarge Umiam Mining Private Limited v. Union of India<sup>10</sup> ("Lafarge") has upheld the decision to grant ex post facto clearances with respect to limestone mining projects in the State of Meghalaya. In Lafarge, the Court dealt with the question of whether ex post facto clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the ex post facto clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project."*

*(Emphasis supplied)*

46. After advertent to the decision in Lafarge, another Bench of three learned judges of this Court in Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai<sup>11</sup>, dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday U. Lalit speaking for the Bench held thus:

*"19...the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper."*

47. The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the appellant's unit and instead held thus:

*"20. At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1-2010, the expansion of the project has been undertaken and as reported by CPCB in its affidavit filed on 7-7-2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court. If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today."*

*(Emphasis supplied)*

48. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of

workers in their industrial units.

49. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs. 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016."

88. The Notification being SO 804(E) dated 14<sup>th</sup> March, 2017 was not an issue in *Alembic Pharmaceuticals* (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27<sup>th</sup> January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

89. We are of the view that the High Court erred in passing the impugned order, vacating interim orders which had been in force for two years. The impugned order is not in conformity with the principle of proportionality. This is not a case where the steel plant was started without environmental clearance or consent of JSPCB. The Appellant had applied for and obtained environmental clearance to set up an integrated steel plant (3MTPA) on 1350 acres of land at Mauza South Parbatpur, as observed above. Environmental Clearance had been granted on 21<sup>st</sup> February 2008 and Consent to Operate had been granted by JSPCB on 5<sup>th</sup> May 2008.

90. The Appellant established its steel plant in Mauza Bhaadaband. 5.3 kms away

from the site for which EC and CTE had been granted. It is the contention of the Appellant that the shift is minor and makes no change in the EIA/EMP on the basis of which EC has been granted. The shift did not require fresh public hearing in terms of the Circular dated 22<sup>nd</sup> January 2010 of the MoEF.

91. As aforesaid, by a letter dated 2.12.2011 addressed to the Appellant, the MoEF confirmed that the steel plant of the Appellant was within the Environment Impact Area and the affected people had the opportunity to air their views in a public hearing. The question is whether the Petitioner was required to obtain fresh prior clearance for shifting or was covered by the exemption under the said Notification dated 22<sup>nd</sup> January 2010.

92. The Appellant has all along asserted that no part of the premises of the integrated steel plant is in any forest. As such there was no violation of the Indian Forest Act, 1927 or the Forest Conservation Act, 1980. The MoEF had also confirmed that the steel plant in question was well within the Environment Impact Area and the affected people had the opportunity in a public hearing. Be that as it may, whether the shifting of the site has really made any difference from the environmental impact angle requires consideration by the appropriate authority/forum.

93. In any case, the Appellant has duly applied for ex post facto forest clearance approval without prejudice to its rights and contentions that its steel plant is not on forest land and also applied for revised EC. On 17<sup>th</sup> December 2019, MoEF&CC accorded ex post facto in principle approval to the forest clearance proposal on the recommendations of the Forest Advisory Committee. The application for revised clearance is pending consideration. No final decision has however been taken, ostensibly in view of the interim order passed by the Madras High Court staying the operation of the Standard Operation Procedures issued vide Memorandum dated 7<sup>th</sup> July 2021.

94. The interim order passed by the Madras High Court appears to be misconceived. However, this Court is not hearing an appeal from that interim order. The interim stay passed by the Madras High Court can have no application to operation of the Standard Operating Procedure to projects in territories beyond the territorial jurisdiction of Madras High Court. Moreover, final decision may have been taken in accordance with the Orders/Rules prevailing prior to 7<sup>th</sup> July, 2021.

95. In passing the impugned order the High Court overlooked the consequences of closure of an integrated steel plant with a work force of 300 regular and 700 contractual workers. The High Court also failed to appreciate that the judgment of this Court in *Alembic Pharmaceuticals* (supra) was distinguishable on facts. Furthermore, continuance of the interim orders allowing operation of an industrial establishment or even the grant of revised EC to the industrial establishment cannot stand in the way of action against that establishment for contraventions, including the imposition of penalty, on the principle 'polluter pays'. The scope and effect of Section 32A of the IBC is a different issue. This Court need not examine into the question of whether penal action can be initiated against the Appellant or, whether compensation can be recovered from the Appellant, at this stage. The issue may be decided by the appropriate authority at the appropriate stage when it adjudicates an action for penalization of the Appellant or recovery of compensation from the Appellant. The application of the Appellant for revised EC, CTO etc. shall be considered strictly in accordance with environmental norms.

