BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

AT NEW DELHI

ORIGINAL APPLICATION NO. 636 OF 2022

IN THE MATTER OF:-

Ashish Chaubey …Applicant

Versus

ACP Tollways Private Limited and Others …Respondents

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Place: Lucknow

Date: 29.04.2025

DIVYADEEP CHATURVEDI

& ABHISHEK DWIVEDI

ADVOCATES FOR RESPONDENT NO. 3

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

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ORIGINAL APPLICATION NO. 636 OF 2022

IN THE MATTER OF:-

Ashish Chaubey …Applicant

Versus

ACP Tollways Private Limited and Others …Respondents

WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 3

1. The present Written Submissions are being filed on behalf of the Respondent No. 3 pursuant to the directions issued by Hon'ble Tribunal *vide* its Order dated 22.04.2024.

2. The present Original Application has been filed by the Applicant seeking following reliefs [**Pg.17**]:

    a. *Issue an appropriate direction for the investigation of the aforementioned constructions and issue an appropriate order to the respondents for the compliance of the letter dated 31.05.2014 vide letter no. 3308014-2-2013-800(70)-2014 issued by the Government of Uttar Pradesh to the no objection certificate.*
    b. *Issue and appropriate order to the respondents for the compliance of the regulations and directions given by the Hon'ble Supreme Court of India, regarding no construction shall be made within the 10 kms of forest reserved area and Eco-Sensitive Zones.*
    c. *Direct an investigation for the enquiry of a collusion (if any) of the local authorities with the construction of illegal residential buildings and offices.*
    d. *Appoint a committee for assessment of the damage in the Eco Sensitive Zone to the wildlife caused by the illegal construction*

by the respondent no. 1 and submit a report to this Hon'ble Court.

e. *Pass an appropriate order and direction to ensure that the illegal construction done by the respondent if in collusion with the local authorities may not be repeated in the future keeping the safety of wildlife in mind.*

f. *Issue appropriate order and directions to the respondents to ensure restoration of the ecology damaged.*

A. THE PETITION IS BARRED BY LIMITATION

3. That at the outset, the Respondent No. 3 submits that the present Original Application filed under Section 18(1) r/w Sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 (**"NGT Act"**) is hopelessly barred by the limitation. Before proceeding to the specifics of the case, it is submitted that the Hon'ble Supreme Court has held that the period of limitation set out in a special law which provides for remedies and appeals has to be construed in its terms and without reference to the Limitation Act, 1963 if it contains specific provisions delineating the time or period within which applications or appeals can be preferred and confines the consideration of applications for condoning the delay to a specific number of days. The Hon'ble Supreme Court has clearly held that the Limitation Act, 1963 in such cases [special laws such as NGT Act] is inapplicable. [**Sridevi Datla v. Union of India & Ors. [2021 (5) SCC 321] at Paras 19 and 23].**

4. Therefore, the limitation in respect of the Application will have to be adjudged solely within the confines of the NGT Act. With the aforementioned legal position in context, the Respondent No. 3 will now proceed to address the issue of limitation in terms of the present case.

4.1. **The Application does not fall within the limitation period of 6 months as prescribed under Section 14 of the NGT Act;**

4.1.1. The Original Application, on the point of limitation [**Pg.16**] states-

'That the application is being filed within the 6 months period from the of the application sent to the authorities as the section 14(3) of the NGT act clearly provided that the limitation of disputes falling in the Ambit of National Green Tribunal will be six months.'

4.1.2. Therefore, the Application itself confines its cause of action to Section 14 of the NGT Act. However, there are no statements, bundle of facts or pleadings that disclose as to *'when the cause of action first arose'*. There is not even a statement as to when was the construction started, for how long it continued and when it was completed.

4.1.3. The Applicant has to plead and disclose the basic details forming the cause of action for the Hon'ble Tribunal to even consider the plaint. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from **reading the plaint itself.** For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. [**Hardesh Ores Pvt. Ltd v. M/S. Hede And Company 2007 (5) SCC 614 at Para 21]**

4.1.4. While limitation is a mixed question of law and facts, the facts in support of the law must be pleaded by the Applicant. The burden of proof to plead facts in support of the law [limitation] was on the Applicant. It is also a settled law that when a point of law is required to be substantiated by facts, the party raising the point must plead and prove such facts by evidence **which must appear from the Application/ Petition.** If the facts are not pleaded or the evidence in support of such facts is not annexed to the Application/Petition, as the case may be, the court will not entertain the point. [**Bharat Singh v. State of Haryana (1988) 4 SCC 534 at Para 11**]

4.1.5. Therefore, as the plaint is completely silent as to *'when the cause of action first arose',* the same cannot be entertained by this Hon'ble Tribunal.

4.2. **In any case, even the 5 years period prescribed under Section 15 of the NGT Act does not help the Applicant**

4.2.1. At the outset, it is stated that the Petitioner has not taken the refuge of Section 15 of the NGT Act to claim that the Application is within limitation. In absence of such a plea, any reference or discussion on Section 15 is purely academic. It is a trite law that when the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. **[Bachhaj Nahar v. Nilima Mandal (2008) 17 SCC 491 at Para 13]**

4.2.2. In the present case, as the Applicant has solely claimed limitation under Section 14 of the NGT Act and therefore, any consideration of the OA under Section 15 is impermissible.

4.2.3. Without prejudice to the same, the Application is barred under Section 15 of the NGT Act as well. The paragraphs 4.1.2 to 4.1.5 hereinabove are applicable to Section 15 as well. The Applicant has failed to disclose 'when the cause of action first arose' for the five year period under the NGT Act to come into play. The entire Application is bereft of material facts and particulars to present a concrete/prima facie cause of action.

4.2.4. Even on facts on place before the Hon'ble Tribunal, the Application is hopelessly barred by limitation even under Section 15 of the NGT Act. In this regard, following facts are on record-

4.2.4.1. The Concession Agreement between the Respondent nos. 1 and 3 was executed on **08.02.2011**.[**Pg. 287**]

4.2.4.2. The in-principle approval for diversion of forest land for non-forest use was obtained on **14.11.2013** [**Pg.551**] and all the conditions stated therein were fulfilled leading to grant of the final approval on **31.03.2014.** [**Pg.554**]

4.2.4.3. The Project work was completed in the year 2016 i.e., on **20.10.2016** with the issuance of final/last Provisional Commercial Operations Date (PCOD) Certificate [**Pg.247**]. The list of balance minor work (punch list) [**Pg.249**] appended to the Provisional Commercial Operations Date (PCOD) Certificate does not list any balance work in relation to the Toll Plaza or the chainage concerned.

4.2.5. Evidently, the work was started in 2011, the permissions were received in 2014 and the work was completed by October 2016. The Claimant has waited for almost 6 years after the completion of the Project to prefer the present application as a fishing exercise. Therefore, the Application is hopelessly barred by limitation.

4.3. **The entire Application is a casual fishing exercise**

4.3.1. The Applicant's casual approach in invoking the jurisdiction of the Hon'ble Tribunal disentitles the Applicant from any relief.

4.3.1.1. The Applicant claims to have become aware of the violations only after filing an application under RTI Act and thereafter receiving a reply. However, the original RTI Application and the Reply have not even been annexed but an incomplete typed copy appears to have been annexed with incorrect date.

4.3.1.2. This Hon'ble Tribunal has repeatedly refused to entertain the principles of '*limitation from the date of knowledge'* and the corresponding theory of '*Discovery Rule'* being applicable to patent event perceptible to the public at large. Consequently, the cause of action for filing an application under the NGT Act cannot be said to accrue on the day when such alleged environmental damage was allegedly discovered by the Applicant.

4.3.1.3. Second, it appears from the typed copies that the RTI Application was filed on 01.05.2019 [**Pg.34**] and received

on 04.05.2019 [**Pg.30**]. The date of reply has not been disclosed. However, the Claimant has waited for more than 3 years from the date of the RTI Application to prefer the present application as a fishing exercise.

4.3.1.4. In any case, this Hon'ble Tribunal has held on earlier occasions that an application under the RTI Act, 2005 does not give the cause of action to the Applicant to approach this Hon'ble Tribunal. [**Ajay Jayawantrao Bhosale Vs. Union of India Original Application No. 63/2019(WZ) at Para 19]**

4.3.1.5. Further, the Applicant has sent its first legal representation to Respondent No. 1 on 08.02.2022 [**Pg. 37**] while the Original Application has been filed on 22.08.2022 [**Pg. 2**]. Even the same is not within the 6 months period of issuance of the legal representation. This is a reflection of Applicant's casual approach.

4.3.1.6. At this stage, it would be pertinent to refer to the *bonafide* of the Applicant as well. Such casual approach in filing the present Application coupled with the fact that there are no ascertainable particulars of the *bonafide* of the Applicant in the Petition, merits a cautious approach by the Hon'ble Tribunal. It has been settled by the Hon'ble Supreme Court that the Hon'ble Tribunal ought to test the *bonafide* of the applicant approaching the Hon'ble Tribunal as the question of operation of Industry and employment of numerous employees is solely dependent on the outcome of the litigation before this Hon'ble Tribunal. (**Uday Welfare Trust Vs. State of U.P. [2022] 19 SCR 781 at Para 99**)

5. Therefore, in relation to the issue of limitation, the Respondent submits that the Application is hopelessly barred by limitation and deserves to be rejected on this ground alone.

B. ALL ENVIRONMENTAL CLEARANCES ARE IN PLACE

6. It is humbly submitted that a perusal of the records furnished before this Hon'ble Forum, it is well established that-

6.1. The Environmental Clearance was not obtained as Uttar Pradesh State Level Environment Impact Assessment Agency, while rejecting Respondent No. 3's application for Environmental Clearance, held that the Project is not covered by EIA Notification, 2006. [**Pg.521**]

6.2. The in-principle approval for diversion of forest land for non-forest use was obtained on 14.11.2013 [**Pg. 551**] and all the conditions stated therein were fulfilled leading to grant of the final approval on 31.03.2014. [**Pg.554**]

6.3. The Project, from Km. 72.00 to Km 73.00 has been constructed with the forest land measuring 7.517 Hec. and the layout plan [**Pg. 56**] for the tollgate, office building and administrative building in the aforesaid area was approved by the Forest Authorities.

6.4. The Report by Ministry of Environment and Forests [**MOEF**] also confirms that there is no change in the total forest area and no additional tree felling on account of the construction that has eventually taken place. There is a mere change in the location of the administrative building from one side to the other side of the road. **[Pg. 409]**

7. Therefore, it is humbly submitted that as there is no additional tree felling and no additional forest area utilised and apart from a change of location of one of the buildings from one side of the road to the other side, no alterations have been done in the layout of the Project.

8. It is requested that the public money has been expended on the Project, the project is crucial for public convenience, and employs sizable number of local populace, the Hon'ble Tribunal may take a kind and humane view of the matter, especially when no additional tree felling and no occupation of additional forest land has been accepted/verified by the MOEF. **[Pg. 409]**

C. THE WORK PREDATES THE NOTIFICATION OF ECO-SENSITIVE ZONE.

9. The MOEF Report has suggested that the project comes within the Eco-Sensitive Zone of Kaimur Wildlife Sanctuary and the user agency did not take the requisite permission from the Monitoring Committee as per para 5 of the Gazette Notification No. S.O. 891 [E] dated 20.03.2017 issued by MOEF declaring the Kaimur Wildlife Sanctuary as Eco-Sensitive Zone. In this regard, it is pertinent to note as follows:

9.1. The Gazette Notification No. S.O. 891 [E] was issued on 20.03.2017 [**Pg. 621**] i.e., the Kaimur Wildlife Sanctuary was declared as Eco-Sensitive Zone on 20.03.2017. Therefore, the requirement to obtain requisite permission from the Monitoring Committee as per para 5 of the Gazette Notification No. S.O. 891 [E] dated 20.03.2017 arose on 20.03.2017 onwards.

9.2. However, the Project work had already been completed on 20.10.2016 [**Pg.247**]. Therefore, the Gazette Notification No. S.O. 891 [E] dated 20.03.2017 cannot be made applicable retrospectively to the Project and a post-facto approval be directed. It is a settled law that environmental notifications do not operate retrospectively unless expressly provided. [**D. Swamy v. Karnataka State Pollution Control Board & Ors. OA No. 169 of 2016 at Paras 25 & 26** & **Gaurav Garg v. Union Of India OA No. 774 of 2022 at Paras 51**]

9.3. Further, the 'Guidelines on Requirements for Environmental Clearances for Road Projects', published by Indian Roads Congress, a constituent entity of Ministry of Road, Transport and Highways (MORTH), Government of India provide that clearance for Eco-Sensitive Zone is required only if the project requires an Environmental Clearance [**Pg. 378**]. As the present project did not require Environmental Clearance [**Pg.521**], no separate clearance for the Eco-Sensitive Zone was required.

9.4. Last, the State Respondents themselves have admitted that even as of 29.05.2024, the Monitoring Committee in terms of para 5 of the Gazette Notification No. S.O. 891 [E] dated 20.03.2017 had not

been constituted thereby rendering the para 5 of the Gazette Notification inexecutable. **[Pg.723/last row in the table]**

10. Therefore, the penalties imposed by the authorities in reference to Gazette Notification No. S.O. 891 [E] dated 20.03.2017 are also misplaced and untenable in law.

D. THE RESPONDENT NO. 1 WAS RESPONSIBLE FOR COMPLIANCE WITH APPLICABLE PERMITS

11. During the arguments, it was suggested by the Senior Counsel appearing for the Respondent No. 1 that the Respondent No. 3 had permitted the alleged changes in the approved layout and was ultimately responsible for the design approvals. The same is incorrect. In this regard, it is submitted as follows:

11.1. The Project was a DBFOT [Design, Build, Finance, Operate and Transfer] project [**Pg. 287**] with minimal involvement of the Respondent No. 3. The Respondent No. 1 was solely responsible for all designs and construction activities which were monitored by an Independent Engineer (*not a constituent of the Respondent No. 3).*

11.2. The Respondent No. 3 provided the copy of the said approved layout [**Pg. 56**] to the Respondent No. 1 which was required to comply with all the condition stated therein in terms of Clauses 5.1.2, [**Pg. 383**] 5.1.4(f) [**Pg. 383**] and 12.1(c) [**Pg. 384**] of the Concession Agreement.

11.3. There is nothing on record to show that (a) the Respondent No. 1 ever approached the Respondent No. 3 seeking any change in the approved layout; and/or (b) the Respondent No. 1 informed the Respondent No. 3 about any change in the layout; and/or (c) the Respondent No. 3 has approved any deviation from the conditions/approved layout.

11.4. The Independent Engineer has only certified the conformity of the drawings of the toll plaza with the applicable Indian Roads Congress Specifications (IRC SP:84-2009) as evident from the

approvals themselves [**Pg. 265**]. There is no approval, express or implied, to change the approved layout.

12. The record (*specifically the documents annexed with the Supplementary Counter Affidavit*) clearly show that the Respondent No. 3 has been a diligent and responsible entity and has obtained all the required environmental permits and has deposited the corresponding amounts towards diversion of the forest lands. It has always acted in compliance with applicable law and regulations.

13. In view of the humble submissions preferred above, it is most respectfully prayed that the original application be dismissed with costs.

Place: Lucknow
Dated : 29.04.2025

DIVYADEEP CHATURVEDI
& ABHISHEK DWIVEDI
ADVOCATES FOR RESPONDENT NO. 3

(2021) 5 Supreme Court Cases 321

(BEFORE L. NAGESWARA RAO AND S. RAVINDRA BHAT, JJ.)

2J

SRIDEVI DATLA .. Appellant;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 3136 of 2020†, decided on March 2, 2021

A. **Environment Law — National Green Tribunal Act, 2010 — S. 16 proviso — Appeal — Delay — Condonation of — NGT's refusal to exercise discretion — "Sufficient cause" not construed liberally by NGT — Legality — Environmental clearance for construction of greenfield international airport — Held an appeal to NGT in such matters is no ordinary matter — It has potential of irrevocably changing environment with possibility of likely injury — Application of judicial mind by an independent tribunal in such cases, at first appellate stage, is almost a necessity**

— Documentation attendant to clearance granted to project applicant was voluminous, and expert as well as professional legal advice of kind necessary to approach NGT was not available in State of A.P. — Thus, procuring of relevant documents, and correspondence with counsel in Delhi and drafting of appeal entailed some delay — Given the mandate of NGT Act, exercise of discretion, as was done in present case, to reject appeal by dismissing application for condonation of delay, on ground that no sufficient cause was shown, was erroneous and based on a narrow reading of law

B. **Limitation Act, 1963 — S. 29(2) — Express exclusion of Limitation Act, by special law — If a mandatory requirement — Import of words "expressly excluded" in S. 29(2) — Held, provisions of Limitation Act are inapplicable in appeal under S. 16 of the NGT Act**

— National Green Tribunal Act, 2010 — S. 16 — Appeal — Delay condonation — Inapplicability of Limitation Act — Words and Phrases — "Expressly excluded"

C. **Statute Law — General Clauses Act, 1897 — S. 10 — Object and applicability — For S. 10 of the 1897 Act to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday — Held, S. 10 of the 1897 Act applies proprio vigore to all appeals filed under NGT Act**

— Object of S. 10 is to enable a person to do what he could have done on a holiday — Where a period is prescribed for performance of an act in a court or office, and that period expires on a holiday, then according to S. 10 of the 1897 Act, act in question should be considered to have been done within that period, if it is done on next day on which court or office is open — National Green Tribunal Act, 2010 — S. 16 — Appeal — Delay condonation — Applicability of S. 10 of the General Clauses Act

† Arising from the Judgment and Order in *Sridevi Datla* v. *Union of India*, 2020 SCC OnLine NGT 870 (National Green Tribunal, MA No. 231 of 2017, dt. 31-7-2020)

D. **Limitation Act, 1963 — S. 5 — Expression "sufficient cause" — Held, must receive a liberal construction so as to advance substantial justice — Generally, delays in preferring appeals are required to be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to party seeking condonation of delay — National Green Tribunal Act, 2010, S. 16 proviso**

E. **Limitation Act, 1963 — S. 5 — Sufficient cause — There cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific — Adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief — National Green Tribunal Act, 2010, S. 16 proviso**

F. **Limitation Act, 1963 — S. 5 — Delay condonation — Sufficient cause — In cases where delay is inordinate, consideration of prejudice to other side will be a relevant factor while condoning delay — However, in cases where delay is of few days, no such consideration arises — Court, equally should be sensitive to fact that successful litigant has acquired certain rights on basis of judgment under challenge and a lot of time is consumed at various stages of litigation apart from cost — Term "sufficient cause" is relative, fact dependent, and has many hues, largely deriving colour from facts of each case, and behaviour of litigant who seeks condonation of delay (in approaching the court) — However, what can broadly be said to be universally accepted is that in principle, applicant must display bona fides, should not have been negligent, and delay occasioned should not be such that condoning it would seriously prejudice other party — National Green Tribunal Act, 2010, S. 16 proviso**

G. **Environment Law — National Green Tribunal Act, 2010 — Ss. 22, 14, 15 and 16 — State's power to alienate publicly available resources like ponds — Held, such transfer or alienation is impermissible**

H. **Environment Law — National Green Tribunal Act, 2010 — Ss. 16 and 20 — Duties of NGT and proper exercise of power — NGT is under an obligation to consider issues as an expert body, and apply principle of sustainable development, in adjudicating environmental issues, especially while considering validity of grant of clearance to large projects under Environment (Protection) Act, 1986**

I. **Environment Law — National Green Tribunal Act, 2010 — Ss. 14 to 18 — Locus standi/Standing to approach NGT — Held, there is nothing in the NGT Act which excludes parties who would be directly affected by a project that has environmental repercussions, from accessing NGT**

Fifth respondent (project applicant) proposed the construction of a new greenfield international airport. As was required by law and extant statutory notifications, it applied to the Ministry of Environment, Forests and Climate Change (MoEF) to seek environmental clearance. MoEF, after following the prescribed procedure, which included ascertaining the views and objections of the parties concerned, the general public, etc. indicated its approval by an order dated 14-8-2017. In terms of Section 19 of the NGT Act, the approval was posted on the website of MoEF on 14-8-2017. Concededly, the project applicant published the approval in an English daily on 13-9-2017.

The appellant preferred her appeal to NGT. Along with the appeal, she preferred an application for condonation of delay in approaching NGT, given the stipulation of Section 19 of the NGT Act that the appeal had to be preferred within 30 days from the date of communication of the order impugned. She explained that since the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the inter se communication delay, NGT needed to condone the delay, in the interests of justice. After considering the submissions made by the appellant as well as the project applicant, which opposed the application for condonation of delay, NGT, by its impugned order, rejected the appellant's application and consequently the appeal before the Supreme Court.

It was contended by the appellant that NGT's opinion that sufficient cause was not shown while seeking condonation of delay is erroneous. Any proposal as well as clearances where voluminous documentation is involved, or if any individual or entity is aggrieved, or adversely affected, the only remedy provided is by way of an appeal. To substantiate the grounds of appeal, it would be essential that in many instances, expert advice is obtained based on which the grounds of appeal can be prepared and urged. If the issue were to be considered in this perspective, the explanation provided by the appellant in her application seeking condonation of delay could not be considered unreasonable and in fact amounts to sufficient cause.

The Union of India contended that in terms of the Environment Impact Assessment Notification, 2006, the clearance had to be published within seven days from the date of uploading on the website of MoEF. The publication of environment clearance dated 14-8-2017 was done on 21-8-2017. Thus, the appellant's plea that she came to know of the environmental clearance on 24-8-2017 is baseless.

The project applicant contended that the project concerned has been conceived in public interest and in replacement of the existing airport which is primarily a defence airport. It was further contended that any aggrieved litigant should be vigilant in the exercise of his rights and that he cannot claim the exercise of discretion for condoning any delay as a matter of right.

The issue for determination before the Supreme Court was: whether the approach to the issue of limitation by NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 of the NGT Act was filed within the 90 days period, in the facts of the present case.