96. The appeals are allowed. The impugned order is set aside. The Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO.

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<sup>1</sup> (1996) 3 SCC 212

<sup>2</sup> 2020 SCC OnLine SC 347

<sup>3</sup> (2011) 7 SCC 338

<sup>4</sup> "CEPI"

<sup>5</sup> CEPI score - 88.50

<sup>6</sup> CEPI score - 85.75

<sup>7</sup> CEPI score - 80.93

<sup>8</sup> CEPI score - 80.21

<sup>9</sup> (2005) 11 SCC 559

<sup>10</sup> (2011) 7 SCC 338

<sup>11</sup> (2016) 9 SCC 300

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2022 SCC OnLine SC 362

In the Supreme Court of India  
(BEFORE INDIRA BANERJEE AND J.K. MAHESHWARI, JJ.)

Pahwa Plastics Pvt. Ltd. and Another ... Appellants;  
*Versus*

Dastak NGO and Others ... Respondents.

Civil Appeal No. 4795 of 2021

Decided on March 25, 2022

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.:— This appeal under Section 22 of the National Green Tribunal Act, 2010, is against an order dated 3<sup>rd</sup> June 2021 passed by the Principal Bench of the National Green Tribunal (NGT) in O.A No. 287/2020 at New Delhi, *inter alia*, holding that establishments such as the manufacturing units of the Appellants, which did not have prior Environmental Clearance (EC) could not be allowed to operate.

2. The question of law involved in this appeal is, whether an establishment employing about 8000 workers, which has been set up pursuant to Consent to Establish (CTE) and Consent to Operate (CTO) from the concerned statutory authority and has applied for ex post facto EC can be closed down pending issuance of EC, even though it may not cause pollution and/or may be found to comply with the required pollution norms.

3. With increasing industrialization and the establishment of factories which emitted smoke and other pollutants, there was worldwide concern for protection of environment. In June 1972, the United Nations Conference on the Human Environment was held in Stockholm, where decisions were taken to take appropriate steps for preservation of the natural resources of the earth, which, among other things, included preservation of the quality of air and water by controlling pollution.

4. In 1974, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, with a view to prevent and control water pollution and to maintain and restore wholesomeness of water.

5. In furtherance of the decisions taken at Stockholm, Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as "the Air Pollution Act", to provide for prevention, control and abatement of air pollution.

6. The Air Pollution Act provides for the constitution of a Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB) to deal with the problem of air pollution. Section 16 of the Air Pollution Act enables the Central Pollution Control Board to take steps to improve the quality of air and to prevent, control or abate air pollution in the country. Section 17 of the Air Pollution Act enables the State Pollution Control Boards to plan comprehensive programmes for the prevention, control or abatement of air pollution, *inter alia*, by laying down standards for emission of air pollutants.

7. Section 18 of the Air Pollution Act enables the Central Government to give directions by which the CPCB is to be bound. Similarly, every SPCB is to be bound by directions in writing as might be given by the CPCB or the State Government.

8. Where a notification is issued under the Air Pollution Act, placing an area within the control area of air pollution, permission is necessary to set up and operate any factory or plant thereat. No person operating any factory or plant in any air pollution control area is to discharge or cause or permit to be discharged the emission of any air pollutants, in excess of the standards laid down by the SPCB under Clause (g) of sub-

Section (1) of Section 17.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "the EP Act" was also enacted pursuant to the decisions taken at the United Nations Conference on the Human Environment, held in Stockholm in June, 1972. As per the Statement of Objects and Reasons for enactment of the EP Act, the said Act has been prompted by concern over the environment, that has grown all over the world since the 60s.

10. Sub-section (1) of Section 3 of the EP Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and reducing environmental pollution.

11. Sub-section (2) of Section 3 of the EP Act enables the Central Government to take, inter alia, the following measures:

*"(i) co-ordination of actions by the State Governments, officers and other authorities—*

*(a) under this Act, or the rules made thereunder; or*

*(b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

*Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances;*

*(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*

*(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*

*(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;*

*(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*

*(xii) collection and dissemination of information in respect of matters relating to environmental pollution;*

*(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*

*(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions*

of this Act.”

12. Sub-section (3) of Section 3 of the EP Act provides as follows:

“3. Power of Central Government to take measures to protect and improve environment.—

...

*(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”*

13. Subject to the provisions of the EP Act, the Central Government has power under sub-Section (1) of Section 3, to take all such measures, as it deems necessary or expedient, for the purpose of protecting and improving the quality of environment and preventing, controlling or reducing environmental pollution.

14. Section 5 of the EP Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the EP Act, the Central Government may, in exercise of its powers and performance of its functions under the EP Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

15. In exercise of powers conferred by Sections 6 and 25 of the EP Act, the Central Government has made the Environment (Protection) Rules, 1986, hereinafter referred to as “the EP Rules”.

16. The Central Government issued an Environmental Impact Assessment Notification dated 27<sup>th</sup> January 1994 in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules, directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernization of any activity or a new project listed in Schedule I to the said notification shall not be undertaken in any part of India, unless it has been accorded EC by the Central Government in accordance with the procedures specified in the said notification.

17. In exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules and in supersession of notification number S.O. 60 (E) dated 27<sup>th</sup> January 1994, except in respect of things done or omitted to be done before such supersession, the Central Government issued a notification dated 14<sup>th</sup> September 2006, being Notification S.O. 1533 (E) requiring prior environmental clearance from the Central Government or as the case may be, by the State-Level Environment Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the EP Act.

18. In terms of the said notification dated 14<sup>th</sup> September 2006, the process of environmental clearance for new projects was to comprise of a maximum of four stages, all of which might not apply to particular cases. The stages were (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal.

19. In the meanwhile, by a notification being S.O. 327 (E) dated 10<sup>th</sup> April 2001, published in the Gazette of India on 12<sup>th</sup> April 2001, the Central Government has

delegated the powers vested in it under the EP Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority to prevent violation of the Rules.

20. The Appellants carry on business, *inter alia*, of manufacture and sale of basic organic chemicals, namely, Formaldehyde. The Appellant No. 1, M/s. Pahwa Plastics Private Limited has two manufacturing units, one at village Kharawar in Rohtak, hereinafter referred to as the "Rohtak Unit" and the other at village Jathlana, Jagadhri in Yamuna Nagar in Haryana, hereinafter referred to as the "Yamuna Nagar Unit". The Appellant No. 2 has a manufacturing unit at village Ghespur in Yamuna Nagar, Haryana which is hereinafter referred to as the "Yamuna Nagar Unit". The manufacturing units established, run and operated by the respective Appellants fall in the category of Micro, Small and Medium Enterprise (MSME) as defined under the Micro, Small and Medium Enterprises Development Act, 2006, hereinafter referred to as "the MSME Act".

21. On or about 31<sup>st</sup> March 2014, the Appellant No. 1, M/s. Pahwa Plastics Ltd. applied for Consent to Establish (CTE) its Yamuna Nagar unit for manufacture of Formaldehyde.

22. By a communication No. HSPCB/Consent/ : 2846616YAMCTE 3087415 dated 2<sup>nd</sup> June 2016, the Haryana State Pollution Control Board (HSPCB) granted Consent to Establish (CTE) to the Appellant No. 1 M/s. Pahwa Plastics Private Limited in respect of its Yamuna Nagar Unit. The CTE was to remain valid for 60 months from the date of its issue, to be extended for another year at the discretion of the Board or till the time the unit started its trial production, whichever was earlier.

23. Some of the terms and conditions on which CTE was granted are set out hereinbelow:

*"3. The officer/official of the Board shall have the right to access and inspection of the industry in connection with the various processes and the treatment facilities being provided simultaneously with the construction of building/machinery. The effluent should conform the effluent standards as applicable.*

*4. That necessary arrangement shall be made by the industry for the control of Air Pollution before commissioning the plant. The emitted pollutants will meet the emission and other standards as laid/will be prescribed by the Board from time to time.*

*5. The applicant will obtain consent under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 as amended to-date-even before starting trial production.*

*6. The above Consent to Establish is further subject to the conditions that the unit complies with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respect before commissioning of the operation and during its actual working strictly.*

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*8. The Electricity Department will give only temporary connection and permanent connection to the unit will be given after verifying the consent granted by the Board, both under Water Act and Air Act.*

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*12. That there is no discharge directly or indirectly from the unit or the process into any interstate river or Yamuna River or River Ghaggar.*

*13. That the industry or the unit concerned is not sited within any prohibited distances according to the Environmental Laws and Rules, Notification, Orders and Policies of Central Pollution Control Board and Haryana State Pollution Control*

Board.