Allowing the appeal, the Supreme Court

Held :

The State has no power to alienate publicly available resources like ponds, etc. (Para 16)

NGT is under an obligation to consider issues as an expert body, and apply the principle of sustainable development, in adjudicating environmental issues, especially while considering the validity of grant of clearance to large projects under Environment (Protection) Act, 1986. (Para 16)

Jitendra Singh v. *Ministry of Environment*, (2020) 20 SCC 581 : 2019 SCC OnLine SC 1510; *Hanuman Laxman Aroskar* v. *Union of India*, (2019) 15 SCC 401, *relied on*

Where periods of limitation are prescribed under special laws, appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period. Provisions of the Limitation Act are inapplicable in appeal under Section 16 of the NGT Act. (Para 19)

Kaushalya Rani v. *Gopal Singh*, (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152; *CCE* v. *Hongo (India) (P) Ltd.*, (2009) 5 SCC 791; *Union of India* v. *Popular Construction Co.* (2001) 8 SCC 470; *Patel Bros.* v. *State of Assam*, (2017) 2 SCC 350 : (2017) 1 SCC (Civ) 658, *followed*

Object of Section 10 of the General Clauses Act, 1897 is to enable a person to do what he could have done on a holiday. Where a period is prescribed for performance of an act in a court or office, and that period expires on a holiday, then according to Section 10 of the 1897 Act should be considered to have been done within that period, if it is done on next day on which court or office is open. For Section 10 of the 1897 Act to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. (Para 21)

Harinder Singh v. *S. Karnail Singh*, 1957 SCR 208 : AIR 1957 SC 271; *Manohar Joshi* v. *Nitin Bhaurao Patil*, (1996) 1 SCC 169; *Mohd. Ayub* v. *State of U.P.*, (2009) 17 SCC 70 : (2011) 1 SCC (L&S) 580, *followed*

There is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is, therefore, held that the provision applies proprio vigore to all appeals filed under the NGT Act. (Para 22)

The expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. (Para 24)

G. Ramegowda v. *LAO*, (1988) 2 SCC 142, *followed*

Ramlal v. *Rewa Coalfields Ltd.*, (1962) 2 SCR 762 : AIR 1962 SC 361; *Shakuntala Devi Jain* v. *Kuntal Kumari*, (1969) 1 SCR 1006 : AIR 1969 SC 575; *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi*, (1979) 4 SCC 365 : 1979 SCC (Cri) 996; *Mata Din* v. *Narayanan*, (1969) 2 SCC 770; *LAO* v. *Katiji*, (1987) 2 SCC 107 : 1989 SCC (Tax) 172, *relied on*

Adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief. There cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific. (Para 25)

Esha Bhattacharjee v. *Raghunathpur Nafar Academy*, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595; *Improvement Trust* v. *Ujagar Singh*, (2010) 6 SCC 786 : (2010) 2 SCC (Civ) 798, *followed*

State of Nagaland v. *Lipok Ao*, (2005) 3 SCC 752 : 2005 SCC (Cri) 906; *New India Insurance Co. Ltd.* v. *Shanti Misra*, (1975) 2 SCC 840; *N. Balakrishnan* v. *M. Krishnamurthy*, (1998) 7 SCC 123; *State of Haryana* v. *Chandra Mani*, (1996) 3 SCC 132; *LAO* v. *K.V. Ayisumma*, (1996) 10 SCC 634, *relied on*

A distinction can be underlined between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented

approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that "the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost". (Para 27)

Maniben Devraj Shah v. *Municipal Corpn. of Brihan Mumbai*, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24, *followed*

Thus, it is evident that the term sufficient cause is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party. (Para 28)

The appellant pleaded that since the documentation attendant to the clearance granted to the project applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay. (Para 29)

There is merit in the appellant's argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is nothing in the NGT Act which excludes parties who would be directly affected by a project that has environmental repercussions, from accessing the tribunal (NGT). Likewise, characterising the nature of legal advice that can be accessed for challenging land acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support — apart from expert professional legal advice is necessary, if NGT were to be approached. In these circumstances, given the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity. (Para 30)

The delay in filing the appeal before NGT is hereby condoned. The appeal is allowed. (Para 31)

Sridevi Datla v. *Union of India*, 2020 SCC OnLine NGT 870, *reversed*

Padmabati Mohapatra v. *Union of India*, 2013 SCC OnLine NGT 2177; *Rambir Narhargir Gosai* v. *Prabhakar Bhaskar Gadhaway*, 1954 SCC OnLine MP 46 : AIR 1955 Nag 300; *Save Mon Region Federation* v. *Union of India*, 2013 SCC OnLine NGT 2511; *H. Dohil Constructions Co. (P) Ltd.* v. *Nahar Exports Ltd.*, (2015) 1 SCC 680 : (2015) 1 SCC (Civ) 646; *DSR Steel (P) Ltd.* v. *State of Rajasthan*, (2012) 6 SCC 782 : (2012) 3 SCC (Civ) 1034, *cited*

RM-D/67551/C

Advocates who appeared in this case :
Ms Anitha Shenoy, Senior Advocate, for the Appellant;
K.M. Nataraj, Additional Solicitor General and Mukul Rohatgi, Senior Advocate, for the Respondents.

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2. 2020 SCC OnLine NGT 870, *Sridevi Datla* v. *Union of India* **(reversed)** 327*a*, 327*e-f*, 328*f*, 328*f-g*, 336*e*
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14. (2005) 3 SCC 752 : 2005 SCC (Cri) 906, *State of Nagaland* v. *Lipok Ao* 334*f*
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27. (1962) 2 SCR 762 : AIR 1962 SC 361, *Ramlal* v. *Rewa Coalfields Ltd.* 334*c-d*
28. 1957 SCR 208 : AIR 1957 SC 271, *Harinder Singh* v. *S. Karnail Singh* 333*d*
29. 1954 SCC OnLine MP 46 : AIR 1955 Nag 300, *Rambir Narhargir Gosai* v. *Prabhakar Bhaskar Gadhaway* 328*f*

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.— The appellant is aggrieved by an order[1] of the National Green Tribunal (hereafter referred to as "NGT"[2]) and has, therefore, approached this Court under Section 22 of the NGT Act. NGT rejected her appeal, preferred to it against the environmental clearance for construction of Greenfield International Airport, Bhogapuram, Visakhapatnam, which had been sought for by the fifth respondent.

2. The facts are simple: the fifth respondent (hereafter called "the project applicant") proposed the construction of a new greenfield international airport. As was required by law and extant statutory notifications, it applied to the Ministry of Environment, Forests and Climate Change (hereinafter, the "MoEF") to seek environmental clearance. MoEF, after following the prescribed procedure, which included ascertaining the views and objections of the parties concerned, the general public, etc. indicated its approval by an order dated 14-8-2017. In terms of Section 19 of the NGT Act, the approval was posted on the website of MoEF on 14-8-2017. Concededly, the project applicant published the approval in an English daily on 13-9-2017.

3. The appellant preferred her appeal to NGT on 13-11-2017. Along with the appeal, she preferred an application for condonation of delay in approaching NGT, given the stipulation of Section 19 that the appeal had to be preferred within 30 days from the date of communication of the order impugned. She explained that since the clearance and related documents were voluminous and the matter required some technical expertise, requiring the papers to be forwarded to experts and lawyers in Delhi, and the inter se communication delay, NGT needed to condone the delay, in the interests of justice. After considering the submissions made by the appellant as well as the project applicant, which opposed the application for condonation of delay, NGT, by its impugned order[1], rejected the appellant's application and consequently the appeal as well.

4. The appellant's arguments before this Court are mainly twofold: that the requirement of Section 16 is to "*communicate the order to the parties concerned as well as the public and that a meaningful interpretation should be given to the provision*". It was emphasised in this context that communication means not merely the publication on the Central Government's website, but also dissemination of the news or the decision to the affected parties. The learned Senior Counsel for the appellant Ms Anitha Shenoy, in this context, relied upon the terms contained in the environmental clearance/approval given by MoEF, especially those which obliged the project applicant to intimate the decision in dailies having local circulation in the vernacular. She also relied upon the stipulations in the environmental clearance ("EC") which prescribed that the successful project applicant had to, in continuation to so publishing the decision or intimation in local newspapers, also ensure that the decision was forwarded to local communities through the panchayats, etc. for dissemination.

1 *Sridevi Datla* v. *Union of India*, 2020 SCC OnLine NGT 870
2 Dated 31-7-2020

5. It was pointed out that the object of these conditions should be construed as part of a larger scheme of the Act to communicate every decision. The appellant argued that if a contrary interpretation were to be accepted, the appeal given by the statute would be meaningless as most often, large projects which involve either displacement of people or which affect habitats and have the tendency to damage or at least cause significant adverse impact upon the environment would not be considered on its merits by NGT since people and neighbourhoods cannot be presumed to have knowledge of deliberations in New Delhi.

6. It was also argued on behalf of the appellant that in the circumstances of the present case, at least the appeal could not be said to be time-barred. It was argued that the date for reckoning (limitation) is from 14-8-2017, when MoEF uploaded the decision on its website. The ninety-day period within which appeal was to be filed, expired on 12-11-2017, which was a Sunday. It was submitted that under Section 10 of the General Clauses Act, if any period prescribed ends on a Sunday or a day on which the court or the tribunal does not function, the next day should be considered as the terminus quo in point of time. Consequently, it was submitted that the appeal should be considered as within time and should have been entertained on merits.

7. Lastly, it was argued that NGT's opinion that sufficient cause was not shown while seeking condonation of delay is erroneous. The learned counsel highlighted that any proposal as well as clearances where voluminous documentation is involved, or if any individual or entity is aggrieved, or adversely affected, the only remedy provided is by way of an appeal. To substantiate the grounds of appeal, it would be essential that in many instances, expert advice is obtained based on which the grounds of appeal can be prepared and urged. If the issue were to be considered in this perspective, the explanation provided by the appellant in her application seeking condonation of delay could not be considered unreasonable and in fact amounts to sufficient cause. The learned counsel relied upon a previous order of NGT in *Padmabati Mohapatra* v. *Union of India*[3]. Reliance was also placed on the judgment of the Nagpur High Court, in *Rambir Narhargir Gosai* v. *Prabhakar Bhaskar Gadhaway*[4].

8. On behalf of the Union of India, the ASG, Mr K.M. Nataraj argued that the impugned order[1] does not require to be disturbed. He pointed out that the impugned order[1] had noticed that the appellant made no complaint that MoEF had put up the decision to grant environmental clearance on its website on 14-8-2017 or that having uploaded the decision it could not be viewed publicly in an uninterrupted manner. He further submitted that the finding that the first date when the decision was communicated by MoEF on its website is determinative for the purpose of reckoning limitation rather than any other later point in time. It was further emphasised on behalf of the UoI that the need to publish environmental clearances under the Environment Impact

3 2013 SCC OnLine NGT 2177
4 1954 SCC OnLine MP 46 : AIR 1955 Nag 300
1 *Sridevi Datla* v. *Union of India*, 2020 SCC OnLine NGT 870

Notification 2006, framed under the Environment Protection Act, 1986 is now known to all. The proposal of the project applicant clearly fell within the sweep of the Environment Impact Notification in Item 7(*a*) to the Schedule (to the notification).

9. It was submitted on behalf of the UoI that in terms of the Environment Impact Assessment Notification, 2006, the clearance had to be published within seven days from the date of uploading. The publication of environment clearance dated 14-8-2017 was done on 21-8-2017. Thus, the appellant's plea that she came to know of the environmental clearance on 24-8-2017 is baseless. The learned ASG relied upon a decision of NGT in *Save Mon Region Federation* v. *Union of India*[5] in this regard.

10. The learned ASG lastly argued that by virtue of Section 33 of the Act, the provisions of all other laws stand overridden and consequently, the question of extending the period of limitation by reference to Section 5 of the Limitation Act would not arise. He further urged that the period of limitation prescribed is actually 30 days for the filing of an appeal, and that further period of 60 days is only by way of acceptance of application for condonation of delay. Thus, no appeal is maintainable after the expiry of 90 days. It is pointed out that in the present case, the 90 day period in fact ended a day prior to the filing of the appeal; it was, therefore, clearly time-barred.

11. Mr Mukul Rohatgi, learned Senior Counsel appearing for the project applicant supported the submissions of the Union and argued that the project applicant concerned i.e. M/s Bhogapuram International Airport Corporation Ltd., has been conceived in public interest and in replacement of the existing Vishakhapatnam Airport which is primarily a defence airport. The learned counsel relied upon the decision of this Court in *H. Dohil Constructions Co. (P) Ltd.* v. *Nahar Exports Ltd.*[6] to the effect that any aggrieved litigant should be vigilant in the exercise of his rights and that he cannot claim the exercise of discretion for condoning any delay as a matter of right. Reliance was also placed upon the decision in *DSR Steel (P) Ltd.* v. *State of Rajasthan*[7]. In this regard, it was submitted that the appeal before this Court which purports to be under Section 22 of the Act is confined to the grounds specified under Section 100 CPC, which is only if the Court is satisfied that the case involves a substantial question of law.

12. Lastly, it was submitted by the learned Senior Counsel that the NGT Act correctly surmised in the circumstances of the case that the appellant had adopted a casual approach and did not believe the contents of the application for condonation of delay. The learned counsel in this context argued that the appellant is an interested person in the sense that her lands had been notified for acquisition and was therefore not uninformed or incapable of receiving appropriate legal advice.

5 2013 SCC OnLine NGT 2511
6 (2015) 1 SCC 680 : (2015) 1 SCC (Civ) 646
7 (2012) 6 SCC 782 : (2012) 3 SCC (Civ) 1034

Analysis and findings

13. The relevant provision of the Act i.e. Section 16[8] reads as follows:

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

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

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

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

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

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

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

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

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

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

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

8 Of the NGT Act

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

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

14. Environmental disputes are complicated and entail expertise in diverse fields (such as ecology, chemistry, biology, economics, administration, management, law, etc.) for their determination in an effective and speedy fashion, that is not possible within the regular judicial and administrative set up in India. In other words, environmental disputes relating to forests, biodiversity, air and water are complicated in nature; resolving and expeditiously disposing of these cases is not possible without a separate special court. Environmental courts or tribunals have been a long-standing demand for other reasons too. For effective prevention and control of environmental protection, there was an urgent need for a separate environmental court or tribunal to adjudicate without much delay. India is a party to the United Nations Conference on the Human Environment (known as the Stockholm Conference), 1972 where it made commitments relating to safeguarding of natural resources and developing international law, and to provide compensation to victims of pollution and other environmental degradation.

15. India is also a signatory to the Rio Declaration adopted at the United Nations Conference on Environment and Development at Rio de Janeiro in 1992. The Rio Declaration states that participating States must make suitable environmental legislation regarding effective access to the people, to judicial and administrative proceedings, including remedies. The Law Commission's 186th report recommended that the Union Government should establish and constitute separate Environmental Courts in each State, to deal with complex, specialised issues concerning the environment. It was in this background that Parliament enacted the NGT Act. The Act amends various other enactments and adds provisions to them, for appeal before NGT. These are incorporated in Section 33-B of the Water (Prevention and Control of Pollution) Act, 1974; Section 13-A of the Water (Prevention and Control of Pollution) Cess Act, 1977; Section 2-A of the Forest (Conservation) Act, 1980; Section 31-B of the Air (Prevention and Control of Pollution) Act, 1981; Section 5-A in the Environment (Protection) Act, 1986 and Section 52-A in the Biological Diversity Act, 2002.

16. In *Jitendra Singh* v. *Ministry of Environment*[9] the narrow, but important question considered was whether a State could alienate publicly available resources like ponds. This Court held that that such transfer or alienation was impermissible. In *Hanuman Laxman Aroskar* v. *Union of India*[10] this Court held that NGT is under an obligation to consider issues as an expert body, and apply the principle of sustainable development, in adjudicating environmental

9 (2020) 20 SCC 581 : 2019 SCC OnLine SC 1510
10 (2019) 15 SCC 401

issues, especially while considering the validity of grant of clearance to large projects under the Environment Protection Act. It was held that NGT Act:

> "provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment." (*Hanuman Laxman Aroskar case*[10], SCC p. 458, para 133)

17. The Court noted that to be a member of NGT, the individual had to possess specified academic qualifications, including a master's degree in science with a doctorate in engineering or technology, with prescribed experience in certain domains. To be an administrative member, the individual should possess fifteen years' administrative experience including experience of five years in dealing with environmental matters in the Central or State Government or in a reputed national or State level institution. The Court proceeded to hold in *Hanuman Laxman Aroskar*[10], that the grant of environmental clearance to a greenfield airport in Goa did not receive proper merits review by NGT.

18. Having regard to these decisions, and given the nature of jurisdiction which NGT has been invested with, the substantial questions of law that arise in the present case, are whether the approach to the issue of limitation by NGT was correct, and whether on a correct interpretation of law, the appeal under Section 16 was filed within the 90 days period, in the facts of this case.

Applicability of General Clauses Act

19. There can be no dispute that the period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the Limitation Act, if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days. Undoubtedly, in such cases, the Limitation Act would be inapplicable.[11] There are several previous judgments of this Court holding that where periods of limitation are prescribed under special laws,

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10 *Hanuman Laxman Aroskar* v. *Union of India*, (2019) 15 SCC 401

11 That provision is as follows:

> "**29.** ***Savings***.—(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).
>
> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

appeals that exceed the period granted and are within the extended period of limitation in the special law, can be entertained at the discretion of the tribunal, or court concerned and the Limitation Act would not apply upon expiry of such extended period.[12] This Court holds that there is merit in the contention of the Union that the provisions of the Limitation Act are inapplicable. This is, however, not dispositive of the issue; the next question is whether there is merit in the appellant's argument that NGT should have considered the issue of whether the appeal was filed within the extended period prescribed under the proviso to Section 16 i.e. within sixty days after the expiration of the initial 30 day period, required in the main provision.

20. The appellant argues that since there is no indication to the contrary; the appeal is to be considered as having been filed within the extended period of 60 days, since the last (of the 60 days) was a Sunday (12-7-2020). The appellant relied on Section 10 of the General Clauses Act, for this purpose. The respondents, notably the Union, opposed this argument.

21. Section 10 of the General Clauses Act, 1897[13] stipulates that when the last date for doing something falls on a public holiday, the act "*shall be considered as done*".. if it "*is done or taken on the next day afterwards on which the Court or office is open*". This provision applies to all Central Acts enacted *after* the said Act was brought into force. The scope of this provision was considered by this Court in *Harinder Singh* v. *S. Karnail Singh*[14] by a four-Judge Bench, which explained the object of Section 10 and held as under: (AIR p. 273, para 5)

> "*5.* ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday."

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12 *Kaushalya Rani* v. *Gopal Singh*, (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152; *CCE* v. *Hongo (India) (P) Ltd.*, (2009) 5 SCC 791; *Union of India* v. *Popular Construction Co.* (2001) 8 SCC 470; *Patel Bros.* v. *State of Assam*, (2017) 2 SCC 350 : (2017) 1 SCC (Civ) 658

13 "**10.** ***Computation of time***.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

14 1957 SCR 208 : AIR 1957 SC 271

22. Other decisions[15] have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is, therefore, held that the provision applies *proprio vigore* to all appeals filed under the NGT Act.

Approach of the court in considering the application for condonation of delay

23. What constitutes "sufficient cause" in terms of Section 16 of the NGT Act? While it is unexceptionable for the project applicant to argue that the Limitation Act is per se inapplicable to proceedings under the NGT Act, given that the basic, and outer period of limitation for filing an appeal have been enacted, nevertheless, what constitutes *sufficient cause*, is left to the discretion of the tribunal. Here, the court discerns a surfeit of authority on what the term denotes, and the general approach of the court, in dealing with delay.

24. In *G. Ramegowda* v. *LAO*[16], speaking for this Court, Venkatachaliah, J. summarised the position in the following terms: (SCC pp. 147-48, para 14)

> "*14*. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: *Ramlal* v. *Rewa Coalfields Ltd.*[17], *Shakuntala Devi Jain* v. *Kuntal Kumari*[18], *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi*[19], *Mata Din* v. *Narayanan*[20] and *LAO* v. *Katiji*[21], etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

25. Much later, in *Esha Bhattacharjee* v. *Raghunathpur Nafar Academy*[22] this Court referred to a large number of previous judgments[23], and observed that adoption of a strict standard of proof sometimes fails to protect public justice

15 *Manohar Joshi* v. *Nitin Bhaurao Patil*, (1996) 1 SCC 169; *Mohd. Ayub* v. *State of U.P.*, (2009) 17 SCC 70 : (2011) 1 SCC (L&S) 580
16 (1988) 2 SCC 142
17 (1962) 2 SCR 762 : AIR 1962 SC 361
18 (1969) 1 SCR 1006 : AIR 1969 SC 575
19 (1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 3 SCR 694
20 (1969) 2 SCC 770 : (1970) 2 SCR 90
21 (1987) 2 SCC 107 : 1989 SCC (Tax) 172
22 (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595
23 *State of Nagaland* v. *Lipok Ao*, (2005) 3 SCC 752 : 2005 SCC (Cri) 906; *New India Insurance Co. Ltd.* v. *Shanti Misra*, (1975) 2 SCC 840; *N. Balakrishnan* v. *M. Krishnamurthy*, (1998) 7 SCC 123; *State of Haryana* v. *Chandra Mani*, (1996) 3 SCC 132; and *LAO* v. *K.V. Ayisumma*, (1996) 10 SCC 634

and it may result in public mischief. Other decisions have highlighted that there cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific; in *Improvement Trust* v. *Ujagar Singh*[24], the Court held: (*Improvement Trust case*[24], SCC p. 789, para 16)

> "*16*. While considering [an] application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not."

26. The Court also emphasised that each case has to be balanced on the basis of its facts and the surrounding circumstances in which the parties act and behave.

27. Yet another dimension to the issue was highlighted in *Maniben Devraj Shah* v. *Municipal Corpn. of Brihan Mumbai*[25], where the Court underlined a distinction between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that "*the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost*." The Court then held that: (SCC pp. 168-69, para 24)

> "*24*. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

28. It is evident that the term *sufficient cause* is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.

29. Keeping these principles in mind, it is relevant to consider whether NGT's refusal to exercise discretion, in the facts and circumstances of this case, was erroneous. The Court is conscious of the fact that exercise of discretion, per se, is a fact dependent one, and considerable latitude should be given to the court or tribunal of the first instance, in the performance of that task. Nevertheless, as decided, cases and judgments have shown that the exercise of discretion does at

24 (2010) 6 SCC 786 : (2010) 2 SCC (Civ) 798
25 (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24

times, call for appellate scrutiny by this Court. This is one such. The appellant pleaded that since the documentation attendant to the clearance granted to the project applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay.

30. This Court is of the opinion that there is merit in the appellant's argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is, in our opinion, nothing in the NGT Act which excludes parties *who would be directly affected by a project*, that has environmental repercussions, from accessing the tribunal (NGT). Likewise, characterising the nature of legal advice that can be accessed for challenging land acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support — apart from expert professional legal advice is necessary, if NGT were to be approached. In these circumstances, this Court is of the opinion that given the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity.

31. In view of the foregoing findings, this Court is of the opinion that the impugned order[1] of NGT has to be and is, therefore set aside. The delay in filing the appeal before NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law. The appeal is allowed. There shall be no order on costs.

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1 *Sridevi Datla* v. *Union of India*, 2020 SCC OnLine NGT 870

(2007) 5 Supreme Court Cases 614

(BEFORE B.P. SINGH AND H.S. BEDI, JJ.)

Civil Appeal No. 2517 of 2007†

HARDESH ORES (P) LTD. .. Appellant;

Versus

HEDE AND COMPANY .. Respondent.

With

Civil Appeal No. 2518 of 2007‡

SOCIEDADE DE FOMENTO INDUSTRIAL (P) LTD. .. Appellant;

Versus

HEDE AND COMPANY .. Respondent.

Civil Appeals No. 2517 of 2007 with No. 2518 of 2007, decided on May 15, 2007

A. **Civil Procedure Code, 1908 — Or. 7 Rr. 11(d), 7 & 8 — Omitting to claim foundational relief and claiming the consequential relief only, to get around bar of limitation — Impermissibility — Appellants seeking injunction for enforcement of negative covenants in (purportedly renewed) agreement almost four years after the respondents had categorically denied the said renewal — Trial court and High Court finding that appellants' suit was not merely for injunction as prayed for in plaint, but was in effect for specific performance of renewal of the agreement, and hence dismissing plaint as being time-barred — Sustainability — Denial of renewal of the agreement by respondents in December 2001 had led to accrual of cause of action to appellants to seek a declaration and get their right of renewal enforced — Even assuming that Art. 113, Limitation Act applies to enforcement of covenants in a suit for injunction, held, real foundation for the suit was that the earlier agreement had stood renewed automatically containing the same terms and conditions as in the original agreement, including the negative covenants — However, a subsisting renewed agreement did not exist in fact — In its absence, no relief as prayed for in plaint could be granted by the clever device of filing a suit for injunction, without the appellants' claiming a declaration that their rights were subsisting under a renewed agreement, which was barred by limitation — Hence trial court and High Court rightly rejected the plaint — Limitation — Limitation Act, 1963, Art. 113**

B. **Specific Relief Act, 1963 — Ss. 38, 34, 10 and 12 — Enforcement of contractual obligation — Need for subsistence of contract/contractual obligation — Maintainability of suit for enforcement of negative covenants in agreement purported to have been renewed — Need for agreement to**

† Arising out of SLP (C) No. 106 of 2007. From the Final Judgment and Order dated 20-10-2006 of the High Court of Bombay at Goa in First Appeal No. 138 of 2006 with Application No. 148 of 2006

‡ Arising out of SLP (C) No. 640 of 2007

have been properly renewed or declaration obtained in respect thereof from a court of law — Contract Act, 1872 — S. 37

a C. **Contract — Renewal of contract — Requirements for — Nature of renewed agreement — Difference between renewal and extension of existing agreement, explained — Transfer of Property Act, 1882 — Ss. 105 and 106 — Deeds and Documents**

D. **Contract — Renewal of contract — Invocation of renewal clause by party having the right to do so — Denial of renewal by other party — Proper relief to be claimed, held, is to get the right of renewal declared and** b **enforced by a court of law and/or to get a declaration that the agreement stood renewed as contemplated by the renewal clause — Specific Relief Act, 1963 — Ss. 34, 38, 10 and 12 — Applicability**

E. **Civil Procedure Code, 1908 — Or. 7 R. 11(d) — Rejection of plaint on ground of limitation, reiterated, is contemplated under Or. 7 R. 11(d) — "Law" within the meaning of Or. 7 R. 11(d) must include the law of** c **limitation**

Dismissing the appeals, the Supreme Court

Held :

The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. "Law" within the d meaning of Order 7 Rule 11(*d*) must include the law of limitation as well.

(Para 25)

In order to give effect to the renewal of an agreement or a lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be, in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. There is no concept of automatic renewal of lease by mere e exercise of option by the lessee. This may be distinguished from an extension of an agreement where a new document is not required. Enforcement of the negative covenants presupposes the existence of a subsisting agreement.

(Paras 31 and 39)

State of U.P. v. *Lalji Tandon*, (2004) 1 SCC 1; *Provash Chandra Dalui* v. *Biswanath Banerjee*, 1989 Supp (1) SCC 487; *Ambica Quarry Works* v. *State of Gujarat*, (1987) 1 SCC 213, *followed*

f *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 188, *cited*

In the instant case, the appellant-plaintiffs did exercise their option under the original agreement and claimed renewal. The respondents denied the appellants' right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants. Thus, a cause of action accrued to the appellant-plaintiffs when their right of renewal was g denied by the respondents. This happened in December 2001 and, therefore, within three years from that date they ought to have taken appropriate proceedings to get their right of renewal declared and enforced by a court of law and/or to get a declaration that the agreement stood renewed for a further period of 5 years upon the appellants' exercising their option to claim renewal under the original agreement. The appellant-plaintiffs failed to do so.

(Paras 39 and 27 to 29)

h It was only on 4-8-2005 that the present suits came to be filed by the appellants in which a prayer for injunction was made with a view to enforce the

terms of clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting mining operation by anyone else except the appellants, or without their permission. The use of the words "during the subsistence of this agreement" in clause 15, and "during the pendency of this indenture" in clause 20 of the agreement is significant. In the absence of a document renewing the original agreement for a further period of 5 years and in the absence of any declaration from a court of law that the original agreement stood renewed automatically upon the appellants exercising their option for grant of renewal, the appellants cannot be granted relief of injunction, for the simple reason that there is no subsisting agreement evidenced by a written document or declared by a court. If there is no such agreement, there is no question of enforcing clauses 15 and 20 thereof. (Paras 32 and 39)

The appellants ought to have prayed for a declaration that their agreement stood renewed automatically on exercise of option for renewal and only on that basis could they have sought an injunction restraining the respondents from interfering with their possession and operation. Having not done so, they cannot be permitted to camouflage the real issue and claim an order of injunction without establishing the subsistence of a valid agreement. In the instant suit as well they could have sought a declaration that the agreement stood renewed automatically but such a claim would have been barred by limitation since more than 3 years had elapsed after a categoric denial of their right claiming renewal or automatic renewal by the respondent-defendants. (Para 39)

Even assuming that Article 113 of the Limitation Act, 1963 applies where enforcement of a positive or negative covenant is sought in a suit for injunction, in this case it has been found that the real foundation for the suit was that the earlier agreement stood renewed automatically containing the same terms and conditions as in the original agreement including the negative covenants. The basis for claiming the relief of injunction, namely, a subsisting renewed agreement did not exist in fact. In its absence, no relief as prayed for in the suit could be granted by the clever device of filing a suit for injunction, without claiming a declaration as to their subsisting rights under a renewed agreement, which is barred by limitation. (Para 40)

N.V. Srinivasa Murthy v. *Mariyamma*, (2005) 5 SCC 548; *T. Arivandandam* v. *T.V. Satyapal*, (1977) 4 SCC 467; *ITC Ltd.* v. *Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70, *followed*

Ramesh B. Desai v. *Bipin Vadilal Mehta*, (2006) 5 SCC 638; *Union of India* v. *West Coast Paper Mills Ltd.*, (2004) 2 SCC 747, *cited*

Hence the trial court as well as the High Court were justified in holding that the plaint deserved to be rejected under Order 7 Rule 11 CPC since the suit appeared from the statements in the plaint to be barred by the law of limitation. (Para 41)

F. **Civil Procedure Code, 1908 — Or. 7 R. 11(d) — Rejection of plaint under — Interpretation and construction of pleadings in plaint — Principles for, reiterated — Need for reading the plaint as a whole, stressed**

G. **Civil Procedure Code, 1908 — Or. 7 R. 11(d) — Matters to be considered at the stage of rejection of plaint — Covenants in agreement sought to be enforced in suit for perpetual injunction — Question raised by defendants as to whether agreement was registrable in application under Or. 7 R. 11 — Maintainability — Held, such question cannot be gone into at such stage**

Whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Order 7 Rule 11(*d*) is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. (Para 25)

Liverpool & London S.P. & I Assn. Ltd. v. *M.V. Sea Success I*, (2004) 9 SCC 512; *Popat and Kotecha Property* v. *State Bank of India Staff Assn.*, (2005) 7 SCC 510, *followed*

The question as to whether the agreement required registration is not a question which can be gone into an application under Order 7 Rule 11 CPC. (Paras 24 and 23)

D-M/A/36290/C

Advocates who appeared in this case :

Soli J. Sorabjee, M.S. Usgaoncar and R.F. Nariman, Senior Advocates [Dhruv Mehta, Harshvardhan Jha, Yashraj Deora, A.A. Razak (for K.L. Mehta & Co.), Advocates, with them] for the Appellant;

Mukul Rohatgi, M.N. Krishnamani, K.B. Sinha and Ranjit Kumar, Senior Advocates (Bhavanishankar V. Gadnis, Ms Sunita B. Rao and Nitin Popli, Advocates, with them) for the Respondent.

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

1. (2006) 5 SCC 638, *Ramesh B. Desai* v. *Bipin Vadilal Mehta* 622*e-f*
2. (2005) 7 SCC 510, *Popat and Kotecha Property* v. *State Bank of India Staff Assn.* 626*d*
3. (2005) 5 SCC 548, *N.V. Srinivasa Murthy* v. *Mariyamma* 622*b*, 622*d*, 623*g-h*, 624*g*, 630*e*
4. (2004) 12 SCC 188, *M.C. Mehta* v. *Union of India* 625*d-e*
5. (2004) 9 SCC 512, *Liverpool & London S.P. & I Assn. Ltd.* v. *M.V. Sea Success I* 626*d*
6. (2004) 2 SCC 747, *Union of India* v. *West Coast Paper Mills Ltd.* 623*g*
7. (2004) 1 SCC 1, *State of U.P.* v. *Lalji Tandon* 625*c-d*, 628*b*
8. (1998) 2 SCC 70, *ITC Ltd.* v. *Debts Recovery Appellate Tribunal* 630*c-d*
9. 1989 Supp (1) SCC 487, *Provash Chandra Dalui* v. *Biswanath Banerjee* 625*d*, 627*g*
10. (1987) 1 SCC 213, *Ambica Quarry Works* v. *State of Gujarat* 627*f-g*
11. (1977) 4 SCC 467, *T. Arivandandam* v. *T.V. Satyapal* 630*a*, 630*c-d*

The Judgment of the Court was delivered by

B.P. SINGH, J.— Special leave granted.

2. These appeals have been filed by the appellants against the common judgment and order of the High Court of Judicature at Bombay dated 20-10-2006 in First Appeals Nos. 138 and 139 of 2006 whereby the High Court has affirmed the order of the trial court dismissing the suits filed by the appellants under Order 7 Rule 11 of the Code of Civil Procedure holding that the suits are barred by limitation.

3. The representative facts giving rise to these appeals are taken from the pleadings in suit filed by Hardesh Ores Pvt. Ltd. The appellants herein, namely, Hardesh Ores Pvt. Ltd. in civil appeal arising out of SLP (C) No. 106

of 2007 (for short "Hardesh") and Sociedade de Fomento Industrial Pvt. Ltd. in civil appeal arising out of SLP (C) No. 640 of 2007 (for short "Fomento") respectively entered into two agreements with the respondent Hede & Co. (for short "Hede") on 23-10-1996. The agreement with Hardesh was for extraction of ore from the mine in question whereas the agreement with Fomento was for purchase of minerals extracted from the mine. Both the agreements contained similar terms and conditions. As per clause 2.1 of the agreement, the agreement though executed on 23-10-1996 was to come into force from 1-1-1997 and was to remain in force for a period of 5 years from such date. Clause 2.2 of the agreement provided that on the expiry of every 5 years the agreement shall stand renewed for further periods of like duration at the sole option of Hardesh on the same terms and conditions as contained in the original agreement. Hardesh was entitled to exercise its option during the entire period of lease in respect of the said mine and renewals thereafter, and until such time as remaining deposits of ore in the said mine could be economically exploited. Clause 2.3 gave the right to Hardesh to terminate the agreement by giving two calendar months' prior notice in writing to the respondent Hede of its intention to do so. Clause 2.5 of the agreement provided inter alia that in case Hardesh was forced to abandon work in the said mine/land on account of any lawful or legal claim made and/or objection raised by any person including the holder of surface right or on account of any injunction being passed by any court of law or on account of any fault of the respondent, the agreement shall not stand terminated but the operation thereof shall stand suspended for such time. In the event such a condition/situation continued to exist for a period exceeding six calendar months, Hardesh shall be entitled to terminate the agreement after giving 30 days' notice in writing. Clause 9.2 of the agreement ensured that the respondent shall not in any manner interfere or obstruct Hardesh from carrying on the work of extraction, raising, loading or delivering the ore and its other functions under and in accordance with the agreement.

4. Clause 15 of the agreement provided that during the subsistence of the agreement, Hardesh shall solely be entitled to extract and deliver the ore from the said mine and the respondent shall not be entitled to authorise or permit any other person for that purpose nor shall the respondent either themselves or through their servants and/or agents, extract, raise, remove, load, transport or deliver the ore from the said mine unless expressly authorised or approved by Hardesh in writing.

5. Under clause 20 of the agreement the respondent covenanted unto the appellant that during the pendency of the indenture they shall not enter into any agreement, understanding or arrangement with any other party for working the said mine/lease for carrying on any other operation whatsoever in the said mine/lease.

6. The agreement with Fomento is more or less in the same terms though with Fomento it is for the purchase of the iron ore extracted and to be extracted from the said mine.

7. Two suits for injunction were filed by the appellants herein on 4-10-2005. The reliefs claimed in the suit of Hardesh were as follows:

a (*i*) The defendants, their agents or representatives be restrained from in any manner stopping and/or obstructing the plaintiff from entering upon the said mine and/or carrying on the work of extraction, raising, loading and/or delivering the ore from the said mine to Fomento and/or from doing any activities ancillary thereto which the plaintiff is empowered to do under the 23-10-1996 extraction agreement.

b (*ii*) The defendants, their agents or representatives be restrained from entering into the mine and doing any work for extracting, raising, removing, loading, transporting, selling or delivering to any other persons iron ore from the said mine either by themselves or through their servants and/or agents.

c (*iii*) The defendants, their agents or representatives be restrained from entering into any contract/agreements and/or understanding with third parties for prospecting and/or extracting and/or raising any iron ore from the said mine or selling the ore from the said mine to any third party.

d (*iv*) That the defendant be directed to give effect to the negative covenant contained in clauses 15 and 20 of the extraction agreement dated 23-10-1996.

8. In the plaint reference was made to the agreements that were entered into between the parties. It was also stated that there were privately owned lands comprised within the said mine and no consent had been obtained from the surface right owners by the respondent and the same was to be obtained e subsequently, which necessitated the incorporation of clause 2.5 in the agreement. The agreement was to commence from 1-1-1997 but on 12-12-1996 in view of an order of the Supreme Court dated 12-12-1996†† prohibiting mining operations in the authorised area, mining operations could not be commenced. In view of the situation that arose on account of the order of the Supreme Court, which necessitated permission being sought from the f Central Government for commencing mining operations, as also in view of the fact that the consent of the surface right owners had not been obtained, on the proposal of the respondent, the appellants exercising their right under clause 15 of the agreement authorised the respondent to carry on extraction operation in the pits already opened. It is the case of the appellant that the appellant had taken possession of the mine immediately after coming into g effect of the contract on 1-1-1997. The respondent extracted the ore from the mine already opened pursuant to the authorisation given as per clause 15 of the agreement. This arrangement was of a temporary nature. Some obstruction was raised by the surface right owners in January 1998 which was reported to the respondent. The respondent promised to sort out the problem with the surface right owners by getting their consent in writing. It is h admitted in the plaint that although the said agreements were to come into

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

force on 1-1-1997 no mining operations could be commenced in view of the order of the Supreme Court dated 12-12-1996††.

9. The case of the appellant in the plaint is that the extraction agreement was initially for a period of five years from 1-1-1997 with a right of renewal at the option of the appellant on the same terms and conditions. In view of the original period of 5 years coming to an end on 31-12-2001, in terms of clause 2.2 of the agreement, appellant Hardesh exercised its option to renew the said agreement for further period of 5 years. This was conveyed to the respondent vide letter dated 4-12-2001 which was received by it on 7-12-2001. According to the appellant with the exercise of option by appellant Hardesh the agreement stood renewed up to 31-12-2006. However, the appellant Hardesh received a letter dated 29-12-2001 from the respondent alleging that the plaintiff-appellant was not entitled to exercise the option for renewal. The letter dated 4-12-2001 annexed to the plaint has been marked as Ext. 41 and its reply dated 29-12-2001 has been marked as Ext. 43.

10. The appellant came to learn that the respondent was conducting the extraction in the private area where the surface rights were held by the Salgaonkar sisters. This led the appellant to believe that the problem may have been sorted out with the surface right owners, namely, Salgaonkar sisters. If that was so, it was incumbent upon the respondent to inform the appellant so that the appellant could undertake the extraction work itself. The appellant had also come to learn that the first stage clearance had been granted in respect of the said mine on 17-10-2003 by the Ministry of Environment and Forests under the Forest (Conservation) Act, 1980 but the second stage clearance was yet to be obtained without which it was not possible to commence work.

11. In this background the appellant issued a notice dated 27-4-2005 to the respondent requesting them to furnish to the appellant within 15 days of the receipt of the notice the documents evidencing the consent obtained from Salgaonkar sisters. The notice also stated as follows:

> "Kindly note that if no documents as aforesaid are furnished to us within a period of 15 days from the receipt of this notice, or if no reply is received from you we shall presume that such consent has been obtained since you are doing the extraction in the area of the captioned mining lease wherein surface rights are held by Salgaonkar sisters, pursuant to the authorisation granted to you, in terms of clause 15 of the extraction agreement dated 23-10-1996."

12. The said letter was annexed as Ext. 48. The respondent failed to furnish the documents, as requested, and, therefore, the appellant issued notice dated 17-5-2005 withdrawing the authorisation granted by the appellant under clause 15 of the extraction agreement and called upon the respondent to resist from doing any extraction or selling ore to any party within 30 days of service of notice failing which the appellant asserted its right to enter into the mine to give effect to the agreement. The respondent replied by its letter dated 24-6-2005 refusing to comply with the demand

contained in the notice. The appellant asserted that in view of clauses 15 and 20 of the agreement the appellant had exclusive right to carry on extraction and not the respondent. It was also stated in the plaint that there were valid, subsisting and binding agreements between the plaintiffs (Hardesh and Fomento) and the defendant-respondent and that Hardesh and Fomento were at all material times and even today ready and willing to perform the terms of the agreement. It was asserted that the plaintiff-appellants had performed their obligations under the agreements. The extraction agreement was specifically enforceable and the appellant had performed its obligations and were willing to fully carry out its obligations as per the said agreement. In the circumstances, it was submitted that the appellant was entitled to an order of preventive injunction and as also temporary injunction in the manner prayed for in the suit.

13. It is the case of the appellant-plaintiff that the cause of action arose to the plaintiff with the expiry of notice period dated 17-5-2005. On such pleas the prayers which have been extracted in earlier part of the judgment were made in the suit.

14. An application was filed on behalf of the respondent under Order 7 Rule 11 of the Code of Civil Procedure submitting that there was absence of cause of action and also the plaint was barred by limitation. Subsequently, the plea of absence of cause of action was given up and only the plea of bar of limitation under the Limitation Act was pressed. It was submitted that Article 54 of the Limitation Act applied and that a suit for specific performance of the contract should have been filed within 3 years from the date the appellant-plaintiff had notice that the renewal of the agreement was refused by the respondent. In the instant case the refusal was communicated on 29-12-2001 and, therefore, the suit should have been filed within 3 years thereafter.

15. The trial court by its order of 23-2-2006 allowed the application and dismissed the suit as barred by limitation. It observed that from a mere perusal of the pleadings contained in paras 47 to 51 of the plaint it appeared that the appellant had asserted that the agreements were specifically enforceable. A reading of the plaint established that the foundation of the appellant's suit was for specific performance of the renewal of the agreement dated 23-10-1996, the cause of action for which arose on 29-12-2001 when they received reply of the respondent denying that the agreement stood renewed. Since the suit was filed much after the expiry of 3 years from that date, it was hopelessly barred by limitation.

16. Aggrieved by the order of the trial court the appellants preferred two appeals before the High Court which have been dismissed by the impugned order. Before the High Court it was urged that in deciding an application under Order 7 Rule 11 CPC the contentions raised in defence or submissions advanced by the respondent-defendant about their case need not be considered and the matter must be decided on the basis of averments in the plaint and the documents annexed with the plaint. The trial court had fallen

into an error when it referred to the defence of the defendant to determine as to whether the plaint was liable to be rejected as barred by limitation. It also noticed the submission urged on behalf of the appellant that the question of limitation was a mixed question of law and fact and, therefore, such a question could be adjudicated only in the trial.

17. On the other hand the appellants (*sic* respondents) contended that the case was squarely covered by the ratio laid down by this Court in *N.V. Srinivasa Murthy* v. *Mariyamma*[1]. By the device of clever drafting of the plaint the question of limitation was sought to be got over by camouflaging the real issue in the suit and making it appear as if it was merely a suit for perpetual injunction.

18. The High Court after appreciating the averments contained in the plaint observed that this was not merely a suit for perpetual injunction insisting upon performance of the negative covenants as contained in clauses 15 and 20 of the agreement. The plaint clearly showed that the plaintiff's suit was in effect a suit for specific performance of the renewal of the agreement dated 23-10-1996. The cause of action for such a suit arose on 29-12-2001 when the respondent by its letter refuted the claim of the appellants for renewal w.e.f. 1-1-2002 for a period of 5 years. After considering the judgment of this Court in *Srinivasa Murthy case*[1] the High Court concluded that the ratio laid down therein was squarely applicable to the instant case. It recorded a finding that the suit for injunction simpliciter was nothing but a camouflage to get over the bar of limitation, which, in fact, showed that specific performance was implicit in the pleadings contained in the plaint itself. The suit though styled as "suit for injunction" was, in fact, a suit for specific performance for the renewal of the agreement dated 23-10-1996 for which the cause of action had arisen on 29-12-2001. It negatived the contention urged on behalf of the appellants relying on the judgment of this Court in *Ramesh B. Desai* v. *Bipin Vadilal Mehta*[2] holding that in the instant case without going into the pleadings and the documents filed on behalf of the defence, the plaint itself and the documents annexed therewith showed that in fact it was a suit for specific performance of the agreement between the parties which appeared to be barred by the law of limitation. Accordingly it dismissed the appeals preferred by the appellants.

19. Mr Soli J. Sorabjee, learned Senior Counsel appearing on behalf of the appellants in civil appeal arising out of SLP (C) No. 106 of 2007 submitted that in dealing with an application under Order 7 Rule 11 the court must go by the averments in the plaint. The plaint must be read as a whole. The mere use of words like "readiness" and "willingness" to perform the agreement by themselves do not make it a case of specific performance of agreement. Those averments in the instant case were necessary for enforcing the negative covenants contained in clauses 15 and 20 of the agreement. He,

1 (2005) 5 SCC 548
2 (2006) 5 SCC 638

therefore, submitted that the trial court was entirely wrong in construing the instant suit as a suit for specific performance of the agreement, whereas it was essentially a suit for perpetual injunction seeking enforcement of the negative covenants contained in the agreement in clauses 15 and 20 thereof. He further submitted that the question of limitation was a mixed question of law and fact and could be decided only in the suit.

20. Mr R.F. Nariman, learned Senior Counsel appearing on behalf of the appellant in civil appeal arising out of SLP (C) No. 640 of 2007 submitted that clause 2.2 of the agreement provided for a renewal every 5 years at the option of the lessee till the mine was exhausted. The use of the words "stand renewed", "further periods" and "sole option of Hardesh" were indicative of the fact that there was automatic renewal of the lease once the option was exercised by Hardesh and such renewals took place as and when options were exercised in future till such time as the mine got exhausted. He submitted that there were inbuilt provisions of pricing in the agreement itself which were dependent on export price. There was an inbuilt mechanism for escalation of price which supported his contention that the lease stood renewed from time to time on option being exercised by Hardesh. He also submitted that the subject-matter of the lease was divided into two parts. So far as the forest land was concerned the cause of action had not even arisen and, therefore, there was no question of dismissing the entire suit. He drew our attention to clause 2.5 of the agreement and contended that the aforesaid clause provided for suspension of the agreement and not its termination in the eventualities enumerated in that clause. According to him Article 54 of the Limitation Act was not at all applicable and, if at all, Article 113 may apply since there was no specific article prescribing a period of limitation for the enforcement of positive or negative covenants. The article was elastic enough to include a case where the party unequivocally threatened the plaintiff's right and the same need not be the first threat. Referring to Article 58, he submitted that the limitation is to be computed from the date when the right to sue first accrued whereas under Article 113 the threat giving rise to the cause of action need not be the first threat. In the instant case the defendant had started mining in the area including the land which were in dispute on account of the fact that the surface right owners had not given them permission to do so. It was in these circumstances that the respondent was called upon to disclose the documents, if any, evidencing grant of permission by the surface right owners. He relied upon a decision of this Court in *Union of India* v. *West Coast Paper Mills Ltd.*[3] highlighting the difference between Article 58 and Article 113 of the Limitation Act. He further submitted that *Srinivasa Murthy case*[1] was misapplied since the fact situation in the instant case was different from that in *Srinivasa Murthy case*[1]. The High Court fell into an error in looking at the defence of the respondent to come to the conclusion that the suit was barred since there was

3 (2004) 2 SCC 747

1 *N.V. Srinivasa Murthy* v. *Mariyamma*, (2005) 5 SCC 548

no valid renewal. Mr Nariman, however, did not dispute that reference to "law" in Order 7 Rule 11 CPC included a law relating to limitation such as the Limitation Act.