\* \* \*

17. *In case of change of name from previous Consent to Establish granted, fresh Consent to Establish fee shall be levied.*

18. *Industry should adopt water conservation measures to ensure minimum consumption of water in their Process. Ground water based proposals of new industries should get clearance from Central Ground Water Authority for scientific development of previous resources.*

19. *That the unit will take all other clearances from concerned agencies, whenever required.*

20. *That the unit will not change its process without the prior permission of the Board.*

21. *That the Consent to Establish so granted will be invalid, if the unit falls in Aravali Area or non conforming area.*

22. *That the unit will comply with the Hazardous Waste Management Rules and will also make the non-leachate pit for storage of Hazardous waste and will undertake not to dispose off the same except for pit in their own premises or with the authorized disposal authority.*

23. *That the unit will submit an undertaking that it will comply with all the specific and general conditions as imposed in the above Consent to Establish within 30 days failing which Consent to Establish will be revoked."*

24. By another communication No. HSPCB/Consent/ : 2846618YAMCTO3098246 dated 26<sup>th</sup> March 2018, HSPCB granted consent to the Appellant No. 1 to operate its Yamuna Nagar Unit from 8<sup>th</sup> February 2018 to 31<sup>st</sup> March 2022.

25. By an order No. HSPCB/YMN/2242, dated 31<sup>st</sup> March 2010, the Appellant No. 2, M/s. Apcolite Polymer Private Limited was granted CTE to establish its Yamuna Nagar Unit for manufacture of Formaldehyde with the manufacturing capacity of 80 tonnes per day.

26. By another communication Nos. HSPCB/Consent/ : HSPCB/YMN/DLC/2011/4027 & HSPCB/YMN/DLC/2011/4029 dated 16<sup>th</sup> January 2012, HSPCB granted the Appellant No. 2, M/s. Apcolite Polymers Private Limited, Consent to Operate (CTO) its Yamuna Nagar Unit. The CTO has been extended from 1<sup>st</sup> April 2016 till 31<sup>st</sup> March 2026, by a letter dated 13<sup>th</sup> March 2016. The CTO is valid till March 2026.

27. By a communication No. HSPCB/Consent/ : 2846616YAMCT OHWM2630357 dated 13<sup>th</sup> March 2016, HSPCB granted consent for emission of AIR to Appellant No. 2, M/s. Apcolite Polymers Private Limited in respect of its Yamuna Nagar Unit on, inter alia, the terms and conditions specified in the said letter, some of which are extracted hereinbelow:—

*"10. The air pollution control equipment of such specification which shall keep the emissions within the emission standard as approved by the State Board from time to time shall be installed and operated in the premises where the industry is carrying on/proposed to carry on its business.*

*11. The existing air pollution control equipment if required shall be alerted or replaced in accordance with the direction on the Board.*

*12. All solid wastes arising in the factory premises shall be properly graded and disposed of by:—*

*(i) In case of Land fill material, care should be taken to ensure that the material does not give rise to leachate which may percolate in ground water of carried away with storm run off.*

*(ii) Composting in case of bio degradable materials.*

(iii) *If the method of incineration is used for the disposal of solid waste the consent application should be processed separately and it should be taken up which consent is granted.*

13. *The industry shall submit an undertaking to the effect that the above conditions shall be complied with by them.*

14. *The applicant shall submit its undertaking to the effect that the above conditions shall be complied with by them.*

15. *The applicant shall make an application for grant of fresh consent at least 90 days before the date of expiry of this consent.*

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18. *There should not be any fugitive emission from the premises.*

19. *The liquid effluent arising out of the operation of the air pollution control equipment shall also be treated in a manner and to the standards stipulated in the consent granted under Water (Prevention & Control of Pollution) Act, 1974 by this Board.*

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21. *If the industry fails to adhere to any of the condition of this consent order the consent so granted shall automatically lapse.*

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33. *The industry shall submit Environment Audit report once in a year.*

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38. *In case of by passing the emissions, the consent shall be deemed revoked."*

28. It is the case of the Appellants that at the time when CTE was granted to the Appellants, it was thought that EC was not required for units which manufactured Formaldehyde. Even HSPCB itself was not sure of whether EC was required for such units.