21. Mr Mukul Rohatgi, learned Senior Counsel appearing for the respondent in civil appeal arising out of SLP (C) No. 106 of 2007 submitted that the High Court was fully justified in coming to the conclusion that the clever drafting of the plaint purporting to be a suit for injunction was merely to camouflage the real issue. He did not dispute that the plaint must be read as a whole and one must look to the substance rather than the form. He submitted that the appellant's case that there was automatic renewal after the original term expired on mere exercise of option by the appellant was not legally tenable. According to him the renewal of a mining lease must be evidenced by the execution of a deed evidencing renewal, or a fresh mining lease, and such a document must incorporate the negative covenants as were sought to be enforced. According to him if the submission urged on behalf of the appellants is to be accepted, by mere exercise of option and without execution of an actual agreement, a renewed agreement comes into existence with the same negative covenants which gave a right to the appellant to enforce the newly born negative covenants. According to him where an option is to be exercised by the lessee, he must insist upon the execution of an actual physical agreement evidencing renewal of the original term. If the promisor refused to execute such a document, the appellants should have sought the assistance of the court and ought to have moved the court claiming a relief against the promisor for execution of a document evidencing renewal of the lease. That should have been done within a period of 3 years from the date on which the promisor rejected the claim of the appellant that the lease stood renewed by mere exercise of option by it. If no suit is filed and no agreement is executed by the parties, there can be no question of a fresh agreement coming into existence and consequently no question of enforcement of a negative covenant arises in such a non-existent agreement. He further submitted that the 1996 agreement was a lease for a period exceeding 11 months and, therefore, required compulsory registration in view of the provisions of Sections 17 and 49 of the Registration Act. It, therefore, cannot be read as evidence in the suit and consequently no rights under such an agreement can be claimed. He further submitted that even renewal of such a lease required registration. According to him the appellants were trying to sidestep something which was imperative and which had necessarily to be asked for in the suit, which had not been asked for. Therefore, applying the principle laid down in *Srinivasa Murthy case*[1] the suit must fail because the appellants should have asked for a declaration under Order 2 Rule 2 to the effect that the agreement stood renewed and the respondent's denial was unlawful. Rather than doing that, the appellants have sought only the end relief which could not be asked for without first asking for a declaration that the lease deed stood renewed on mere exercise of option without the

1 *N.V. Srinivasa Murthy* v. *Mariyamma*, (2005) 5 SCC 548

execution of an indenture evidencing renewal of the lease. Only in such a renewed lease a negative covenant could have been incorporated which could have been enforced. Since such an agreement never came into existence and a suit for declaration stood barred by time, the appellant cannot get over the limitation and seek the remedy of injunction by way of enforcement of the negative covenants in an agreement which never came into existence. In sum and substance he submitted that without first getting a renewed lease deed executed in physical form or getting a declaration from a court of law that the lease stood renewed as contended by them, the appellant cannot seek a relief by way of injunction by filing a suit for enforcement of negative covenants. He further submitted that the appropriate article which applied in the facts of this case was Article 54. Since the respondent denied the fact that the lease stood automatically renewed, the limitation commenced from that day and, therefore, a suit for declaration and/or specific performance was barred after 3 years from the date of refusal i.e. 29-12-2001. Articles 58 and 113 did not apply to the facts of this case.

22. Mr Ranjit Kumar, learned Senior Counsel appearing on behalf of the respondent in civil appeal arising out of SLP (C) No. 640 of 2007 relied upon judgments in *State of U.P.* v. *Lalji Tandon*[4] and *Provash Chandra Dalui* v. *Biswanath Banerjee*[5] and contended that there was a vital distinction between extension of a lease and renewal of a lease. The law is well settled that in case of renewal a fresh agreement has to be executed. He also relied upon decision of this Court in *M.C. Mehta* v. *Union of India*[6] to contend that even renewal of a lease amounted to a fresh grant of lease. He also contended that the plaint itself disclosed that the appellant-plaintiff had never worked the mine and it was the respondent-defendant who was working the mine.

23. Replying to the submissions urged on behalf of the respondents, Mr Sorabjee, appearing for the appellants submitted that the question as to whether the agreement was really a mining lease or a mere agreement, and whether it required registration, has to be gone into in the suit and this question cannot be urged in an application under Order 7 Rule 11 CPC. At this stage whatever is stated in the plaint must be accepted. The question of registration may arise when the document is produced and objected to by the respondent. In any event, even if the document requires registration, that cannot be a ground for rejecting the plaint on the ground that the suit is barred by limitation. Moreover, since the respondents have given up the plea of absence of cause of action, this matter cannot be investigated at this stage. He reiterated his submission that under clause 2.2 of the agreement read with clause 18, by exercise of option claiming renewal, the agreement ipso facto stands renewed and there is no need to get a fresh agreement executed.

24. We may observe at the threshold that the question as to whether the agreement required registration is not a question which can be gone into at

4 (2004) 1 SCC 1
5 1989 Supp (1) SCC 487
6 (2004) 12 SCC 188

this stage, particularly in view of the fact that the plaint has been rejected on the ground of limitation.

25. The language of Order 7 Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr Nariman did not dispute that "law" within the meaning of clause (*d*) of Order 7 Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (*d*) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (*d*) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S.P. & I Assn. Ltd.* v. *M.V. Sea Success I*[7] and *Popat and Kotecha Property* v. *State Bank of India Staff Assn.*[8]

26. We shall therefore proceed on the basis of averments contained in the plaint and the documents annexed to it.

27. In the instant case it cannot be disputed that the agreement was acted upon as stated in the plaint itself. It is averred in the plaint that possession of the mine was taken in terms of the agreement by the appellant-plaintiff. The appellant-plaintiff also exercised its right under the agreement and in terms of clause 15 thereof authorised the respondent-defendant to carry on mining operations in the pits already opened up. Apart from these the mere fact that the appellant sought renewal of the lease, which was denied by the respondent, is sufficient proof of the fact that the agreement had been acted upon by the appellant.

28. The next averment in the plaint which is relevant is para 23 thereof wherein the appellant-plaintiff stated that since the original period of 5 years was to end on 31-12-2001 in terms of clause 2.2 of the agreement, the appellant-plaintiff exercised its option to renew the said agreement for further period of 5 years which was conveyed to the respondent vide its letter dated 4-12-2001 and which was received by the respondent-defendant on 7-12-2001. In the same paragraph it is stated that the extraction agreement entered into between the plaintiff-appellant and the defendant-respondent was operative and stood renewed up to 31-12-2006. A copy of the letter dated 4-12-2001 has been annexed to the plaint and marked as Ext. 41. The

7 (2004) 9 SCC 512
8 (2005) 7 SCC 510

plaintiff-appellant further goes on to say that it received the reply from the defendant-respondent dated 29-12-2001 alleging that the plaintiff-appellant was not entitled to exercise the option of renewal. The said letter has been annexed to the plaint and marked as Ext. 43. A mere perusal of the letter dated 4-12-2001 addressed by the appellant to the respondent is enough to satisfy the court that in terms of clause 2.2 of the agreement the appellant exercised its option to renew the captioned agreement for a further period of 5 years commencing from 1-1-2002 on the same terms and conditions as contained in the original agreement. The letter clearly states that after 31-12-2001 the captioned agreement will stand renewed for the period 1-1-2002 to 31-12-2006. To this the respondent-defendant replied by its letter dated 29-12-2001, the relevant part whereof reads as follows:

> "We do not agree with your contention in your letter dated 4-12-2001 that the agreement in reference stands renewed as alleged from 1-1-2002 to 31-12-2006 or for any other period whatsoever."

29. It is thus apparent that the appellant-plaintiff exercised its right under the agreement to claim a renewal of the term of the lease and the respondent-defendant refuted that claim and denied the assertion that the agreement stood renewed as alleged from 1-1-2002 to 31-12-2006 or for any other period whatsoever. In view of the correspondence exchanged between the parties, clearly a cause of action accrued to the appellant-plaintiff since its right of renewal as a matter of course claimed by it was denied by the respondent-defendant. Whether the denial was justified or not is another matter. In the facts and circumstances of the case, a right accrued to the appellant-plaintiff to sue the respondent-defendant and to get a declaration that the agreement stood automatically renewed for a further period of 5 years. It is the admitted position that the appellant-plaintiff did not pursue the matter further and never sought relief from any court of law of competent jurisdiction for a declaration that the lease stood renewed automatically upon the appellant-plaintiff exercising its option under the agreement. It was contended on behalf of the respondent-defendant that there is no question of automatic renewal of an agreement or lease by mere exercise of the option which the appellant-plaintiff may claim under the agreement. The respondent contends that renewal of an agreement or lease requires execution of another document evidencing such renewal and, in its absence, it cannot be argued that the agreement or lease stood automatically renewed. It was also urged relying upon the decision of this Court in *Ambica Quarry Works* v. *State of Gujarat*[9] that the grant of renewal is a fresh grant and must be consistent with law. The respondents relied on the decision of this Court in *Provash Chandra Dalui* v. *Biswanath Banerjee*[5] wherein this Court considered the difference between "extension" and "renewal" of a lease. This Court observed thus: (SCC p. 496, para 14)

> "*14*. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to

9 (1987) 1 SCC 213
5 1989 Supp (1) SCC 487

carry out further than its original limit. Extension, according to *Black's Law Dictionary*, means enlargement of the main body; addition to something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act."

30. The same view was reiterated by this Court in *State of U.P.* v. *Lalji Tandon*[4] wherein it was observed as under: (SCC pp. 8-9, para 13)

"There is a difference between an *extension of lease* in accordance with the covenant in that regard contained in the principal lease and *renewal of lease*, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be."

(emphasis in original)

31. Having regard to these decisions we must hold that in order to give effect to the renewal of a lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be, and there is no concept of automatic renewal of lease by mere exercise of option by the lessee. It is, therefore, not possible to accept the submission urged on behalf of the appellant-plaintiffs that by mere exercise of option claiming renewal, the lease stood renewed automatically and there was no need for executing a document evidencing renewal of the lease.

32. We shall now advert to some of the facts stated in the plaint itself. The case of the appellant-plaintiff is that since it was not possible to commence mining operation after taking possession of the mine, in exercise of its right under clause 15 of the agreement, it permitted the respondent to carry on mining operations confined to the pits already opened up. Its case was that under its permission the respondents were carrying on limited mining operation. The appellants were awaiting permission of the Central Government under the Forest (Conservation) Act as also consent of the surface right holders permitting them to carry on mining operations. When the original term of the lease expired, they exercised their option to get the lease renewed for a further period of 5 years but the respondents refuted their

4 (2004) 1 SCC 1

claim and denied the fact that the lease stood renewed automatically. The option was exercised by the appellant and refuted by the respondent in December 2001. Thereafter nothing much appears to have happened and during this period the respondent carried on mining operations. It was only on 15-5-2005 that the appellant Hardesh wrote to the respondent stating that they had been permitted to extract ore from the broken pits in the forest area under clause 15 of the extraction agreement. The appellant also permitted the respondent to sell the ore to others like Dempo or Chowgules since Fomento was not interested in purchasing the low grade ore. The communication also referred to the option exercised by the appellant for renewal for a period of 5 years from 1-1-2002 to which the respondent replied saying that they were not entitled to exercise any option. The letter then goes on to say that the appellants were led to believe that the respondent had obtained the consent from the surface right owners of the privately owned land within the mining area about which no information had been given to the appellants. Therefore, by letter dated 27-4-2005 the respondent were called upon to furnish the documents evidencing consent given by the surface right owners. It was further stated that if no documents, as aforesaid, were furnished within a period of 15 days from the date of receipt of this notice or if no reply was received, the appellants shall presume that such consent had been obtained since the respondents were doing the extraction in the area of the captioned mining lease. Since no documents were furnished pursuant to notice dated 27-4-2005, the appellants assumed that such consent had been obtained. It, therefore, withdrew the permission given to the respondents under clause 15 of the extraction agreement so that the appellants could make preparation to start the extraction work. The last paragraph of this letter reads as under:

> "We, therefore, give you notice to desist from doing any extraction of ore or doing work of any type in the above mine on the expiry of 30 days from the receipt of this notice failing which we would have no other alternative than to approach the court to get appropriate relief, including specific performance against you."

It is not necessary to refer to the correspondence exchanged thereafter. The suits came to be filed on 4-8-2005 in which a prayer for injunction was made with a view to enforce the negative covenants contained in clauses 15 and 20 of the agreement.

33. The respondent sought rejection of the plaint by filing application under Order 7 Rule 11 CPC contending that the suit was barred by limitation on the face of it. It was contended before the High Court as also before us that the plaint has been cleverly drafted to give it the appearance of a simple suit for injunction to enforce the terms of clauses 15 and 20 of the agreement which incorporated negative covenants prohibiting mining operation by anyone else except the appellant Hardesh, or without its permission. It was submitted before us that the law is well settled that the dexterity of the draftsman whereby the real cause of action is camouflaged in a plaint cleverly drafted cannot defeat the right of the defendant to get the suit

dismissed on the ground of limitation if on the facts, as stated in the plaint, the suit is shown to be barred by limitation. In *T. Arivandandam* v. *T.V. Satyapal*[10] this Court observed as under: (SCC p. 470, para 5)

> "*5*. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC, taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits."

34. In *ITC Ltd.* v. *Debts Recovery Appellate Tribunal*[11] this Court noticed the judgment in *Arivandandam*[10] and observed as under: (SCC p. 77, para 16)

> "*16*. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

35. The respondent strongly relied on the decision of this Court in *Srinivasa Murthy case*[1]. That was a case where the plaintiffs alleged in the plaint that their father had incurred some debts and had therefore borrowed a sum of Rs 2000 from the predecessor-in-title of the defendants. Only by way of security for the loan advanced, a registered sale deed had been executed on 5-5-1953 with a contemporaneous oral agreement that on return of the borrowed sum with interest payable thereon @ 6% per annum a registered reconveyance deed shall thereafter be executed in favour of the borrower. The case of the plaintiffs was that despite the registered sale deed, the plaintiffs continued to be in possession of the suit lands. The receipt was obtained on 25-3-1987 from the defendants and the original registered sale deed dated 5-5-1953 was returned to the first plaintiff with an oral promise by the defendants to execute the registered document in favour of the plaintiff borrower. On reading of all the averments of the plaint, it appeared that the cause of action for obtaining a registered reconveyance deed from the defendants in favour of the plaintiffs first arose on 25-3-1987 when the entire loan amount was alleged to have been paid and an oral promise was given by

10 (1977) 4 SCC 467
11 (1998) 2 SCC 70
1 *N.V. Srinivasa Murthy* v. *Mariyamma*, (2005) 5 SCC 548

the defendants to reconvey the suit lands. In the mutation proceedings an order was passed in favour of the defendants and the said order was confirmed in appeal by order of the Assistant Commissioner dated 28-4-1994. The cause of action is said to have arisen when the Appellate Authority confirmed the order of the lower authority directing mutation of the names of the defendants and then again in the first week of July 1995 when the defendants were alleged to have made an attempt to interfere with the plaintiffs' possession and enjoyment of the suit lands. The suit was filed on 26-8-1996 in which the reliefs claimed were, (*a*) declaration that the plaintiffs are absolute owners of the suit lands, and (*b*) permanent injunction restraining the defendants from wrongfully entering the scheduled property and from interfering with the peaceful possession and enjoyment of scheduled lands.

36. This Court after examining the pleadings observed that the foundation of the suit was that the registered sale deed dated 5-5-1953 was in fact only a loan transaction executed to secure the amount borrowed from the plaintiffs' predecessor. The amount borrowed was alleged to have been fully paid back on 25-3-1987 and in acknowledgment thereof a formal receipt was obtained. At the same time there was an alleged oral agreement by the defendants to reconvey the property to the plaintiffs by registered deed. This Court held that on the basis of the averments contained in the plaint, relief of declaring the registered sale deed dated 5-5-1953 to be a loan transaction and second relief of specific performance of oral agreement of reconveyance of property by registered document ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking a declaration that the registered sale deed dated 5-5-1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for reconveyance deed according to the plaintiffs' own averments arose on 25-3-1987 when the plaintiffs claimed to have obtained the entire loan amount and obtained a promise from the defendants to reconvey the property. The mutation proceedings did not furnish any independent or fresh cause of action to seek a declaration of the sale deed of 5-5-1953 to be merely a loan transaction. The foundation of the suit was clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount. This Court went on to observe: (SCC p. 553, paras 14-15)

> "*14.* After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5-5-1953, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Courts.
>
> *15.* Civil Suit No. 557 of 1990 was pending when the present suit was filed. In the present suit, the relief indirectly claimed is of declaring the sale deed of 5-5-1953 to be not really a sale deed but a loan

transaction. Relief of reconveyance of property under alleged oral agreement on return of loan has been deliberately omitted from the relief clause. In our view, the present plaint is liable to rejection, if not on the ground that it does not disclose 'cause of action', on the ground that from the averments in the plaint, the suit is apparently barred by law within the meaning of clause (*d*) of Order 7 Rule 11 of the Code of Civil Procedure."

37. Relying upon these decisions it was contended before us that though the suit is for grant of injunction, real foundation of the suit is that there exists an agreement containing negative covenants which can be enforced by the appellant-plaintiff. The relief is sought on the assumption that there is an existing agreement containing negative covenants in clauses 15 and 20 thereof, as they were in the original agreement. Counsel submitted that even the negative covenants in clauses 15 and 20 of the agreement presuppose the subsistence of the agreement and, therefore, unless the appellant-plaintiffs satisfy the Court that there is a subsisting agreement, they cannot seek any relief from the Court to enforce the negative covenants contained therein.

38. On the other hand, it is the case of the appellant-plaintiff that on mere exercise of option by the appellant-plaintiff claiming renewal the agreement got renewed automatically.

39. We are of the view that the respondents are right in contending that enforcement of the negative covenants presupposes the existence of a subsisting agreement. As noticed earlier, the law is well settled that the renewal of an agreement or lease requires execution of a document in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. In the instant case, the appellant-plaintiff did exercise their option and claimed renewal. The respondents denied their right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants. Having regard to these facts it must be held that a cause of action accrued to the appellant-plaintiff when their right of renewal was denied by the respondents. This happened in December 2001 and, therefore, within three years from that date they ought to have taken appropriate proceedings to get their right of renewal declared and enforced by a court of law and/or to get a declaration that the agreement stood renewed for a further period of 5 years upon the appellants' exercising their option to claim renewal under the original agreement. The appellant-plaintiffs have failed to do so. However, the plaint proceeds on the assumption that the original agreement stood renewed including the negative covenants contained in clauses 15 and 20 of the original agreement which authorised only the appellants to extract ore from the mine with an obligation cast on the respondent-defendants not to interfere with the enjoyment of their rights under the agreement. In the facts of this case, in the suit prayer for injunction based on negative covenants could not be asked for unless it was first established that the agreement continued to subsist. The use of the words "during the subsistence of this agreement" in clause 15, and "during the

pendency of this indenture" in clause 20 of the agreement is significant. In the absence of a document renewing the original agreement for a further period of 5 years and in the absence of any declaration from a court of law that the original agreement stood renewed automatically upon the appellants exercising their option for grant of renewal, as is the case of the appellants, they cannot be granted relief of injunction, as prayed for in the suit, for the simple reason that there is no subsisting agreement evidenced by a written document or declared by a court. If there is no such agreement, there is no question of enforcing clauses 15 and 20 thereof. The appellants ought to have prayed for a declaration that their agreement stood renewed automatically on exercise of option for renewal and only on that basis could they have sought an injunction restraining the respondents from interfering with their possession and operation. Having not done so, they cannot be permitted to camouflage the real issue and claim an order of injunction without establishing the subsistence of a valid agreement. In the instant suit as well they could have sought a declaration that the agreement stood renewed automatically but such a claim would have been barred by limitation since more than 3 years had elapsed after a categoric denial of their right claiming renewal or automatic renewal by the respondent-defendants.

40. Mr Nariman contended that this case was governed not by Article 58 of the Limitation Act but, if at all, by Article 113 thereof because there is no specific article provided for enforcement of positive or negative covenants. We shall assume that he is right in contending that Article 113 may apply where enforcement of a positive or negative covenant is sought in a suit for injunction. However, in this case we have found that the real foundation for the suit was that the earlier agreement stood renewed automatically containing the same terms and conditions as in the original agreement including the negative covenants. There is neither a document to prove that the agreement stood renewed nor is there a declaration by a court that the agreement stood renewed automatically on exercise of option for renewal by the appellants. The basis for claiming the relief of injunction, namely, a subsisting renewed agreement did not exist in fact. In its absence, no relief as prayed for in the suit could be granted by the clever device of filing a suit for injunction, without claiming a declaration as to their subsisting rights under a renewed agreement, which is apparently barred by limitation.

41. We are, therefore, satisfied that the trial court as well as the High Court were justified in holding that the plaint deserved to be rejected under Order 7 Rule 11 CPC since the suit appeared from the statements in the plaint to be barred by the law of limitation. We, therefore, find no merit in these appeals and the same are accordingly dismissed. No order as to costs.

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of Article 371-D(10) of the Constitution. We do not find any merit in the contentions advanced in the special leave petition and the same is accordingly dismissed.

(1988) 4 Supreme Court Cases 534

(BEFORE M. M. DUTT AND K. N. SINGH, JJ.)

Civil Appeal No. 1193 of 1984

BHARAT SINGH AND OTHERS .. Appellants ;

Versus

STATE OF HARYANA AND OTHERS .. Respondents.

And

Civil Appeal No. 572 of 1985

DALLU .. Appellant ;

Versus

STATE OF HARYANA AND OTHERS .. Respondents.

And

Civil Appeal No. 573 of 1985

NATHU RAM AND OTHERS .. Appellants ;

Versus

STATE OF HARYANA AND OTHERS .. Respondents.

With

Writ Petition (C) Nos. 11106-27 of 1984

RAM PHAL AND OTHERS .. Appellants ;

Versus

STATE OF HARYANA AND OTHERS .. Respondents.