29. Mr. Gupta argued that the Appellants were *bona fide* under the impression that the Appellants were not required to obtain prior EC for setting up this establishment to manufacture Formaldehyde. On the basis of CTE granted by HSPCB, the Appellants set up their units taking huge loans from banks for which repayments have to be paid in installments.

30. In exercise of power under Section 3(1) and Section 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules, the Central Government issued a notification being S.O. 804(E) dated 14<sup>th</sup> March 2017 which provides for grant of *ex post facto* EC for project proponents who had commenced, continued or completed a project without obtaining EC under the EP Act/EP Rules or the Environmental Impact Notification issued thereunder. Paragraphs 3, 4 and 5 of the said notification, read as hereunder:

*"(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.*

*(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.*

*(5) In case, where the findings of the Expert Appraisal Committee on point at*

*sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."*

31. The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27<sup>th</sup> January 1994 and the Notification dated 14<sup>th</sup> September 2006.

32. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders, rules or bye-laws, that power includes the power, exercisable in like manner, and subject to like sanction and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27<sup>th</sup> January 1994 and 14<sup>th</sup> September 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. As held by this Court in *Shree Sidhali Steels Ltd. v. State of Uttar Pradesh*<sup>1</sup>, power under Section 21 to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

33. Puducherry Environment Protection Association filed a Writ Petition being W.P. No. 11189 of 2017 in the High Court of Madras assailing the said notification dated 14<sup>th</sup> March 2017. By a judgment and order dated 13<sup>th</sup> October 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.

34. The Ministry of Environment, Forest and Climate Change (MoEF&CC) issued a draft notification dated 23<sup>rd</sup> March 2020 which was duly published in the Gazette of India Extraordinary Part II. The Notification was proposed to be issued in exercise of powers conferred by subsection (1) and clause (v) of sub-section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC. It was proposed that cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.

35. On 10<sup>th</sup> November 2020, the Department of Environment and Climate Change of the Government of Haryana issued an order which is extracted hereinbelow for convenience:

*"Whereas the process of manufacturing of Formaldehyde is covered under the provisions of 5(f) of Schedule of Environment Impact Assessment Notification (EIA),*

*2006 of Government of India, and requires the prior Environmental Clearance (EC) from the competent authority State Environment Impact Assessment Authority (SEIAA)/Ministry of Environment, Forest and Climate Change, Government of India, before establishment and operation of such units, besides other mandatory clearance, as applicable;*

*Whereas, it has come to the notice of Government that around 15 such units have been permitted to establish/operate in the State of Haryana, without obtaining the necessary Prior Environmental Clearances, but with the Consent of the Haryana State Pollution Control Bureau (HSPCB), which misinterpreted the category of such units and on realising the requirement of EC in these cases, has revoked its consents issued earlier to these units recently;*

*Whereas, some of these units approached the Government explaining their hardship due to such sudden revocation of their consents and have sought time for obtaining the necessary EC from the competent authority as the process is likely to take a minimum of 6 months to one year period, and to allow them to operate with all pollution control measures, following the pollution control norms applicable, and,*

*Whereas, the Government has carefully considered their request and the competent authority has decided that these units shall be allowed to continue their operations for a period of six months, without prejudice to any legal action taken against the violations committed by them, by the competent authorities, with the conditions that they will immediately apply for Environmental Clearance from the competent authority and provide the proof of such application within 60 days from the issuance of this communication to Environment and Climate Change Department and to Haryana State Pollution Control Board.*

*Therefore, it is ordered accordingly."*

36. Referring to the Counter Affidavit filed by HSPCB before the NGT, Mr. Gupta pointed out that, since HSPCB itself was under the misconception that prior EC was not necessary for units such as the Yamunanagar units of the Appellants Nos. 1 and 2 respectively. HSPCB took a policy decision to allow the units which did not have prior EC to operate for six months, on condition that they would apply for EC within sixty days.

37. The Appellants duly applied for EC in respect of their manufacturing units. After scrutinizing their applications and after finding the units suitable for grant of EC in terms of the prevailing guidelines, the Expert Appraisal Committee constituted by the MoEF&CC conducted a public hearing to finalize the cases of the Appellants for issuance of Terms of Reference (TOR).

38. By an Office Memorandum, being F. No. 22-21/2020-1A III, dated 7<sup>th</sup> July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for identification and handling of violation cases under EIA Notification 2006.