Civil Appeals Nos. 1193 of 1984 and 572-573 of 1985† and Writ Petitions (Civil) Nos. 11106-27 of 1984‡, decided on September 13, 1988

†From the Judgment and Order dated October 12, 1983 of the Punjab and Haryana High Court in C.W.P. Nos. 1659 and 1777 of 1983

‡Under Article 32 of the Constitution of India

Land Acquisition Act, 1894 — Section 4(1) — Public notice — Pnblication of substance of the notification under Section 4(1) in the locality of the land sought to be acquired — Proof of — Affidavit in opposition affirmed by Land Acquisition Officer stating that publicity of the snbstance of the notification was made through village chowkidar with loud voice and beating of empty tin and entries made in that regard in Patwari's Roznamcha Vakyati report and that pursuant to such publicity several land-owners had filed objections to the proposed acquisition — On facts held, allegation of non-publication of the substance of the notification not made out (Paras 4, 5 and 15)

Land Acquisition Act, 1894 — Section 4 — Public purpose — Allegation of profiteering — Held, cannot stand when public purpose of development and industrialisation for which acqnisition made itself not challenged — Where the acqnisition initially made at the instance of a State agency viz. Urban Development Anthority which after making external developments, sold out the land to another State agency viz. Industrial Development Corporation which again made internal developments in the land for providing fully developed land to entrepreneurs at no profit no loss basis, held, allegation of profiteering by the State not made out — Even assuming that Urban Development Authority had made some profit in sale of the land, that would not affect the public purpose for which the land was acquired and acquisition would not be liable to challenge on that ground (Paras 11 and 12)

State of Bihar v. Maharajadhiraja Sir Kameshwar Singh, 1952 SCR 889 : AIR 1952 SC 252 and Arnold Rodricks v. State of Maharashtra, AIR 1966 SC 1788 : 1967 Mah LJ 1, distinguished

Land Acquisition Act, 1894 — Sections 4, 3(e) and Part VII — Acquiring authority, whether a 'company' — Notification under Section 4(1) stating that development and industrialisation of the acquired land would be made under Haryana Urban Development Authority Act, 1977 by HUDA — HUDA after some external development, transferring the land to Haryana State Industrial Development Corporation for further development and allotment — Held, HUDA was the acquiring anthority and HSIDC would not become the acquiring authority merely by virtue of transfer of the land to it — HUDA not being a 'company' within the meaning of Section 3(e), acquisition would not become invalid by reason of non-compliance with provisions of Part VII (Para 14)

Land Acquisition Act, 1894 — Section 4 — Acquisition of agricultural land for urban development and industrialisation — Challenged alleging failure to apply mind to need of agricultural land and to exercise restraint as required by Government's policy decision (contained in Haryana Government Circular No. 2099-R-III-82/17113, dated May 18, 1982) — Allegations overruled

Held :

Though agricultural land is necessary and should not ordinarily be converted to non-agricultural use, but keeping in view the progress and

prosperity of the country, the State has to strike a balance between the need for development of industrialisation and the need for agriculture. The allegation that before initiating the acquisition proceedings, the Government has not applied its mind to the need for agricultural land is a very vague allegation without any material in support thereof. The contention is overruled. (Para 16)

Land Acquisition Act, 1894 — Section 4 — Acquisition of agricultural land for urban development and industrialisation — Allegation of discrimination on ground that land of other persons in the village not acquired not acceptable, for acquisition depends upon necessity and suitability — Constitution of India, Article 14

Held :

The Government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners have been acquired considering the same as suitable for the public purpose. The petitioners cannot complain of any discrimination because the land of other persons had not been acquired by the Government. (Para 17)

Land Acquisition Act, 1894 — Section 4 — Acquisition of agricultural land for development and industrialisation — Persons whose lands acquired alleging to have become landless and claiming allotment of land in the acquired area for starting businesses and earning livelihood — Those really rendered landless by reason of the acquisition directed to be given priority in allotment subject to their making applications, fulfilment of conditions for such allotment and availability of plots (Para 17)

Constitution of India — Article 226 — Practice — Pleading as to point of law substantiated by facts — Facts must be pleaded and proved by evidence — Distinction between pleading under writ petition and that under CPC stated — Civil Procedure Code, 1908, Order 6 Rule 2

When a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. (Para 13)

Appeals and writ petitions dismissed R-M/9041/C

Advocates who appeared in this case :

U. R. Lalit, Senior Advocate (D. N. Goburdhan and Pankaj Kalra, Advocates, with him), for the Appellants ;

R. N. Sachthey and D. S. Tewatia, Senior Advocates (A. Sachthey and Mahabir Singh, Advocates, with them), for the Respondents.

The Judgment of the Court was delivered by

DUTT, J.—In these appeals and writ petitions, the appellants and the petitioners have challenged the validity of the acquisition of their land by the State of Haryana under the Land Acquisition Act, 1894, hereinafter referred to as 'the Act', for a public purpose, namely, for the development and utilisation of land for industrial purpose at Gurgaon under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority (for short HUDA). Although, both in the appeals and in the writ petitions the validity of acquisition has been challenged, we propose to deal with the appeals first.

2. The appeals are directed against the judgments of the Punjab and Haryana High Court dismissing the writ petitions of the appellants questioning the validity of the acquisition of their land and praying for the quashing of such acquisition.

3. The first ground of attack to the acquisition, as urged by Mr Lalit, the learned counsel appearing on behalf of the appellants in Civil Appeal No. 1193 of 1984, is the non-publication of the substance of the notification under Section 4(1) of the Act in the locality of the land sought to be acquired. It is true that Section 4(1) enjoins that the Collector shall cause public notice of the substance of the notification to be given at convenient places in the locality. It is, however, pre-eminently a question of fact. The allegation of the appellants as to the non-publication of the notification under Section 4(1), as made in the writ petition before the High Court, was emphatically denied and disputed in paragraph 8 of the affidavit in opposition affirmed by the Land Acquisition Collector. Paragraph 8 reads as follows :

> 8. In reply to para 8 of the writ petition, it is submitted that the averments of the petitioners are wrong and denied. The publicity of the substance of the notification was made in concerned locality of village Dundahera on July 6, 1981 through Shri Chhattar Singh Chowkidar with loud voice and beating of empty tin. The report existed in Roznamcha Vakyati at Serial No. 519 dated July 6, 1981. Similarly, the publicity was made in concerned locality of village Mulahera through Shri Surjan Singh Chowkidar with loud voice and beat of empty tin (kanaster). A report to this effect exists in Roznamcha Vakyati at Serial No. 520 dated

July 6, 1981. The publicity was made on this very day on which the notification was issued. In response to this publicity 157 landowners filed objection applications which clearly shows that due publicity was made in the concerned locality and the averments of the petitioners are wrong, baseless and hence denied.

4. It is apparent from the statement made in paragraph 8 that the substance of the notification under Section 4(1) was published in the concerned localities of villages Dundahera and Mulahera. It is, however, urged on behalf of the appellants that it was not at all possible to make entries in the Roznamcha as to the publication of the notification under Section 4(1) on the same day it was published in both the villages. It is submitted that on this ground the statement in paragraph 8 as to the publication of the substance of the notification in the localities should not be accepted, and it should be held that there was no such publication as alleged. We are afraid, we are unable to accept the contention. Apart from the statement that there was publication of the notification, there is a further statement in paragraph 8 that pursuant to such publication, 157 landowners filed objections to the proposed acquisition. This fact has not been disputed before us on behalf of the appellants. Moreover, Mr Tewatia, learned counsel appearing on behalf of the State of Haryana, has produced before us the original objection petitions filed by the landowners. In each of these objection petitions there is a note at the end which reads as follows :

> Note : The above referred notification was announced by the beat of drum in the village Dundahera on July 6, 1981, vide Patwari's Roznamcha Report No. 519 dated July 6, 1981.

5. Similar notes, as extracted above, are there in the petitions of objections filed by the landowners of village Mulahera. In view of the facts stated above, the allegation of the appellants that the substance of the notification under Section 4(1) of the Act was not published in the localities of the two villages mentioned above, is without any foundation whatsoever. The contention of the appellants in this regard is rejected.

6. The next ground of attack to the acquisition comes from Mr Kalra, the learned counsel appearing on behalf of the appellants in Civil Appeal Nos. 572 and 573 of 1985. It is urged by the learned counsel that the sole purpose of the acquisition is for a profiteering venture of the government to acquire land of the helpless farmers at a nominal price of Rs 10, Rs 20 or Rs 50 per square yard and then to resell the same at a high profit. It is submitted that a welfare State should work for the poor and the downtrodden of the society rather than to displace them from their land for the sake of making

profit. Our attention has been drawn by the learned counsel to an application filed in this Court by the Haryana State Industrial Development Corporation (for short HSIDC) praying for impleading it as a party respondent in these appeals. In this application it has been stated, inter alia, by HSIDC that it plays an important role in the industrialisation of the State by providing concessional finance and offering land at no profit no loss basis along with infrastructure facilities for setting up new industrial units in the State. Further, it is stated that the land in Udhyog Vihar, Phase IV, (land which is the subject matter of these appeals), was acquired by HUDA and later sold to HSIDC at the approximate price of Rs 55,000 per acre. In paragraph 5 of the application, it is stated that on account of the price of the above land of Phase IV, approximately Rs 1·74 crores was paid by the HSIDC to HUDA. The said payment was made out of the amounts received from the intended allottees/entrepreneurs and also out of the funds/reserves of the HSIDC, and that a sum of Rs 4·90 crores is estimated to be spent on the development of the industrial complex in question.

7. Relying upon the above statements in the said application of HSIDC, the learned counsel for the appellants, endeavours to substantiate his contention that the impugned acquisition is nothing but a profiteering venture of the government. It is urged that the said statements in the application prove that the government has made huge profit in the guise of development and utilisation of the land for industrial purpose at Gurgaon.

8. In support of the contention, Mr Kalra has placed reliance upon an observation of Mahajan, J. (as he then was) in the *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh*[1], namely. that it is a well accepted proposition of law that property of individuals cannot be appropriated by the State under the power of compulsory acquisition for the mere purpose of adding to the revenues of the State. The learned counsel has also placed reliance on the observation in the minority judgment of Wanchoo, J. in *Arnold Rodricks* v. *State of Maharashtra*[2]. In that case, the enquiries purported to be held under Section 5-A and Section 11 of the Act were challenged as illegal, invalid and inoperative in law. In that connection, the validity of the definition of "public purpose" in clause (*f*) of Section 3 of the Act, as amended by the Bombay Amendment Act 35 of 1953, also came to be considered. Clause (2) of the amended definition in clause (*f*) reads as follows :

> (*f*) the expression "public purpose" includes—

1. 1952 SCR 889 : AIR 1952 SC 252
2. AIR 1966 SC 1788 : 1967 Mah LJ 1

(1) * * *

(2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, will be object of securing further development.

9. Wanchoo, J. observed as follows : (AIR p. 1802, paras 33 and 34)

> The attack of the petitioners is on the second part of the addition in 1953 which provides for "subsequent disposal thereof in whole or in part by lease, assignment, or sale, with the object of securing further development". It is urged that all these words means that after the development envisaged in the first part of the addition the State or the local authority would be free to dispose of the land acquired in whole or in part by lease, assignment or sale, apparently to private persons. This, it is said, means that the State or the local authority would acquire land in the first instance and develop it in the manner already indicated and thereafter make profit by leasing, assigning or selling it to private individuals or bodies. It is also said that the object of securing further development which is the reason for sale or lease etc. is a very vague expression and there is nothing to show what this further development comprises of.
>
> It is true that when this part speaks of "subsequent disposal thereof in whole or in part by lease, assignment or sale", it is not unlikely that this disposal will take place to private persons and thus in an indirect way the State would be acquiring the land from one set of individuals and disposing it of to another set of individuals after some development. If this were all, there may be some force in the argument that such acquisition is not within the concept of "public purpose" as used in Article 31(2). But this in our opinion is not all. We cannot ignore the words "with the object of securing further development", which appear in this provision. It would have been a different matter if the provision had stopped at the words "lease, assignment or sale"; but the provision does not stop there. It says that such lease, assignment or sale must be with the object of securing further development, and these words must be given some meaning. It is true that the words "further development" have not been defined, but that was bound to be so, for further development would depend upon the nature of the purpose for which the land is acquired. Of course, it is possible that further development can be made by the State itself or by the local authority which acquires

the land ; but we see no reason why the State or the local authority should not have the power to see that further development takes place even through private agencies by lease, assignment or sale of such land. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the State should not be permitted to see that further development of the land takes place in the direction for which the land is acquired, even though that may be through private agencies. We have no doubt that where the State or the local authority decides that further development should take place through private agencies by disposal of the land so acquired by way of lease, assignment or sale, it will see that further development which it has in mind does take place. We can see no reason why if the land so acquired is leased, assigned or sold, the State or the local authority should not be able to impose terms on such lessees, assignees or vendees that will enable further development on the lines desired to take place. We also see no reason why when imposing terms, the State or the local authority may not provide that if the further development it desires the lessee, assignee or vendee to make is not made within such reasonable time as the State or the local authority may fix, the land will revert to the State or the local authority so that it may again be used for the purpose of further development which was the reason for the acquisition of the land.

10. We fail to understand how does the above observation help the contention of the learned counsel for the appellants that the acquisition has been made by the government with a motive for profiteering in the guise of development and industrialisation. The observation of Wanchoo, J. relates to the definition of "public purpose" under Section 3(*f*) of the Act as amended by the Bombay Amendment Act 35 of 1953. The amended provision specifically provides for the disposal of acquired land in whole or in part by lease, assignment or sale, but there is no such provision in the unamended Section 3(*f*) of the Act with which we are concerned. Wanchoo, J. overruled the contention as to profiteering by the State or local authority as the amended provision made it very clear that such subsequent disposal of the acquired land will be for the purpose of securing further development. We do not think we are called upon to express any opinion on the correctness or otherwise of the above observation, and all that we say is that there is no such provision like the amended definition in Section 3(*f*) of the Act with which we are concerned. In the circumstances, the observation has no manner of application in the instant case.

11. In the writ petitions, the point was taken as an abstract point

of law. There was no attempt on the part of the appellants to substantiate the point by pleading relevant facts and producing relevant evidence. It is apparent that there was no material in the writ petitions in support of the contention of the appellants that the impugned acquisition was nothing but a profiteering venture. The contention was not also advanced before the High Court at the hearing of the writ petitions. The facts stated in the said application of the HSIDC do not, in our opinion, support the contention of the appellants. It is true that, as stated in the said application, HSIDC paid a sum of Rs 1·74 crores to HUDA, but nothing turns on that. The land was acquired by the government for the purpose of development and ndustrialisation. The government can do it itself or through other agencies. In the instant case, the land was acquired at the instance of HUDA and, thereafter, HUDA had transferred the same to HSIDC. It is not that the land was transferred in the same condition as it was acquired. But, we are told by the learned counsel appearing on behalf of HUDA and HSIDC that before transferring, HUDA had made external developments incurring considerable cost and HSIDC in its turn has made various internal developments and in this way the land has been fully developed and made fit for industrialisation. Our attention has been drawn by the learned counsel for HUDA and HSIDC to the various external developments made by HUDA at a total cost of Rs 1,66,200 per acre before it was transferred to HSIDC and the cost that was incurred for external developments was included in the price. Thus, there was no motive for HUDA to make any profit.

12. The "public purpose" in question, already noticed, is development and industrialisation of the acquired land. The appellants have not challenged the said "public purpose". In the absence of any such challenge, it does not lie in the mouth of the appellants to contend that the acquisition was merely a profiteering venture by the State Government through HUDA. The appellants will be awarded the market value of the land as compensation by the Collector. If they are dissatisfied with the award they may ask for references to the District Judge under Section 18 of the Act. If they are still aggrieved, they can file appeals to the High Court and, ultimately, may also come to this Court regarding the amount of compensation. The appellants cannot claim compensation beyond the market value of the land. In such circumstances, we fail to understand how does the question of profiteering come in. Even assuming that HUDA has made some profit, that will not in any way affect the public purpose for which the land was acquired and the acquisition will not be liable for any challenge on that ground.

13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court

as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

14. Equally untenable is the contention of the appellants that the acquisition is for HSIDC which is a 'company' within the meaning of Section 3(*e*) of the Act and, accordingly, the acquisition is invalid for the non-compliance with the provisions of Part VII of the Act. In the notification under Section 4(1), it has been clearly stated that the development and industrialisation of the acquired land would be made under the Haryana Urban Development Authority Act, 1977 by HUDA. It is, therefore, manifestly clear that HUDA was the acquiring authority and not HSIDC. It is for HUDA to develop the land fully either by itself or by any other agency or agencies. HUDA has transferred the land to HSIDC for the purpose of develpoment and allotment to various persons. It is too much to say that as HUDA has transferred the acquired land to HSIDC, the latter is the acquiring authority. We do not think that there is any substance in the contention and it is, accordingly, rejected.

15. Now we may consider the contention made on behalf of the petitioners in the Writ Petitions Nos. 11106 to 11127 of 1984. The first point that has been urged by Mr Goburdhan, learned counsel appearing on behalf of the writ petitioners, is similar to that urged by Mr Lalit in Civil Appeal No. 1193 of 1984, namely, non-publication of the substance of the notification under Section 4(1) of the Act in

the locality. This contention need not detain us long, for in the counter-affidavit filed by the Land Acquisition Collector, it has been averred that the substance of the notification was published and out of 22 petitioners 16 filed their objections pursuant to the publication of the notification in the locality. A similar note, as extracted above, appears in all these objections. In the circumstances, there is no substance in the contention of the petitioners that the substance of the notification under Section 4(1) of the Act was not published in the locality.

16. Next it is urged on behalf of the petitioners that before starting the proceedings for acquisition, the government had not applied its mind to its policy decision, as contained in the circular No. 2099-R-III-82/17113 dated May 18, 1982 wherein it has been stated that "in the matter of State's need for land for its development activities, utmost restraint should be exercised in the acquisition of land". It is submitted that as the land is agricultural, it should not have been acquired in view of the said policy decision of the government. We are unable to accept the contention. In a welfare State, it is the duty of the government to proceed with the work of development and take steps for the growth of industries which are necessary for the country's progress and prosperity and for solving the question of unemployment. It is true that agricultural land is necessary and should not ordinarily be converted to non-agricultural use, but keeping in view the progress and prosperity of the country, the State has to strike a balance between the need for development of industrialisation and the need for agriculture. The allegation that before initiating the acquisition proceedings, the government has not applied its mind to the need for agricultural land is a very vague allegation without any material in support thereof. The contention is overruled.

17. Lastly, it is argued by Mr Goburdhan for the writ petitioners that the petitioners have been discriminated against inasmuch as the land of other persons in the village has not been acquired. This contention is without any substance whatsoever. The government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners have been acquired obviously considering the same as suitable for the public purpose. The petitioners cannot complain of any discrimination because the land of other persons has not been acquired by the government. The contention is devoid of any merit whatsoever.

18. Before parting with these cases, we may consider a short submission on behalf of the appellants as also the writ petitioners that as by the acquisition of their land they have become landless, they should be allotted land by HSIDC, after development, so that they

may start their businesses and earn their livelihood. After giving our anxious consideration to this submission, we direct that if any of the appellants or the petitioners, who has become really landless by the acquisition of his land, makes an application for the allotment of land, the HSIDC shall consider such application and give him priority in the matter of allotment provided he fulfils the conditions for such allotment and plot is available.

19. Another short submission has been made on behalf of the appellants in Civil Appeal No. 1193 of 1984. Our attention has been drawn to paragraphs 4 and 5 of the additional affidavit filed on behalf of the appellants, and affirmed by one Sat Parkash, son of Mathura Prashad, one of the appellants, that in Khasra No. 21/6/2 and in Khasra No. 22/10/1, there are a temple, a piaou and a dharamshala. It is submitted that the land comprising the temple, piaou and dharamshala may be exempted from acquisition. We do not consider it necessary to give any direction in this respect. The appellants, however, will be at liberty to make a representation in that regard to the authority concerned. No other point has been urged in these cases.

20. For the reasons aforesaid, subject to the directions given on the short submissions, all the appeals and the writ petitions are dismissed. There will, however, be no order as to costs in any of them.

(1988) 4 Supreme Court Cases 545

(BEFORE R. S. PATHAK, C.J. AND S. NATARAJAN, J.)

OM PAL . . Appellant ;

Versus

ANAND SWARUP (DEAD) BY LRS. . . Respondent.

Civil Appeal No. 2471 of 1980†,
decided on October 4, 1988

Rent Control and Eviction — Material alteration — Material impairment of value or utility of the building — Meaning of — Burden of proof on landlord — 'Parchhati' put up by tenant in demised dry-cleaning shop for storing clothes by inserting wooden ballis in wall through holes and making the parchhati to rest thereon with support of nuts and bolts — Held, did not constitute material impairment within the meaning of Section 13(2)(iii) of E. P. Urban Rent Restriction Act, 1949

Held :

It is not every construction or alteration that would result in material

†From the Judgment and Order dated September 26, 1980 of the High Court of Punjab and Haryana in Civil Revision No. 292 of 1976

8. Accordingly, the appeal is allowed and the impugned order is set aside. There will, however, be no order as to costs.

(2008) 17 Supreme Court Cases 491

(BEFORE R.V. RAVEENDRAN AND L.S. PANTA, JJ.)

BACHHAJ NAHAR . . Appellant;

Versus

NILIMA MANDAL AND ANOTHER . . Respondents.

Civil Appeals Nos. 5798-99 of 2008†, decided on September 23, 2008

A. **Civil Procedure Code, 1908 — S. 100 — Second appeal — New case made out — Propriety — High Court in a title suit granting relief based on easementary rights which was not pleaded — Sustainability of — Respondent-plaintiffs' suit for declaration, possession and injunction dismissed by first appellate court on the ground that neither there was encroachment by appellant-defendants nor did the suit land belong to respondent-plaintiffs — High Court though holding that respondent-plaintiffs had no title over suit land, granted injunction by making out a new case that plaintiffs had an easementary right to use the schedule property as a passage — In the absence of pleadings and an opportunity to the first defendant to deny such claim, held, High Court could not have granted the relief of injunction by assuming that plaintiffs had an easementary right to use the schedule property as a passage — At best liberty could have been reserved to plaintiffs to file a separate suit for easement — Easements Act, 1882 — Ss. 33 and 35 — Relief under, different from relief under provisions of Specific Relief Act, 1963 — Specific Relief Act, 1963 — Ss. 36 and 37**

B. **Civil Procedure Code, 1908 — S. 100 and Or. 6 R. 1, Or. 7 R. 7, Or. 14 R. 1 and Or. 18 R. 2 — Second appeal — Relief — Relief on the strength of evidence alone (without pleading and an opportunity of hearing) — Permissibility — Without pleading and an opportunity of hearing to defendant, no amount of evidence, held, can be looked into to grant any relief — Exceptions and permissible limits, stated — Practice and Procedure — Relief — Basis for**

C. **Civil Procedure Code, 1908 — S. 100 — Second appeal — Relief — Expeditious justice, by flouting fundamental rules of CPC, held, is not permissible**

The trial court partly decreed the title suit of the respondent-plaintiffs for declaration, possession and injunction. The trial court held that though the suit land (a gali) belonged to the respondent-plaintiffs, the defendants had only encroached 15 sq ft and had made constructions thereupon. Therefore, the trial court instead of directing delivery of possession, directed that the appellant-defendants should pay a sum of Rs 100 to the respondent-plaintiffs as the price of the encroached portion. The first appellate court, however, dismissed the suit of the respondent-plaintiffs on the ground that neither there was

† Arising out of SLPs (C) Nos. 23766-67 of 2005. From the Final Judgments and Orders dated 14-5-2004 and 9-12-2004 of the High Court of Judicature at Patna in Appeal from Appellate Decree No. 76 of 1989 and Civil Review No. 97 of 2004 respectively

encroachment by the appellant-defendants nor did the suit land belong to the respondent-plaintiffs.

The High Court, in second appeal was of the view that the case based on an easementary right could be considered even in the absence of any pleading or issue relating to an easementary right, as the evidence available was sufficient to make out easementary right over the suit property. The High Court, therefore, granted a permanent injunction restraining the first defendant from interfering with the plaintiffs' use and enjoyment of the "right of passage" over the suit property (as also of the persons living on the northern side of the suit property). A revision filed thereagainst, was also dismissed by the High Court. Therefore, the present SLP by the appellant-defendants.

A perusal of the plaint clearly showed that entire case of the plaintiffs was that they were the owners of the suit property and that the first defendant had encroached upon it. The plaintiffs had not pleaded, even as an alternative case, that they were entitled to an easementary right of passage over the schedule property.

Allowing the appeals, the Supreme Court

Held :

In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, have granted the relief of injunction by assuming that the plaintiffs had an easementary right to use the schedule property as a passage. It is a fundamental rule that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out an easementary right. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement.

(Paras 24, 23 and 18)

No amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief. Only in exceptional cases, can this general rule be deviated from, if the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. Again where neither party puts forth such a contention, the court cannot make out such a case not pleaded, suo motu.

(Paras 13 and 17)

Nedunuri Kameswaramma v. *Sampati Subba Rao*, AIR 1963 SC 884, *clarified* and *distinguished*

Bhagwati Prasad v. *Chandramaul*, AIR 1966 SC 735; *Ram Sarup Gupta* v. *Bishun Narain Inter College*, (1987) 2 SCC 555, *referred to*

It would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc. which require pleading and proof. Civil court cannot grant any relief ignoring the prayer. Such relief may be appropriate with reference to a writ proceeding. It

may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. It is always open to the parties to get any issue or dispute settled by mediation or by direct negotiations.