39. The said Office Memorandum, inter alia, reads:

*"The Ministry had issued a notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.*

*2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.*

*3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. v. Synochem Organics Pvt. Ltd. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar v. Central Ground Water Authority, vide order dated 03.06.2021 held that "(...) for past*

violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".

4. Further, the Hon'ble National Green Tribunal in O.A. No. 34/2020 WZ in the matter of Tanaji B. Gambhire v. Chief Secretary, Government of Maharashtra, vide order dated 24.05.2021 has directed that "... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined."

40. The SOP formulated by the said Office Memorandum dated 7<sup>th</sup> July 2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapat*<sup>2</sup>.

41. In terms of the SOP, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

42. By an order dated 9<sup>th</sup> July 2021, the MoEF&CC confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of terms of reference to the Appellant No. 1, M/s. Pahwa Plastics Private Limited for expansion of its Formaldehyde Manufacturing unit from 60 TPD to 150 TPD.

43. In the meanwhile, on or about 26<sup>th</sup> November 2020, the Respondent No. 1, a Non-Governmental Organisation (NGO) hereinafter referred to as "Dastak" filed an application being O.A. No./287/2020 before the NGT praying that the order dated 10<sup>th</sup> November 2020 passed by the State of Haryana be quashed and units which were operating without EC be closed. The NGT disposed of the said application of Dastak by the impugned order dated 3<sup>rd</sup> June 2021.

44. A Public Interest Litigation being W.P. (MD) No. 11757 of 2021 (*Fatima v. Union of India*) was filed before the Madurai Bench of the Madras High Court challenging the said Memorandum dated 7<sup>th</sup> July 2021. By an interim order dated 15<sup>th</sup> July 2021 a Division Bench of the Madras High Court admitted the Writ Petition and stayed the said memorandum.

45. The Madurai Bench of the Madras High Court observed and held:—

*"This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.*

*2. We have heard Mr. A. Yogeshwaran, learned counsel appearing for the writ petitioner and Mr. L. Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.*

*3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme*

*Court, while interpreting Article 21 and Article 48-A of the Constitution of India.*

4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P. No. 11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.

5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of Alembic Pharmaceuticals Ltd. v. Rohit Prajapati, 2020 SCC OnLine SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of S.P. Muthuraman v. Union of India, 2015 SCC OnLine NGT 169.

6. Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD). No. 8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.

7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in Alembic Pharmaceuticals Ltd. (cited supra), and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:

*"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."*

8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed

of the writ petition.

10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is admitted and there shall be an order of interim stay."

46. It is true that in the case of *Puducherry Environment Protection Association v. Union of India*<sup>3</sup>, the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

47. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.

48. The Division Bench of Madras High Court fell in error in staying the said office memorandum, by relying on observations made by this Court in *Alembic Pharmaceuticals Ltd.* (supra), in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7<sup>th</sup> July 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of this Court in *Alembic Pharmaceuticals Ltd.* (supra), was clearly distinguishable and could have no application to the office memorandum dated 7<sup>th</sup> July 2021 which was issued pursuant to the notification dated 14<sup>th</sup> March 2017.

49. The Appellants have already applied for EC. The Expert Appraisal Committee of the MoEF&CC has, after scrutinizing the application of the Appellants and finding them eligible for grant of EC, recommended their cases for grant of Terms of Reference (ToR). ToR was granted to the Appellants and a public hearing had also been conducted. Only last procedural step of issuance of EC is left.

50. It is claimed that the units of the Appellants are totally non-polluting units having "Zero Trade discharge". They have been in operation for many years. In the reply affidavit filed by the State before the NGT, it was mentioned that the units were operating in good faith with valid CTOs granted by the HSPCB. It was stated that the units were not causing pollution hazards. The only thing against the units was the procedural lapse of not obtaining EC.

51. By a communication No. F. No. IA-J-110011/185/2020-IA-II(I) dated 20<sup>th</sup> July 2021 issued to the Appellant No. 1, the MoEF&CC rejected the proposal for terms of reference on the purported ground that the activity of the Appellant No. 1 was covered under category "A" of item 5(f) "Synthetic Organic Chemicals" of the Schedule to the EIA Notification, 2006. A similar communication was issued in respect of M/s. Apcolite Polymers Pvt. Ltd. Significantly, by an order dated 9<sup>th</sup> July 2021, the MoEF&CC had confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of ToR to the Appellant No. 1, as observed above. The proposal for Terms of Reference has obviously been rejected at the final stage after the public hearing, by reason of the impugned order dated 3<sup>rd</sup> June 2021 passed by the NGT on the application of Dastak, which is under appeal.

52. This appeal was listed for admission on 30<sup>th</sup> September 2021, along with an

application for interim relief being I.A. No. 110064 of 2021 praying for orders permitting the Appellants to operate their units during the pendency of the appeal. The appeal was heard at length at the admission stage and reserved for judgment along with the interim application by an order dated 30<sup>th</sup> September 2021.

53. After receiving the communication dated 20<sup>th</sup> July 2021 rejecting the proposal for Terms of Reference, the Appellants requested HSPCB to forward to the Appellants the proceedings of public hearing in respect of the manufacturing units of the Appellants. By a communication No. HSPCB/YR/2021/2830 dated 15<sup>th</sup> February 2022, HSPCB forwarded proceedings of the public hearing in respect of the Yamuna Nagar unit of the Appellant No. 1. By another Communication No. HSPCB/YR/29021/2829 dated 15<sup>th</sup> February 2022 the HSPCB forwarded to the Appellant No. 2 the proceedings of the public hearing held on 3<sup>rd</sup> February 2022 in connection with the Yamuna Nagar Unit of the Appellant No. 2.

54. The manufacturing units of the Appellants appoint about 8,000 employees and have a huge annual turnover. An establishment contributing to the economy of the country and providing livelihood ought not to be closed down only on the ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution.

55. In *Electrosteel Steels Limited v. Union of India*<sup>4</sup>, this Court held:—

*"82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.*

*83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.*

*84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.*

\* \* \*

*88. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in Alembic Pharmaceuticals (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto environmental clearance should not however be granted routinely, but in exceptional circumstances taking*

*into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. Ex post facto approval should not be withheld only as a penal measure. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.*

\* \* \*

96. *The appeals are allowed. The impugned order is set aside. The Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO."*

56. As held by this Court in *Electrosteel Steels Limited* (supra) *ex post facto* Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

57. The 1986 Act does not prohibit *ex post facto* Environmental Clearance. Grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

58. As held by a three Judge Bench of this Court in *Lafarge Umiam Mining Private Limited v. Union of India*<sup>5</sup>: —

*"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."*

59. In *Alembic Pharmaceuticals Ltd.* (supra), this Court observed: —

*"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification*

dated 27 January 1994. It is, as the judgment in *Common Cause* holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."

60. Even though this Court deprecated ex post facto clearances, in *Alembic Pharmaceuticals Ltd.* (supra), this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:—

*"However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court."*

61. The Notification being SO. 804(E) dated 14<sup>th</sup> March 2017 was not in issue in *Alembic Pharmaceuticals Ltd.* (supra). In *Alembic Pharmaceuticals Ltd.* (supra) this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27<sup>th</sup> January 1994, which was statutory. The EIA Notification dated 27<sup>th</sup> January 1994 has, as stated above, been superseded by the Notification dated 14<sup>th</sup> September 2006.

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

63. *Ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has

applied for *ex post facto* EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit *ex post facto* EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in *Electrosteel Steels Limited* (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. *Ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for *ex post facto* EC have been filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with.

68. The Appellants will be allowed to operate the units. Electricity, if disconnected, shall be restored subject to payment of charges, if any. If the application for EC is rejected on the ground of any contravention on the part of the Appellants, it will be open to the Respondents to disconnect the supply of electricity.

69. The Union of India had proceeded with the application for EC and even public hearing had been held. Counsel appearing on behalf of the Union of India contended that the Appellant had not submitted its final application for EC, after public hearing. It is not clear what more was required of the Appellants. Be that as it may, the Union of India shall, within three working days from the date of receipt of a copy of this judgment and order, inform the Appellants in writing of whether anything further is required to be done by the Appellants, and if so what is required to be done. The Appellants shall, within a week thereafter do the needful. The final decision on the application of the Appellants for EC shall be taken within three weeks thereafter.

70. The application being I.A. No. 110064/2021 and other pending applications, if any, in this appeal are disposed of accordingly.

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<sup>1</sup> (2011) 3 SCC 193

<sup>2</sup> 2020 SCC OnLine SC 347

<sup>3</sup> 2017 SCC OnLine Mad 7056

<sup>4</sup> 2021 SCC OnLine SC 1247

<sup>5</sup> (2011) 7 SCC 338

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