(Paras 23, 22 and 26)

Any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of CPC. The High Court in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered this judgment. The rules breached are: (*i*) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court. (*ii*) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint. (*iii*) A factual issue cannot be raised or considered for the first time in a second appeal. (Paras 11 and 10)

D. **Civil Procedure Code, 1908 — Or. 6 Rr. 1 to 3, Or. 2 Rr. 1 & 2 and Or. 14 Rr. 1, 3 & 4 — Pleadings and issues — Object and purpose, stated**

The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. (Paras 12 and 13)

E. **Property Law — Easements Act, 1882 — Ss. 35 and 12 — Injunction on the basis of an easementary right — Principles, stated — A court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence because there are various kinds of easements — Again a right of easement can be declared only when the servient owner is a party to the suit (Paras 19 to 21)**

SS-M/A/39617/S

Advocates who appeared in this case :
S.B. Sanyal, Senior Advocate (Ranjan Mukherjee, Advocate) for the Appellant;
Deba Prasad Mukherjee, Advocate, for the Respondents.

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

1. (1987) 2 SCC 555, *Ram Sarup Gupta* v. *Bishun Narain Inter College* 498*a*, 498*g*
2. AIR 1966 SC 735, *Bhagwati Prasad* v. *Chandramaul* 497*d*, 498*f-g*
3. AIR 1963 SC 884, *Nedunuri Kameswaramma* v. *Sampati Subba Rao* 497*a-b*

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J.— Leave granted. Heard the learned counsel. For convenience, the parties will be referred to also by their ranks in the suit.

The facts

2. Respondents 1 and 2 (the plaintiffs) filed a suit for declaration, possession and injunction (Title Suit No. 133 of 1982 on the file of Sadar Munsiff, Purnia) against the appellant (the first defendant) and Sujash Kumar

Ghosh (the second defendant) in regard to the suit property. The suit property is a strip of land measuring east to west: 72' and north to south: 1'3" on the western side and 10" on the eastern side described in Schedule B to the plaint. The plaintiffs claimed that the suit property was a part of A Schedule property purchased by them under sale deed dated 29-12-1962. The reliefs sought in the said suit were:

(*i*) declarations that (*a*) the plaintiffs are the absolute owners in possession of the suit property; (*b*) the defendants do not have any right, title or interest or possession in respect of suit property; and (*c*) the first defendant had illegally encroached and started construction in the suit property;

(*ii*) a direction to the first defendant to deliver possession of the suit property to the plaintiffs after demolishing the construction over the same; and

(*iii*) a permanent injunction restraining the first defendant from interfering with the suit property.

3. The first defendant resisted the suit contending that he had purchased the property to the south of the plaintiff's property from the second defendant under sale deed dated 5-5-1982 and the suit property actually formed part of his property. He contended that the plaintiffs had no right, title or interest in the suit property.

4. The trial court framed the following issues:

(*i*) Is the suit as framed maintainable?

(*ii*) Have the plaintiffs got any cause of action to file the suit as against these defendants?

(*iii*) Is the suit barred by limitation and also on the principle of waiver, estoppel and acquiescence?

(*iv*) Whether the description of the suit land is vague?

(*v*) Whether the suit land is part and parcel of land of the plaintiff purchased through registered kewala or the suit land was in exclusive possession of Ishan Chand Ghosh, and after his death of the second defendant, and after purchase of the first defendant.

(*vi*) Has the first defendant encroached upon any portion of the suit land?

(*vii*) Whether the plaintiffs got title over the suit land? Or were they using the suit land under express permission of late Ishan Chand Ghosh and his son?

(*viii*) To what relief or reliefs, the plaintiffs are entitled?

5. After considering the evidence, the trial court by judgment and decree dated 31-8-1987 decreed the suit in part. It held that the suit property was part of the plaintiffs' property and that the first defendant had encroached over a part of it to an extent of 15 sq ft. The trial court held that as the first defendant had already put up his construction over the encroached portion

and was using it, instead of directing him to deliver back possession thereof, he should pay Rs 100 as the price of the encroached portion, to the plaintiffs.

6. Feeling aggrieved, the first defendant filed an appeal. The plaintiffs filed cross-objections. The first appellate court held that the plaintiffs had failed to prove that the suit property was part of their property purchased under sale deed dated 29-12-1962 or that the first defendant had encroached upon any portion of the plaintiffs' property; and that the evidence adduced by the plaintiffs established that the gali (suit property) was earlier owned by Ishan Chand Ghosh and his sons and the plaintiffs were only using the said gali with their express permission. The first appellate court therefore allowed the appeal filed by the first defendant and dismissed the cross-objections filed by the plaintiffs by judgment dated 12-1-1989. As a consequence, the suit of the plaintiffs was dismissed.

7. Feeling aggrieved, the plaintiffs filed a second appeal before the High Court. The High Court by judgment dated 14-5-2004 allowed the second appeal. The High Court held that the plaintiffs had failed to make out title to the suit property. It however held that the plaintiffs had made out a case for grant of relief based on easementary right of passage, in respect of the suit property, as they had claimed in the plaint that they and their vendor had been using the suit property and the first defendant and DW 6 had admitted such user. The High Court was of the view that the case based on an easementary right could be considered even in the absence of any pleading or issue relating to an easementary right, as the evidence available was sufficient to make out easementary right over the suit property. The High Court therefore granted a permanent injunction restraining the first defendant from interfering with the plaintiffs' use and enjoyment of the "right of passage" over the suit property (as also of the persons living on the northern side of the suit property).

8. The High Court also observed that if there was any encroachment over the said passage by the first defendant, that will have to be got removed by the "process of law". The High Court also issued a permanent injunction restraining the plaintiffs from encroaching upon the suit property (passage) till the plaintiffs got a declaration of their title over the suit property by a competent court. The first defendant sought review of the said judgment. The review petition was dismissed by the High Court by order dated 9-12-2004.

9. The said judgment and order on review application, of the High Court, are challenged by the first defendant in these appeals by special leave. The appellant contends that neither in law, nor on facts, the High Court could have granted the aforesaid reliefs.

10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(*i*) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the

pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(*ii*) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(*iii*) A factual issue cannot be raised or considered for the first time in a second appeal.

11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.

12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

14. The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not

pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in *Nedunuri Kameswaramma* v. *Sampati Subba Rao*[1]: (AIR p. 886, para 6)

> "*6.* … No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."

But the said observations were made in the context of absence of an issue, and not absence of pleadings.

15. The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in *Bhagwati Prasad* v. *Chandramaul*[2]: (AIR p. 738, para 10)

> "*10.* … *If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial*, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: *did the parties know that the matter in question was involved in the trial, and did they lead evidence about it*? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. *To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.*"

(emphasis supplied)

1 AIR 1963 SC 884
2 AIR 1966 SC 735

16. The principle was reiterated by this Court in *Ram Sarup Gupta* v. *Bishun Narain Inter College*[3]: (SCC pp. 562-63, para 6)

> "*6. … It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.* The object and purpose of pleading is to enable the adversary party to know the case it has to meet. *In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise.* The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. *Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.*" (emphasis supplied)

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in *Bhagwati Prasad*[2] and *Ram Sarup Gupta*[3] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led

3 (1987) 2 SCC 555 : AIR 1987 SC 1242

evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.

a **18.** A perusal of the plaint clearly shows that entire case of the plaintiffs was that they were the owners of the suit property and that the first defendant had encroached upon it. The plaintiffs had not pleaded, even as an alternative case, that they were entitled to an easementary right of passage over the schedule property. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out
b an easementary right. A suit for declaration of title and possession relates to the existence and establishment of natural rights which inhere in a person by virtue of his ownership of a property. On the other hand, a suit for enforcement of an easementary right relates to a right possessed by a dominant owner/occupier over a property not his own, having the effect of restricting the natural rights of the owner/occupier of such property.

c **19.** Easements may relate to a right of way, a right to light and air, right to draw water, right to support, right to have overhanging eaves, right of drainage, right to a watercourse, etc. Easements can be acquired by different ways and are of different kinds, that is, easement by grant, easement of necessity, easement by prescription, etc. A dominant owner seeking any declaratory or injunctive relief relating to an easementary right shall have to
d plead and prove the nature of easement, manner of acquisition of the easementary right, and the manner of disturbance or obstruction to the easementary right.

20. The pleadings necessary to establish an easement by prescription, are different from the pleadings and proof necessary for easement of necessity or easement by grant. In regard to an easement by prescription, the plaintiff is
e required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of twenty years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. For claiming
f an easement of necessity, the plaintiff has to plead that his dominant tenement and the defendant's servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severance of such ownership and that without the easementary right claimed, the dominant tenement cannot be used. We may also note that the pleadings necessary for establishing a right of passage is
g different from a right of drainage or right to support of a roof or right to watercourse. We have referred to these aspects only to show that a court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence.

21. A right of easement can be declared only when the servient owner is a party to the suit. But nowhere in the plaint, the plaintiffs allege, and nowhere
h in the judgment, the High Court holds, that the first or the second defendant is the owner of the suit property. While concluding that the plaintiffs were not

the owners of the suit property, the High Court has held that they have a better right as compared to the first defendant and has also reserved liberty to the plaintiffs to get their title established in a competent court. This means that the Court did not recognise the first defendant as the owner of the suit property. If the High Court was of the view that the defendants were not the owners of the suit property, it could not have granted declaration of easementary right as no such relief could be granted unless the servient owner is impleaded as a defendant. It is also ununderstandable as to how while declaring that the plaintiffs have only an easementary right over the suit property, the court can reserve a right to the plaintiffs to establish their title thereto by a separate suit, when deciding a second appeal arising from a suit by the plaintiffs for declaration of title. Nor is it understandable how the High Court could hold that apart from the plaintiffs, other persons living adjacent to and north of the suit property were entitled to use the same as passage, when they are not parties, and when they have not sought such a relief.

22. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer.

23*. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.

24. In the absence of a claim by the plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no easementary right. In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right. The first appellate court had recorded a finding of fact that

* **Ed.**: Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./89/2009 dated 17-7-2009.

the plaintiffs had not made out title. The High Court in second appeal did not disturb the said finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High Court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage.

25. We accordingly allow these appeals and set aside the judgment and order of the High Court and restore the judgment of the first appellate court. Parties to bear their respective costs.

26. The learned counsel for respondent-plaintiffs submitted that the parties have been litigating for more than quarter of a century over a small strip; and that without prejudice to their rights, if some arrangement could be arrived at whereby the plaintiffs are permitted to have at least a "pakka nala" for passage of effluents from their property, it may put an end to the dispute between the two neighbours. All that we can observe is that it is always open to the parties to get any issue or dispute settled by mediation or by direct negotiations. This observation should not however be construed as recognition of any right in the plaintiffs.

(2008) 17 Supreme Court Cases 501

(BEFORE DR. ARIJIT PASAYAT AND DR. M.K. SHARMA, JJ.)

RAJENDRAN AND ANOTHER . . Appellants;

Versus

STATE ASSISTANT COMMISSIONER OF POLICE (LAW AND ORDER) . . Respondent.

Criminal Appeals No. 53 of 2002† with No. 1139 of 2003, decided on December 2, 2008

Penal Code, 1860 — S. 498-A and Expln. (a) thereto — Applicability — Conviction under S. 498-A, justified — Torture of deceased at the hands of appellant-accused (husband and in-laws of deceased) resulting in her committing suicide — Reiterated, for application of S. 498-A, consequences of cruelty [defined in Expln. (a) to S. 498-A], which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman, are required to be established — Herein, there were materials to show that deceased was being tortured and ill-treated by appellants — Hence, Expln. (a) to S. 498-A has definite application to the facts herein — Additionally, there was no rebuttal by appellants of presumption under S. 113-A, Evidence Act, where court may presume that suicide by woman was abetted by her husband or his

† From the Final Judgment and Order dated 23-2-2001 of the High Court of Judicature at Madras in Crl. MP No. 6590 of 1992 in Crl. Appeal No. 581 of 1992 : **(2001) 4 Cur Cri Rul 189**

Item No. 4 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&CC & Ors.

....Respondent(s)

Date of hearing: 01.12.2022

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

Applicant	:	Mr. Nitin Lonkar, Advocate
Respondent(s)	:	Ms. Manasi Joshi, Advocate for R-1, 6 & 7 Mr. Aniruddha Kulkarni, Advocate for R-3 to 5 Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC Mr. Saket Mone along-with Mr. Abhishek Salian, Advocates for R-11/PP

ORDER

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.

2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent- Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

I.A. No. 86/2021(WZ)

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors. [MANU/GT/0006/2017],* where-in relevant para no. 11 is as follows:-

> *"11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and*

> *Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open species, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed."*

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors. [(2017) SCC Online NGT 1098],* where-in relevant para nos. 11 to 13 are as follows:-

> *"**11.** Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for 'sufficient cause' if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure ''I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*
>
> ***12.** In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as 'cause of action' but the actual act or its consequence constitutes 'cause of action' in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

> ***13.*** *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008."*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

> *"**18.25.** I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

7th May, 2015", reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

"24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref Liverpool and London S.P. and I Asson. Ltd: v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

***18.26** Further I state that, the **Forward Foundation** Judgment was challenged before the FIon'b1e Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5th March, 2019 and has confirmed the said judgment*

of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

"In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"

"The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment."

"Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para

14 of the reply affidavit, mentioned at page nos. 926 to 928 of the paper book, which are as follows:-

"14. IMPORTANT DATES AND EVENTS:

I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

"

Sr. No.	Events	Date
1.	*1st Application for EC*	*07.09.2013*
2.	*1st Show Cause Notice by SEIAA & PS- DoE*	*30.08.2014*
3.	*1st Withdrawal Communication for SCN*	*10.03.2015*
4.	*1st Consent to Establish*	*10.03.2015*
5.	*2nd Application for EC*	*30.06.2016*
6.	*2nd Consent to Establish*	*12.10.2017*
7.	*3rd Application for EC*	*06.10.2018*
8.	*Notice/Complaint of Original Applicant*	*19.05.2019*
9.	*MPCB 1st Site Visit by Field Officer*	*10.06.2019*
10.	*2nd Show Cause Notice by SEIAA & PS- DoE*	*15.06.2019*
11.	*MPCB 2nd Site Visit by SRO-2*	*27.06.2019*
12.	*Filing of OA*	*14.08.2019*
13.	*First Order of NGT*	*22.10.2019*
14.	*Service to Joint Committee of SEIAA & MPCB*	*02.11.2019*
15.	*Personal hearing given to PP by PS-DoE*	*11.11.2019*
16.	*2nd Withdrawal Communication for SCN*	*16.11.2019*
17.	*Second Order of NGT*	*10.12.2019*
18.	*Joint Committee Visit to project site*	*15.12.2019*
19.	*Architect Certificates prepared on*	*20.12.2019*
20.	*Joint Committee Report filed to NGT*	*07.01.2020*
21.	*Third Order of NGT issuing Notice 86 Show cause to PP*	*05.02.2020*
22.	*Service to the Respondent No. 11-PP*	*15.02.2020*
23.	*Grant of ex-post facto EC*	*18.02.2020*
24.	*Appeal No. 26/2020 filed on*	*19.03.2020*
25.	*Fourth Order of NGT*	*13.07.2020*
26.	*Respondent No. 11-PP Reply Affidavit Sworn on*	*24.09.2020*
27.	*Respondent No. 11-PP filed*	*24.09.2020*
28.	*Fifth Order of NGT*	*03.09.2021*
29.	*Respondent No. 11-PP filed 86/2020 filed on*	*06.10.2021*
30.	*Respondent No. 11-PP Corrected Reply Affidavit served on Original*	*09.10.2021*

	Applicant	

"

16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

17. We have heard the arguments of the parties and perused the record and also have gone through the Judgments, which have been relied upon by both the parties, we find that as far as legal position is concerned, Sections 14 & 15 of the National Green Tribunal Act, 2010 provide as follows:-

> *"Section 14:- Tribunal to settle disputes.-*
>
> *(1) .....*
>
> *(2) .....*
>
> *(3) No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*
>
> *Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."*
>
> *Section 15:- Relief, compensation and restitution –*
>
> *(1) .....*
>
> *(2) .....*
>
> *(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*
>
> *Provided that the Tribunal, may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."*

18. According to the Applicant in Original Application, as per his own pleadings which are stated in para no. 40, it is clear that construction of the project by the Project Proponent was started in the year 2011 and continued till 19.05.2018. He states that he had obtained information

through online search and under RTI from 2017 to 18.05.2018. Thereafter, he had sent legal notice through Counsel on 19.05.2019. According to him, the SEIAA had issued first Show Cause Notice on 15.06.2019. Therefore, that date should be taken to be the date of cause of action, which first arose.

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.

20. All connected I.A.s also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 01, 2022
Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)
P.Kr

[2022] 19 S.C.R. 781

THE STATE OF UTTAR PRADESH & ORS. ETC. ETC

v.

UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC. ETC.

(Civil Appeal Nos.2407–2412 of 2021)

OCTOBER 21, 2022

[B. R. GAVAI AND B. V. NAGARATHNA, JJ.]

National Green Tribunal Act, 2010: ss. 19(1), 20, 22 – Wood Based Industries [Establishment and Regulation] Guidelines 2016 – Need for sustainable development – Provisional license – Issuance of, for establishment of Wood based industries-WBIs – Timber assessment for Trees Outside Forest-TOF in the State of U.P. for WBIs by the Forest Survey of India-FSI – E-lottery held for grant of licenses to various WBIs and issuance of provisional licenses to 1215 successful applicants in the 8 categories to set up their WBIs – Subsequently, issuance of notice by the Government of UP communicating the same to WBIs – Challenged to, by the respondent – Direction by the National Green Tribunal to the U.P. State to submit a report and to review its notice with regard to the establishment of new WBIs –NGT then quashed and set aside the notice issued by the State Government for establishing new WBIs and all the provisional licenses given – NGT held that WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this was to be determined in actual terms and not on mere assumptions – On appeal, held: Estimation arrived at by the FSI was by applying a proper and adequate scientific method – Courts should not enter into an area that is the domain of the experts – Duty of the State as well as its citizens to safeguard the forest of the country – Principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens – Furthermore, before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons stopping investment in the State, prejudicing the interests of the farmers; the credentials of the applicants must be tested – While protecting the environment, the need for sustainable development has also to be taken into consideration and a proper

balance between the two has to be struck – For the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to – Thus, the State Government directed to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied – Impugned orders of the NGT are not sustainable in law andthus, are quashed and set aside.

Allowing the appeals, the Court

HELD: 1.1 This Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category. Even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as 'NIL' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. [Para 49 & 59][797-D; 801-D-E]

1.2 As per the 2016 Guidelines, the SLC was reconstituted in the State of U.P. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. [Para 64-67][803-G-H; 804-A, F; 805-B-C]

1.3 Estimation arrived at by the FSI was by applying a proper and adequate scientific method. However, it is surprising that the learned NGT has brushed aside such a scientific exercise. A

body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. [Para 70, 71 & 89][806-B-C; 812-F-G]

1.4 FSI has also emphasized the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro–ecology, socio–economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment. [Para 74][808-B-C]

2.1 Prohibited trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances [Para 76][808-E-F]

2.2 It is settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs. [Para 79, 81][809-D-E; 810-A]

2.3 Decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this court in the case of *Tata Cellular vs. Union of India* [1994] 6 SCC 651.[Para 83][810-F-G]

3.1 It is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other. While protecting the environment, the need for sustainable

development has also to be taken into consideration and a proper balance between the two has to be struck. [Para 87 & 88][812-E-F]

3.2 It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT. Court is of the view that the NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. Impugned orders of the learned NGT are not sustainable in law. [Para 91 & 94][813-F; 814-E-G]

3.3 On the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, NGT has passed the impugned order which adversely affects their interest.It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19[1] of the NGT Act, it is bound to follow. [Para 95][815-A-C]

3.4 This court finds that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the applicants must be tested. [Para 99][816-C]

4.1 Though this court is allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, the court would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The court directs the State Government to

ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. [Para 100 & 102][816-F; 819-E]

4.2 The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi as well as in the Review Applications are quashed and set aside. [Para 103][819-F-G]

Common Cause vs. Union of India and others **(2017) 9 SCC 499: [2017] 13 SCR 361;** *Mantri Techzone Private Limited vs. Forword Foundation and others* **[2019] 18 SCC 494;** *Municipal Corporation of Greater Mumbai vs. Ankita Sinha and Ors.***(2021) SCC OnLine SC 897;** *Pragnesh Shah vs. Dr. Arun Kumar Sharma and others* **[2022] SCC OnLine SC 79;***T ata Cellular vs. Union of India* **(1994) 6 SCC 651 : [1994] 2 Suppl. SCR 122 Para 83;** *Samatha vs. State of A.P. and Ors.***(1997) 8 SCC 191 : [1997] Suppl. SCR 305;** *State of H.P. and others vs. Ganesh Wood Products and others* **(1995) 6 SCC 363 : [1995] 3 Suppl. SCR 477;** *Essar Oil Ltd. vs. Halar Utkarsh Samiti and others* **(2004) 2 SCC 392 : [2004] 1 SCR 808;** *Indian Council for Enviro–Legal Action vs. Union of India and others* **(1996) 5 SCC 281 : [1996] 1 Suppl. SCR 507;** *Maharashtra Land Development Corporation and others vs. State of Maharashtra and another* **(2011) 15 SCC 616 : [2010] 15 SCR 37;** *Glanrock Estate Private Limited vs. State of Tamil Nadu* **(2010) 10 SCC 96 : [2010] 12 SCR 597;** *T.N. Godavarman Thirumulkpad vs. Union of India and others* **AIR 1997 SC 1228 : [1996] 9 Suppl. SCR 982 – referred to.**

Case Law Reference

[2017] 13 SCR 361	**referred to**	**Para 36**
[1994] 2 Suppl. SCR 122	**referred to**	**Para 83**
[1997] Suppl. SCR 305	**referred to**	**Para 101**
[1995] 3 Suppl. SCR 477	**referred to**	**Para 101**
[2004] 1 SCR 808	**referred to**	**Para 101**

A	**[1996] 1 Suppl. SCR 507**	**referred to**	**Para 101**
	[2010] 15 SCR 37	**referred to**	**Para 101**
	[2010] 12 SCR 597	**referred to**	**Para 101**
B	**[1996] 9 Suppl. SCR 982**	**referred to**	**Para 101**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.2407-2412 of 2021.

From the Judgment and Order dated 02.12.2020 of the National Green Tribunal, Principal Bench, New Delhi in Review Application Nos.40 and 41 of 2020 and dated 21.12.2020 in Review Application No.42 of 2020 and dated 18.02.2020 in Original Application Nos.313, 335 and 396 of 2019.

With

Civil Appeal Nos.3144-3146, 3132-3134, 3135-3137, 3138, 4061-4062, 3141, 2547-2548, 3142-3143, 3147-3149 Of 2022

Ms. Aishwarya Bhati, ASG, Vikas Singh, P.S. Patwalia, Rana Mukherjee, V. Giri, Syed Waseem Qadri, Sr. Adv., V. K. Uniyal, Vinay Navare, V.K. Shukla, Dhruv Mehta, Brijender Chahar, Sr. Advs., Kamlendra Mishra, Ms. Prerna Singh, Guntur Pramod Kumar, Rajeev Kumar Dubey, Saurabh Singh Chauhan, Ms. Saroj Tripathi, Md. Rashid Saeed, Saeed Quadri, Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg, Ishaan Tiwari, Satyajeet Kumar, Rajesh Srivastava, Gaurav Verma, Neeraj Datt Gaur, Lokesh Kumar Choudhary, A. Lakshminarayanan, Rudraksh Gupta, A. Velan, Akhil P. Philip, Vishwadeep Chauhan, Vikalp Sharma, Ankolekar Gurudatta, Ajay Singh, Ram Kumar, Debasis Mukherjee, Lokesh Kumar Choudhary, Vivek Gupta, Mrinmay Bhattmewara, Rajvir Singh Bhati, Shyam R. Agarwal, Namit Saxena, Ms. Suhashini Sen, Ms. Archana Pathak Dave, Ms. Chinmayee Chandra, Varun Chugh, Gurmeet Singh Makker, Ansar Ahmad Chaudhary, Rashid Hasan, Ms. Shehla Chaudhary, Md. Anas Chaudhary, Dr. Vinod Kumar Tewari, Alok Kumar, Nihal Ahmad, Arvind Kumar Shukla, Amit Kumar, Ms. Prachi Goyal, Ms. Anu Singla, Tushar Swahi, Vasu, Arvind Kumar Shukla, Vasu Chaudhar, Ms. Prachi, S. K. Verma, Zulfiker Ali P. S, Advs. for the appearing parties.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. For the reasons stated in the applications for impleadment/ intervention, the same are allowed.

2. This bunch of appeals challenges the order dated 18th February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Application Nos.313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1st March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licenses given in pursuance thereof.

3. The appeals also challenge the orders dated 18th March 2020, 2nd December 2020, and 21st December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.

4. Civil Appeal Nos.2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted licenses in pursuance of the notice dated 1st March 2019, issued by the State of Uttar Pradesh.

FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.

7. In pursuance of the order passed by this Court dated 5th October 2015 in Writ Petition (Civil) No.202 of 1995 (T.N. Godavarman Thirumalpad vs. Union of India), the Ministry of Environment and Forest and Climate Change ("MOEFCC" for short) issued Wood Based Industries (Establishment and Regulation) Guidelines 2016 (hereinafter referred to as "2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11th November 2016.

A 8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4th May 2018, considered the matter about the grant of licenses to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

10. In the meeting of the SLC, held on 7th September 2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

11. In pursuance of the aforesaid decision, E-lottery was held on 12th December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12th December 2018 and 31st December 2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licenses were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1st March 2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licenses to the newly selected WBIs.

12. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28th March 2019, the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary

(Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

13. Being aggrieved by the notice dated 1st March 2019 issued by the State Government, Original Application Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the learned NGT.

14. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3rd August 2019. Vide order dated 6th August 2019 passed in Original Application nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1st March 2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in the case of ***T.N. Godavarman vs. Union of India***. Vide order dated 1st October 2019, the learned NGT directed the status quo to be maintained.

15. The State of Uttar Pradesh filed an Interlocutory Application No.732 of 2019 in O.A. Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6th August 2019 and the order dated 1st October 2019. Vide order dated 18th December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18th February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1st March 2019 issued by the State Government for establishing new WBIs and all the provisional licenses given.

16. Being aggrieved thereby, Civil Appeal (Diary) No.12004 of 2020 was filed before this Court. Vide order dated 26th October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18th March 2020, 2nd December 2020, and 21st December 2020, the learned NGT rejected the Review Applications.

17. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the Original Applications as well as in the Review Petitions.

SUBMISSIONS

18. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr. Rana Mukherjee, learned Senior Counsel appearing on behalf of the

A State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsels, Ms. Prerna Singh, and Mr. Rudraksh Gupta, learned counsels appearing on behalf of the appellants, who were granted provisional licenses. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsels appearing on behalf of the respondent No.1.

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19. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by the MOEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licenses is only 12.35 lakh cubic meters per year, whereas the total timber available in the State is 80.30 lakh cubic meters per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber. Learned Senior Counsel submitted that the only authorized agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, who has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through the FSI.

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20. It is submitted that even the MOEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

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21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No.202 of 1995 (***T.N. Godavarman Thirumulpad vs. Union of India)***. It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18th December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

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22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licenses. He submits that the order impugned is totally in breach of the principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word "allotted". It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licenses for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licenses granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms. Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licenses for plywood (press only)

A category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement. She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

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27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

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28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not *bonafide* litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

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29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No.1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Code of Civil Procedure, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

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30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He submits that an assessment has to be done on the basis of the district-

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wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18th April 2007, accepted by this Court vide its order dated 18th May 2007, would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic meters per year. Learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and, therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4th May 2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7th September 2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licenses. It is submitted that the letters of the said officer dated 11th September 2019 and 20th April 2018have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure-I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as "NIL".

34. The learned Senior Counsel submits that vide Notification dated 20th July 2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31st October 2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11th September 2018. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh notification has been issued on 7th January 2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits

A that if 20.75 lakh cubic meters is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

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36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of ***Common Cause vs. Union of India and others***[1]***, Mantri Techzone Private Limited vs. Forword Foundation and others***[2], ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha and Others***[3]and ***Pragnesh Shah vs. Dr. Arun Kumar Sharma and others***[4].

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37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of ***Ankita Sinha and Others (supra)***, submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the arguments made on behalf of the appellants with regard to locus are without substance.

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38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic meters in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80000 people. Learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

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[1](2017) 9 SCC 499
[2](2019) 18 SCC 494
[3]2021 SCC OnLine SC 897
[4]2022 SCC OnLine SC 79

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EARLIER ORDERS OF THIS COURT

39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in the case of ***T.N. Godavarman (supra)*** passed an order on 12th December 1996. The relevant part thereof is as under:

> "6. Each State Government should within two months, file a report regarding –
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> (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
>
> (ii) the licenced and actual capacity of these mills for stock and sawing;
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> (iii) their proximity to the nearest forest;
>
> (iv) their source of timber.
>
> 7. Each State Government should constitute within one month, an Expert Committee to assess:
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> (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
>
> (ii) The number of existing saw mills which can safely be sustained in the State;
>
> (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located."

41. Vide subsequent order dated 4th March 1997[5], this Court directed thus:

> "**6.** All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

[5] (1997) 3 SCC 312

42. Vide order dated 9th May 2002, this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29th October 2002[6], this Court further directed thus:

"**44.** No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

44. Vide order dated 1st September 2006, this Court allowed licenses to be issued to the closed sawmills, Veneer and Plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic meters vide report dated 3rd April 2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic meters. CEC further reduced the same to 43.70 lakh cubic meters. However, it added 2.00 lakh cubic meters per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic meters.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic meters of timber from the prohibited species. This Court

[6] (2008) 16 SCC 337

considered the report of CEC and passed the following order on 18th May 2007:

"The matters relate to Saw Mills, Plywood and Veneer Units.

The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests.

It has also assessed the units into four categories.

We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC. Licences may be given by the State Level Committees.

If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration."

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

50. Vide order dated 29th February 2008, this court considered the issue regarding the manufacturing of Medium Density Fiber board (MDF) and Particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order:

"The matter relates to the manufacturing of Medium Density Fiber board (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF / Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest can be used by MDF/Particle Board plants."

51. In view of the permissions granted by this Court, the licenses were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability

A of timber between 2007 and 2010. However, it is to be noted that the said licenses were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30th April 2010, when this Court passed the following order:

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> "(II) after meeting the requirement of the licensed wood based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority,
> C subject to the one-time payment of Rs.9 lakhs per press in respect of the veneer units and compliance of the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the above said amount should be kept in a designated interest bearing
> D bank account and should be utilized only after the scheme in this regard is approved by this Hon'ble Court;"

53. It could thus be seen that this Court permitted granting of additional licenses if additional timber was found to be available.

E 54. The CEC in its meeting held on 26th May 2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for Vertical Band Saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills upto 10 Horse Power from 540 to 270 cubic meters per year for the State of Uttar Pradesh in line with other States. As
F such, additional 9,58,230 cubic meters of timber became available for licenses from 3,549 such VBS units. In view of this position between 2010 and 2015, licenses came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

G 55. The matter again came up for consideration before this Court on 5th October 2015 with regard to WBIs, when this Court passed the following order:

> "**CATEGORY I - MATTERS RELATING TO WOOD BASED INDUSTRIES:**

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We have heard Shri Harish Salve, learned *amicus curiae,* Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned senior counsel and other learned senior counsel/ counsels. Accordingly, we pass the following orders:

(i) The State Level Committees for Wood-Based Industries ("SLCs") are, subject to the compliance of the prescribed guidelines and procedure, authorized to take decisions regarding the grant of license/permission to the wood-based industries;

(ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change ("MoEFCC") and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/ equivalent rank will immediately be constituted;

(iii) The MoEF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters;

(iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the MoEFCC seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

We also permit the MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)"

56. It is thus seen that vide the said order, SLCs were authorized to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MOEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the

A SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorized to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MOEFCC against the decision of the SLC.

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MOEFCC GUIDELINES

57. In accordance with the directions issued by this Court vide order dated 5th October 2015, the MOEFCC issued 2016 Guidelines on 11th November 2016. The 2016 Guidelines provided for the constitution C of the SLC as well as the powers and functions of SLC. Under clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorized to approve the name of wood based industrial units which may be considered D for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, E once in five years. Under clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

> "The Indian Plywood Industry Research and Training Institute (IPlRTI), Bangalore an autonomous body under the Ministry of F Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for G 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.

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> The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8x4x6, 8x4xl2, 8x4xl5, 4x4x7, 4x4x10. A 8x4xl0 capacity press can produce upto 10 plywood pieces of 8'x4' size per hour whereas a 8x4xl5 capacity press can produce upto 15 plywood pieces of 8'x4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8x4x10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8x4x10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as 'NIL' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes.

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17th May 2017. Vide Notification dated 11th September 2017, the MOEFCC amended the 2016 Guidelines.

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4th May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs

A under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7th September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously B resolved by the SLC that there was no need for any fresh study/ assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26th May 2010 had reduced the annual consumption of timber of sawmills C upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March D 2019. After the issuance of provisional licenses, on 1st March 2019, the State Government issued a Notice with regard to grant of provisional licenses to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside E the notice dated 1st March 2019 issued by the State Government and provisional licenses given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

CONSIDERATIONS

F 63. The learned NGT while passing the impugned order has set aside the notice of the State of Uttar Pradesh on the following grounds:

(1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on G mere assumptions;

(2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;

(3) that it is the stand of the State of Uttar Pradesh that the H total potential availability of timber per year in the State of

Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;

(4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;

(5) that the standard error percentage adopted by the FSI is not correct and is much higher;

(6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;

(7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licenses to be issued to the closed sawmills vide order dated 1st September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18th May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30th April 2010, this Court permitted additional licenses to be granted if additional timber was available. Accordingly, licenses were granted between 2010 and 2015. Vide subsequent order dated 5th October 2015, this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by the MOEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17th May 2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in

five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

> "In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.
>
> The report gives an assessment of the growing stock existing outside state forest reserves. The report has also indicated district-wise, species-wise and girth class-wise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the state besides providing benchmark data for tree crop in non-forest area."

66. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic meters of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

> "The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire Rural CNF Area of each stratum for each district by combining the estimated stems

and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately."

67. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. District-wise production was estimated before concluding that 77,74,521 cubic meters of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to paragraph 5.4 of the said report, which reads thus:

"**5.4 Estimates of Annual Potential Production of Wood from TOF (Rural)**

Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non timber' and rotation period of specified timber species. ***The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.*** The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

Yield= 2GS/R

Where GS: Growing Stock

R: rotation period

Using the information of timber value, growing stock and rotation period in the above mentioned formulae species wise yield were calculated. The Agro-Climatic Zone wise yield has been given in Annexure-11."

[emphasis supplied]

68. The standard error was also determined by applying the appropriate scientific method.

69. The FSI, hence, considered various aspects before concluding and submitting its 101 page report.

70. It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.

71. However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.

72. The FSI has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (1) Dr. Subhash Ashutosh, DG, FSI; (2) Prakash Lakhchaura, DDG, FI, (3) Kamal Pandey, DD, FI; (4) Dr. Sourav Ghose, Proj. Scientist D; (5) Sushila Tripathi; and (6) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry program in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

73. It will be relevant to refer to the conclusion of the said paper, which is as follows:

"**5. Conclusion**

TOF play a significant role in the socio-economic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.

TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country.

A Through expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030."

74. It could thus be seen that the FSI has also emphasized the B need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

C 75. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

76. Insofar as the finding of the learned NGT that the survey also D takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7th January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31st December 2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary E for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there F is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

77. It is to be noted that the prohibited trees also include trees like Mango, Jamun, etc. which are fruit bearing trees. After a particular G number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19th April 2007, which included 17.77 lakh cubic meters of prohibited trees. The said report of the CEC was H approved by this Court vide its order dated 18th May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs.3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

79. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

80. It is relevant to note that MOEFCC, in pursuance of the directions issued by the learned NGT had filed its opinion on 18th December 2019. It will be relevant to refer to paragraph 8 of the said opinion.

> "8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries."

A 81. The learned NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

82. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4th May 2018, B it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7th September 2018 did a volte-face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7th September 2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the C consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic meters. Adding the timber available in the forest area of 2,57,273 cubic meters, the total quantity of availability of timber was 80,31,795 cubic meters. It is to be noted that the SLC had taken note of the letter dated 29th August 2018 issued by the Director, IPIRTI, where D he had communicated that no assessment pertaining to the annual consumption of timber by Veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the E consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by F WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this court in the case of ***Tata Cellular vs. Union of India***[7], which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

G "**77.** The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?

H [7] (1994) 6 SCC 651

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, Wednesbury unreasonableness.

(*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention"."

84. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

85. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as "NIL" is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, 2016 Guidelines have been issued by the MOEFCC in pursuance of the directions issued by this Court dated 5th October 2015. In any case, the raw material for plywood industries is

'Veneer' and the raw material for veneer is 'timber'. We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

86. That leads us to consider the contention of the respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

CONCLUSION

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

89. A body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P.". The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh.The said report itself shows that the consultants, during the field survey, observed resentment among the plywood manufacturers

against the process of issuing new licenses to the WBIs by the State Government.

90. The report further goes on to show that on average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300-350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh, i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh, i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

91. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs.3000 crore was likely to be attracted in the State; employment opportunities to over 80000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasized that this will reduce dependence on traditional/ cash crops and also reduce migration of people to urban areas. It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has

A given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

93. The paper on "Trees Outside Forest Resources in India" published by the FSI, cited supra, also emphasizes that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

94. As already discussed herein above, the majority of TOF is from two species, i.e. Poplar and Eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. As already discussed herein above, the State had emphasized many advantages of granting new licenses to WBIs. It was also emphasized that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which

the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such license holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licensees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and *bonafides* of the original applicants.

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of ***Ankita Sinha and Others***

A ***(supra)*** to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take *suo motu* cognizance. However, when the credentials and *bonafides* of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the *bonafides* and credentials of such litigants.

100. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

(a) In the case of ***Samatha vs. State of A.P. and Ors.***[8], a three-Judge Bench of this Court after referring to the earlier judgment in the case of ***State of H.P. and others vs. Ganesh Wood Products and others***[9] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of ***Essar Oil Ltd. vs. Halar Utkarsh Samiti and others***[10], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of ***Indian Council for Enviro-Legal Action vs. Union of India and others***[11] were quoted as under:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not

[8] *AIR 1997 SC 3297 = (1997) 8 SCC 191*
[9] (1995) 6 SCC 363
[10] (2004) 2 SCC 392
[11] (1996) 5 SCC 281

hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment."

(c) In the case of ***Maharashtra Land Development Corporation and others vs. State of Maharashtra and another***[12] reference was made to ***Glanrock Estate Private Limited vs. State of Tamil Nadu***[13] wherein it was observed as under:

"*27*. …. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

(d) Of course, one cannot ignore one of the several dicta of this Court in ***T.N. Godavarman Thirumulkpad vs. Union of India and others***[14]wherein this Court enunciated the definition of "forest" in the following words:

"**4.** The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological

[12] (2011) 15 SCC 616
[13] (2010) 10 SCC 96
[14] AIR 1997 SC 1228

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…"

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

103. In the result, the appeals are allowed. The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Application Nos.313, 335 and 396 of 2019 as well as in the Review Applications are quashed and set aside.

104. Pending applications, if any, shall stand disposed of. No costs.

Nidhi Jain and Anurag Bhaskar
(Assisted by : Rahul Kumar, LCRA)

Appeals allowed.

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Application No.169 of 2016 (SZ)

IN THE MATTER OF:

D.Swamy,
S/o Devaiah
Dhanagalli Village
Dhanagalli post
Jayapura, Hobli
Mysore Taluk,
Pin: 570008.

... Applicant(s)

AND

1. The Karnataka State Pollution Control Board
   Rep. by its Member Secretary,
   Parisara Bhavana 1 to 5th Floors,
   No.49, Church Street,
   Bangalore-560 001.

2. The Senior Environmental Officer (08).
   The Karnataka State pollution Control Board,
   1 to 5th Floors,
   No.49 Church Street,
   Bangalore-560 001.

3. M/s. GIPS BIOTECH,
   (Lessee of M/s. Jacob James)
   Rep. by its Managing Partner,
   (Common Bio-Medical Waste Treatment Facility)
   Survey.No.82 & 38/2, Gujjegowdanapura Village,
   Jayapura Hobli,
   Mysore Taluk & District.

4. The Assistant Executive Engineer
Section Office, CHESCOM,
Jayapura Hobli,
Mysore District.

5. The Secretary,
Ministry of Environment,
Forests and Climate Change,
(MOEF &CC), Paryavaran Bhawan,
New Delhi.

6.The State Level Environment
Impact Assessment Authority,
(SEIAA), Karnataka,
Bangalore.

(*Suo motu* impleaded as 5th and 6th respondents
as per the order dated 17.08.2016)

... Respondent(s)

Counsel appearing for the Applicant:

M/s. V. Suthakar, K.S. Viswanathan,
N. Ananthakavitha and M.Gopi

Counsel appearing for the Respondents:

Mr. Devaraj Ashok for R1, R2, R4 and R6
Mr. Dilip Kumar for R3
Mrs. Me. Saraswathy for R5.

ORDER

PRESENT:

HON'BLE JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Delivered by Hon'ble Justice M.S. NAMBIAR, Judicial Member

Dated: 10th May, 2017

Whether the Judgement is allowed to be published on the Internet – Yes/No
Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

M/s. GIPS Biotech, respondent No.3 applied for Consent to establish a Common Bio-Medical Waste Treatment Facility in Survey No.82 and 38/2, Gujjegowdanapura Village, Mysore Taluk and District on 25.02.2012 under the Water (Prevention & Control of Pollution) Act 1974 and Air (Prevention & Control of Pollution) Act, 1981. Consent to establish were granted on 24.11.2012. The said Consent orders were challenged before the Karnataka State Environment Appellate Authority in Appeal Nos.48 and 49 of 2012. On 20.04.2013 the appeals were dismissed. Aggrieved by the dismissal, Appeal Nos.46 and 47 of 2013 were filed before the Tribunal on 29.04.2013. Those appeals were dismissed on 14.07.2014. Meanwhile, vide Notification dated 17.04.2015, the Ministry of Environment Forests and Climate Change (in short 'MoEF & CC') amended EIA Notification, 2006 by inserting entry 7(da) after entry 7(d) of the Schedule to the Notification providing that Environmental Clearance (EC) under EIA Notification, 2006 is required for establishment of a Common Bio-Medical Waste Treatment Facility (in short 'CBWTF').

2. On the application filed by respondent No.3, Consent to operate under the Water (Prevention & Control of Pollution) Act 1974 and Air (Prevention & Control of Pollution) Act, 1981 were granted on 11.02.2016. The applicant challenged the orders before the Karnataka State Environment Appellate Authority in

Appeal No.3 of 2016 on 10.03.2016. The Consent to operate granted on 11.02.2016 was valid for a period upto 30.06.2016. Though the applicant sought an interim order from the Appellate Authority, it was not granted. The applicant thereafter sought permission to withdraw the appeal and consequently Appeal No.3 of 2016 challenging the order granting Consent was dismissed by the Appellate Authority.

3. This application was then filed under Section 14 of the National Green Tribunal Act, 2010 seeking the following reliefs:

"To direct closure of the Common Bio-Medical Waste Treatment Facility run by respondent No.3 at Survey No.82 & 38/2 Gujjegowdanapura Village Jayapura Hobli, Mysore Taluk & District including disconnection of electricity on account of non-compliance of the provisions of EIA Notification, 2006 as amended on 30.04.2015 including Item 7(da) to the Schedule therein and also for non-compliance of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and pass such further or other orders."

4. The case of the applicant is that on enquiry he came to understand that by an order of Consent to establish dated 24.11.2012, respondent No.3 was permitted to establish a CBWTF, subject to complying with all regulations in force. The Central Pollution Control Board (in short 'CPCB') under delegated authority from the MoEF&CC issued directions from time to time to all State Pollution Control Boards in matters relating to Environment. In February 2014, the CPCB issued revised

guidelines to be followed by all State Pollution Control Boards and the Project Proponents at the time of establishment of CBWTF. It is contended that as per the orders of the Principal Bench of the Tribunal in Appeal No.63 of 2012 dated 28.11.2013, revised guidelines were issued by the CPCB in February 2014 including a clear condition that Environmental Clearance for CBWTF is mandatory. The Government of India issued an Amendment to EIA Notification 2006 vide Notification dated 30.04.2015 inserting entry 7(da) after entry 7(d), providing that CBWTF shall be required to obtain prior EC. On 03.07.2015 the Karnataka State Pollution Control Board (in short 'KSPCB') issued a circular bearing No. PCB/BMW/GEN-F-10/2015/932 to inform all Environmental Officers concerned to take note of the said amendment prescribing requirement of EC for establishing CBWTF.

5. The State Level Environment Impact Assessment Authority, Karnataka (in short 'SEIAA') by proceedings dated 01.12.2015 issued directions under Section 5 of the Environment (Protection) Act, 1986 to issue consent to establish for all such projects attracting EIA Notification 2006 subsequent to the amendment, only after submitting prior EC. By proceedings dated 01.12.2015 respondent No.2 the Senior Environmental Officer of KSPCB advised all officers to scrupulously observe the directions issued by the SEIAA, Karnataka regarding production of copy of prior EC, in order to process an application for

establishment of CBWTF. Respondent No. 3 without following the guidelines and amended Notification and without insisting for prior EC, granted a combined consent order both under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 on 11.02.2016. The applicant and other residents of the village made representations to the KSPCB informing that respondent No.3 does not satisfy the distance criteria and other Environmental Safety Norms as prescribed by the CPCB. But without addressing this aspect the Consent was granted. The Consent was valid from 11.02.2016 to 30.06.2016. Though Applicant challenged the order before the Appellate Authority, the matter was protected and ultimately became infructuous as the period of consent lapsed and the applicant was advised to withdraw the appeal and file an application before the Tribunal. Hence, the application. The applicant sought reliefs on the ground that respondent No.3 is operating the CBWTF without any Consent under Rule 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Rule 21 of the Air (Prevention and Control of Pollution) Act, 1981. The unit does not have any authorisation issued under Rule 8 of the Bio-Medical Waste (Management and Handling) Rules 1998. Respondent No. 3 has not obtained any prior EC as provided under entry 7(da) of the Schedule to EIA Notification, 2006 as amended by Notification dated 30.04.2015. The Consent granted to respondent No.3 in violation of the EIA Notification, expired on

30.06.2016 and respondent No.3 has no authority or permission to operate the unit. It is therefore contended that respondent No.3 be directed to obtain EC, before operating the unit and necessary directions are to be issued.

6. Respondent Nos. 1 and 2 in their joint reply contended that respondent No. 3 obtained Consent to establish, and Consent to operate under the Water (Prevention and Control of Pollution) Act,1974 and Air (Prevention and Control of Pollution) Act, 1981 and also authorisation under Bio-Medical (Management and Handling) Rules 1998 which are valid upto 30.06.2016. It is also contended that under EIA Notification, 2006, prior EC is required only for establishing any new project or activities listed in the schedule, or for Expansion or modernization of existing projects or activities listed in the schedule. Respondent No.3 is not establishing a new project or expansion / modification of the existing project or activity after 30.04.2015 and therefore the amended notification has no application to the facts of the case. The KSPCB issued Consent to operate on 11.02.2016. As per the conditions imposed in the order of Consent to operate, the industry submitted an application for renewal of Consent and authorization before the expiry of the period originally granted. By order dated 17.08.2016, the Tribunal directed the KSPCB to consider the application for Consent submitted by respondent No.3 and pass orders. Respondent No.3 applied for authorization

under Bio-Medical Waste (Management & Handling) Rules, 2016 before the expiry of the validity of authorization. As per the EIA Notification, 2006, when the Consent to establish was granted by the KSPCB on 24.11.2012, there was no requirement of prior EC and subsequent amendment to the notification will not apply to the industry which has been established earlier. The revised guidelines published by CPCB in February 2014 also will not be applicable as the unit was already established prior to the issuance of the said guidelines. It is therefore contended that the granting of Consent to operate and its renewal were all perfectly legal.

7. Respondent No.3 in their reply contended that the appeals filed challenging the Consent granted to establish before the Karnataka State Environment Appellate Authority were dismissed on 20.04.2013 and the said orders were challenged before the Tribunal in Appeal Nos. 46 and 47 of 2013 and they were dismissed on 14.07.2014. The Consent order granted for establishment of the CBWTF was upheld by the Tribunal on 14.07.2014 and the said order attained finality.

8. Respondent No.3 further stated that because of the vested interest of the established operators, who caused hurdles in the establishment of the unit, Respondent No.3 could not obtain Consent to Operate as the investment, plant and

machinery would lay idle. The applicant challenged the order of Consent to Operate, in Appeal No. 3 of 2016. The Karnataka State Environment Appellate Authority did not grant any order of stay. The applicant thereafter filed the present application by cleverly drafting the application and withdrew the appeal, to avoid its dismissal on merit. The Appeal No. 3 of 2016 filed by the applicant was thus dismissed as withdrawn. The Consent to establish was granted to respondent No.3 on 24.11.2012. That attained finality by dismissal of Appeal Nos. 46 and 47 of 2013 on 14.07.2014. The amendment to EIA Notification 2006, by Notification dated 17.04.2015, inserting entry '7(da)' in the schedule, providing requirement of prior EC, came into force after the establishment of the CBWTF. The said Notification is not retrospective in operation but only prospective. The application is therefore only to be dismissed.

9. Respondent No.5, Ministry of Environment Forests and Climate Change (MoEF & CC) filed a reply contending that the Ministry has notified the Bio-Medical Waste (Management & Handling) Rules 1998, which was subsequently revised, under Section 6, 8 and 25 of the Environment (Protection) Act, 1986 and notified the revised Bio-Medical Waste (Management & Handling) Rules, 2016 on 28th March 2016. These Rules are uniformly applicable to all over the country. The objective is to ensure that such waste is handled without any adverse effect to

human health and environment. Rule 8 of Bio-Medical Waste (Management & Handling) Rules, 2016 provides procedure to be followed for the treatment and disposal of bio-medical waste. The bio-medical waste shall be treated and disposed of in accordance with Schedule I and in compliance with the standards under Schedule II. It is indicated in the Rules that no occupier shall establish on-site treatment and disposal facility, if service of common biomedical waste treatment facility is available at a distance of 75 km. Every occupier or operator handling biomedical waste, irrespective of the quantity shall make an application in Form II, to the prescribed authority namely State Pollution Control Board as far as the States are concerned, and the Pollution Control Committee in respect of Union Territories. On receipt of the application for grant of authorization the prescribed authority has to make such enquiry as it deems fit and if it is satisfied, shall issue authorization or renewal of authorization. The EIA Notification 2006 provides that all new projects or activities listed in the Schedule to the Notification as well as expansion and modernisation of existing projects or any change in product-mix in an existing manufacturing unit included in Schedule, require prior EC. By Notification dated 17.04.2015, requirement of prior EC was provided for establishing CBWTF.

10. Respondent Nos. 4 and 6 did not file any reply.

11. The argument of the learned counsel appearing for the applicant is that the Principal Bench, New Delhi in Appeal No.63 of 2012, dated 28.11.2013 held that Bio-Medical Waste Treatment Facility is hazardous within the meaning of Entry 7(d) to the Schedule of EIA notification 2006 and therefore every such facility is required to obtain EC from the date of the Judgement dated 28.11.2013. It is also argued that in any case the amended EIA Notification 2006 dated 17.04.2015 makes it mandatory to require prior EC and the said amendment was only a clarification. Therefore, 17.04.2015 cannot be taken as a starting point for the requirement of obtaining EC. Learned counsel argued that even during the hearing of Appeal Nos. 46 and 47 of 2013 before the Tribunal, the guidelines issued by CPCB during February 2014 was produced, which contain reference to the Judgement dated 28.11.2013. Respondent No.3 was thus fully aware of the requirement of prior EC and approached the KSPCB only in March 2015 to obtain Consent to establish, without producing EC. It is also argued that Respondent No.3 has not completed installation of the equipment prior to 17.04.2015 and therefore it is clear that when the amendment to EIA Notification 2006 came into operation on 17.04.2015, the unit of the respondent No.3 was not an existing unit and therefore in any event the requirement of obtaining prior EC is mandatory. Learned counsel argued that as the Tribunal in Himmat Singh Shekhawat, (OA No. 123 of 2014 dated 13.01.2015) case directed closure of the mining operations

going on without prior EC, and respondent No.3 is not entitled to operate the unit without the mandatory requirement of prior EC and therefore direction is to be issued to close the unit.

12. Learned counsel also argued that an existing unit would mean, a unit operating with Consent to Operate and not a unit having only a Consent to establish. The application for Consent to Operate itself was resubmitted by respondent No.3 only on 19.01.2016 and as the requirement of prior EC was there from 17.04.2015, the Consent granted to operate the unit without prior EC is not valid and respondent No.3 is to be directed to close down the unit.

13. Learned counsel appearing for respondent No.3 argued that respondent No.3 obtained the orders of Consent for establishing the unit as early as on 24.11.2012 and that Consent was challenged before the Appellate Authority in Appeal Nos. 48 and 49 of 2012 and got an order of stay and after its dismissal by the Appellate Authority on 20.04.2013, the Appeal Nos. 46 and 47 of 2013 were filed before the Tribunal and those appeals were dismissed only on 14.07.2014. Learned counsel argued that the rival plants, who were operating bio medical waste treatment facility are the appellants in Appeal nos. 48 and 49 of 2012 and when their attempt to prevent respondent No.3 from establishing the unit did not succeed on dismissal of the appeals,

the present application was filed. Learned counsel argued that the delay in establishing the unit after obtaining Consent to establish was because of the appeals filed challenging the order of Consent and the order of stay granted by the Appellate Authority. Respondent No.3 could therefore establish the unit only after 14.07.2014**,** the date of dismissal of appeal Nos.46 and 47 of 2013.

14. Learned counsel argued that before the amendment to EIA Notification 2006 which came into effect on 17.04.2015 requiring prior EC for establishing Bio Medical Waste Treatment Facility, the unit was already established. The argument of the learned counsel is that EIA Notification 2006 requires prior EC for establishing all new projects or expanding or modernizing of existing project or activities or for any change in product-mix in an existing manufacturing units, which are included in the Schedule to the EIA Notification 2006 and not prior EC for an existing CBWTF. The argument of the learned counsel is that as the unit was established prior to 17.04.2015, the amendment to EIA Notification 2006 dated 17.04.2015 is not applicable to the unit of respondent No.3. Learned counsel also argued that EIA Notification 2006, prior to the amendment, does not provide that EC is required for operating the unit and instead the requirement of prior EC is only is for establishing new units and hence the application is only to be dismissed.

15. The following points arise for consideration:

1. Whether prior EC is required for establishing the Common Bio- Medical Waste Treatment Facility?

2. Whether respondent No.3 is required to obtain prior EC, as the Consent to establish was granted to respondent No.3 on 24.11.2012 and EIA Notification 2006 as the amended Notification S.O.1142(E) inserting Item 7(da) in the Schedule, came into force only on 17.04.2015?

16. **Points 1 and 2:**

The facts are not disputed. The Bio Medical Waste (Management & Handling) Rules 1998 came into force on 20.07.1998. The EIA Notification 2006 came into force on 14.09.2006. Respondent No.3 was granted Consent to establish the disputed CBWTF on 24.11.2012. When the said Consent to establish was granted, the Schedule to EIA Notification 2006 does not specifically provide prior EC to establish a CBWTF. Shree Consultants Common Facility for Bio- Medical Waste Treatment and Disposal, Mysore claiming to be interested in establishing a Common Bio-Medical Waste Treatment Disposal Facility at the place, challenged the order of Consent to establish, before the Karnataka State Appellate Authority in Appeal Nos. 48 and 49 of 2012. On admitting the appeals, an order of stay of operation for Consent to establish was granted. The appeals were later dismissed on 20.04.2013. Appeal Nos.46 and 47 of 2013

challenging those orders were filed before the Tribunal and those appeals were also dismissed by the Tribunal on 14.7.2014. It was also observed by the Tribunal that there exists an imminent and acute need for establishing more CBWTF units and the KSPCB was right in granting Consent to respondent No.3, to establish a CBWTF.

17. In a similar case Appeal No.63 of 2012 was filed before the Principal Bench challenging an order of Consent granted for operation of the CBWTF, contending that prior EC is required for establishing CBWTF. By Judgement dated 28.11.2013, the Tribunal held that Bio-Medical Waste Treatment plants are required to obtain prior EC in terms of entry 7(d) of EIA Notification 2006. Having recorded the above finding, while keeping the applications pending, all the respondents (Project Proponents) were directed to obtain EC in terms of site location, potential environmental impacts and proposed environmental safeguards from MoEF&CC in accordance with law. The MoEF&CC was directed to dispose of such applications expeditiously, if the applications are filed.

18. While so, the MoEF&CC by Notification in S.O.1142 (E) dated 17.04.2015, amended Schedule to the EIA Notification 2006. Entry 7(da) was inserted after entry 7(d) which provides for prior EC for establishing all projects of CBWTF. The KSPCB

granted Consent to operate the CBWTF to respondent No.3 on 11.02.2016. That order of Consent was challenged by the appellant before the Karnataka State Environment Appellate Authority on 10.03.2016 in Appeal No.3 of 2016. The said Consent was valid for the period from 11.02.2016 to 30.06.2016. The applicant could not get an interim order of stay. Apprehending that the appeal itself would become infructuous, after the expiry of the term for Consent, the present application was instituted after withdrawing the appeal before the Appellate Authority. Even though, the Consent to establish was obtained on 24.11.2012, due to the operation of stay in Appeal Nos.48 and 49 of 2013 and subsequently the appeals before the Tribunal, respondent No.3 could not establish the unit till 14.07.2014.

19. According to respondent No.3, after the dismissal of the Appeal Nos.46 and 47 of 2013, respondent No.3 received orders for procuring machineries and after establishing the facility, submitted the application for Consent to operate, which was granted on 11.02.2016. Before the expiry of the period of Consent, application was filed by respondent No.3 and Consent was renewed on 17.08.2016.

20. In view of the Notification issued in S.O.1142 (E) dated 17.04.2015, inserting entry 7(da) in the Schedule to the EIA Notification 2006, it cannot be disputed that prior EC is required

to establish any project of CBWTF with effect from 17.04.2015. The argument of the learned counsel appearing for the applicant is that as the Consent to operate was granted only on 11.02.2016, after coming into force of the amendment to EIA Notification, 2006 which provide for prior EC, Consent to operate could not have been granted, as respondent No.3 did not obtain prior EC for establishing the unit, and hence the unit is to be closed.

21. The main question to be settled is therefore whether the amendment to EIA Notification, 2006 dated 17.04.2015 is retrospective in nature or is only prospective.

22. Environment Clearance Regulations, 2006 (in short 'Regulations 2006') was published in the Gazette of India dated 14th September, 2006. That Notification was promulgated in supersession of the earlier Notification issued in S.O.60(E), dated 27th January, 1994. Both Notifications were issued exercising the powers under Section 3 of the Environment (Protection) Act, 1986. It is not in dispute that the Regulations, 2006 is not having any retrospective effect. The said Regulations, 2006 provide as follows:

> " Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of

sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the Notification Number S.O.60(E), dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification. "

The identical provision in 1994 Notification was considered by the Hon'ble Supreme Court in Narmada Bachao Andolan vs. Union of India (2000 (10) SCC, 664) and held as follows:

" This notification is clearly prospective and *inter alia* prohibits the undertaking of a new project listed in Schedule I without prior environmental clearance of the Central Government in accordance with the procedure now specified. In the present case clearance was given by the Central Government in 1987 and at that time no procedure was prescribed by any statute, rule or regulation. The procedure now provided in 1994 for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto."

Paragraph 2 of the EIA Notification, 2006 provides the requirement of prior Environmental Clearance (EC). It reads as follows:

> " 2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (i) All new projects or activities listed in the Schedule to this notification;
>
> (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
>
> (iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range. "

23. It is thus clear that prior EC is required for all new projects or activities listed in the Schedule to the notification, expansion and modernization of existing projects or activities listed in the Schedule to the notification with addition of capacity

beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernization and also for any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified limits.

24. Schedule to the Notification provides the list of projects or activities requiring prior Environmental Clearance. Setting up of Bio-Medical Waste Treatment Facility (in short 'BMWTF') as such was not included in the list of projects or activities shown in the Schedule. Entry 7 of the Schedule comprises the project of Airports under (a), All ship breaking yards including ship breaking units under (b), Industrial estates/ parks/ complexes/ areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes under (c), Common hazardous waste treatment, storage and disposal facilities (TSDFs) under (d), Ports, harbours, break waters, dredging under (e), Highways under (f), Aerial ropeways under (g), Common Effluent Treatment Plants (CETPs) under (h) and Common Municipal Solid Waste Management Facility (CMSWMF) under (i). By Notification S.O.1142 (E) dated 17.04.2015 in Entry 7 of the Schedule, Entry 7(da) was inserted providing that all projects of Bio-Medical Waste Treatment Facilities require prior EC under Paragraph 2 of Regulations 2006. The Notification reads as follows:

" **MINISTRY OF ENVIRONMENT AND FORESTS**
NOTIFICATION
New Delhi, the 17th April, 2015

S.O.1142 (E):- In exerise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments to the notification of the Government of India, in the Ministry of Environment and Forests number S.O.1533(E), dated the 14th September, 2006 after dispensed with the requirement of notie under clause (a) of sub-rule (3) of the said rule 5 in public interest, namely:-

In the said notifiation, in the Schedule, after item 7(d) and the entries relating thereto, the following item and entries shall be inserted, namely:-

(1)	(2)	(3)	(4)	(5)
"7(da)	**Bio-Medical Waste Treatment Facilities**		**All projects**	

(F.No. 3-9/2014-IA.III)
MANOJ KUMAR SINGH, Jt. Secy."

25. All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity, if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect has to be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Therefore, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. The Hon'ble Supreme Court in M/s. Punjab Tin Supply Co., Vs. Central Government (AIR 1984 SC 87) considered the

question and held that if the language is clear and unambiguous, effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not.

26. The Notification S.O.1142 (E) which was quoted above, does not show that retrospective operation was intended. There is nothing in the Notification to assume that retrospective operation is implied. First of all, Paragraph 2 of the Regulations, 2006 contemplates prior EC, before establishing the unit or industry which require EC. What is provided under Paragraph 2 is that prior EC is required for all new projects or activities listed in the Schedule to the notification from the Central Government in the Ministry of Environment and Forests or at the State level the State Environment Impact Assessment Authority (SEIAA) as the case may be, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity. Therefore, by amending the Regulations, 2006, inserting a new project within the ambit of the EIA Notification, 2006 requiring prior EC which was not required earlier when the project was established, it can never be provided that prior EC is required for such project, before preparation of land or before any construction work is started. If retrospective operation is to be given for all such projects, established prior to

the date of the amendment of the Schedule to EIA Notification, 2006 requiring prior EC, it would open the Pandora's box, as projects which have been established long back prior to the date of amendment would also require to take prior EC, which itself is impossible as it was established earlier. Paragraph 2 of the EIA Notification,2006 specifically provides that EC is to be taken prior to the starting of any construction work or preparation of land by the project management, except for securing the land. Therefore, we have no hesitation to hold that the EIA Notification, S.O.1142(E) dated 17.04.2015 has no retrospective effect and would operate only prospectively from 17.04.2015. Therefore, we cannot agree with the contention of the learned counsel appearing for the applicant that as entry 7(da) was inserted in the Regulations, 2006, by Notification dated 17.04.2015, respondent No.3 is bound to obtain prior EC, even if he has established the project prior to 17.04.2015.

27. Learned counsel appearing for the applicant argued that dehors of the insertion of entry 7(da) in the EIA Notification, 2006, dated 17.04.2015, the Principal Bench of the Tribunal in Haat Supreme Wastech Private Ltd., and others Vs. State of Haryana and others (Appeal No.63 of 2012, dated 28.11.2013) considered the question whether CBWTF require prior EC and already found that establishment of CBWTF would come under Entry 7(d) of the Notification and hence require prior EC and

therefore, respondent No.3 cannot contend that prior EC is not necessary for establishment of the bio-medical waste treatment plant. Learned counsel also argued that at least from the date of Judgment in the said case dated 28.11.2013, it is to be taken that establishment of CBWTF would come under Entry 7(d) and even if Entry 7(da) is not there, prior EC for such project is required and therefore as respondent No.3 did not obtain prior EC, it is to be held that respondent No.3 is bound to close the unit and seek EC before starting its operation.

28. True, in Haat Supreme Wastech Private Ltd (supra), the Five Member Bench of the Tribunal considered the question "Whether or not the Bio-Medical Waste Treatment Plants require EC in terms of the EC Regulations, 2006". Finding that the establishment of Bio-Medical Waste Treatment Plants are not specifically included in any of the entries in the Schedule to the EIA Notification, 2006, the Tribunal considered the question whether it would attract any other entry of the Regulation. Based on the legislative intent, object of that and rules and the purpose sought to be achieved, it was held that all regulatory regimes whether relating to municipal solid waste, hazardous waste or bio-medical waste, owe their allegiance to the substantive provisions and the object of the Environment (Protection) Act, 1986. It was therefore held that liberal construction would help in giving a purposeful meaning and interpretation to the provisions of the Act

and the Rules for attainment of the basic object. Finding that Bio-Medical Waste undisputedly is a hazardous waste, it was held that to serve the object and purpose of the Environment (Protection) Act, 1986 and the Rules framed thereunder, a liberal interpretation to the relevant provision particularly Entry 7(d) to include bio-medical waste is to be given and held that it would require prior EC. It was held that the entry is wide enough and is intended to cover the CBWTF, and such an approach, even otherwise, would be in consonance with the legislative intent and scheme of the Act of 1986. It was therefore held that the CBWTF would require to obtain prior EC in terms of Entry of 7(d) of the Notification, 2006. The argument of the learned counsel appearing for the applicant is that even if there was no amendment to EIA Notification, 2006, as the establishment of CBWTF requires prior EC under the Entry 7(d) of the Schedule to the Notification of 2006, respondent No.3 cannot contend that prior EC is not required for the project.

29. Though this argument is attractive, we find that in the application filed under Section 14 of the National Green Tribunal Act, 2010 the applicant has not taken such a ground at all. In the application the applicant has no case that establishment of the CBWTF requires prior EC under Entry 7(d) of EIA Notification, 2006. On the other hand, the very application is filed based only on the amendment dated 17.04.2015 in the EIA Notification, 2006

where Entry 7(da) was inserted requiring prior EC for establishment of Bio-Medical Waste Treatment Facility. In such circumstances, when the case of the applicant is only that respondent No.3 is bound to take prior EC, as the project for establishment of Bio-Medical Waste Treatment Facility Plant would come under Entry 7(da), we hold that the question whether dehors of amendment dated 17.04.2015 prior EC is required for the project is not to be decided in the application in view of the pleadings. Moreover, when entry 7(da) is inserted in the Schedule providing the requirement of prior EC for Bio-Medical Waste Treatment Projects, Entry 7(d) no more applies to a Bio-Medical Waste Treatment Project. When there is a specific entry to cover a particular type of industry or activity, only that Entry in the Schedule will apply. If based on the decision of the Principal Bench in Haat Supreme Wastech Private Ltd (supra) that prior EC is required for all projects is to be implemented for all projects of CBWTF that came into existence subsequent to 14.09.2006, the date of commencement of the EC Notification, 2006, even Shree Consultants common facility for Bio-Medical Waste Treatment and Disposal, the appellant in appeal Nos.46 & 47 of 2013, that challenged the order of Consent to establish granted to Respondent No.3 before the Tribunal, may also require prior EC. As the object and intent of EIA Notification 2006, is to require prior EC for all new projects or activities listed in the Schedule to the Notification, expansion or modernization of existing projects

or activities listed in the Schedule or any change in product-mix in an existing manufacturing units included in the Schedule, we cannot hold that prior EC is required for all those projects which came into existence after 14.09.2006 and prior to 17.04.2015.

30. Then the question is whether the CBWTF of Respondent No.3 was established prior to 17.04.2015 and if not whether EC is mandatory. The argument of the learned counsel appearing for the applicant is that the CBWTF would stand established only on obtaining a Consent to establish, then completing the construction and installing the machinery and equiipment, complying with all the requirements and then obtain Consent to operate under Rule 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Rule 21 of the Air (Prevention and Control of Pollution) Act, 1981. The argument of the learned counsel is that though Respondent No.3 obtained a Consent to establish the unit on 24.11.2012, the Consent to operate was granted for the first time only on 11.02.2016 i.e., subsequent to 17.04.2015 after the coming into effect of the amendment and therefore Consent granted to operate without EC is not valid. Though the Consent to operate granted on 11.02.2016 was only for a period of six months, it is not disputed that subsequently the order of Consent was renewed and at present there is a valid Consent to operate enabling Respondent No.3 to continue to operate the plant. The argument of the learned Counsel appearing

for the applicant is that though an application for Consent to operate was submitted before the KSPCB before 17.04.2015, it was returned by the KSPCB and was represented only on 19.01.2016 and therefore as it is subsequent to 17.04.2015, Consent to operate should not have been granted without prior EC.

31. Learned Counsel appearing for Respondent No.3 would argue that Respondent No.3 could not proceed with the establishment of the CBWTF, as the rival plants challenged the order of Consent to establish first before the Karnataka State Appellate Authority and thereafter before the Tribunal and once the appeals were dismissed by the Tribunal on 14.07.2014, steps were taken to establish and the entire establishment of the facility was completed before 17.04.2015 and in fact an application for Consent to operate was filed on 04.03.2015 before EIA Notification 2006 was amended by S.O 1142(E) dated 17.04.2015 and therefore there is no merit in the contentions of the learned counsel appearing for the applicant.

32. Before proceeding further certain undisputed facts are to be borne in mind. Respondent No.3 filed an application for establishing the CBWTF on 25.02.2012. Consent to establish was granted on 24.11.2012. The said order of Consent was challenged before Karnataka State Appellate Authority in Appeal Nos. 48 &

49 of 2012. An order of stay of operation of the Consent was granted. Those appeals were dismissed on 20.04.2013. The orders of the Karnataka State Appellate Authority were challenged before the Tribunal in Appeal Nos. 46 & 47 of 2013. They were dismissed only on 14.07.2014. Therefore, even though Consent to establish was granted on 25.02.2012, as they were challenged before the Karnataka State Appellate Authority as well as before the Tribunal, the question was finally resolved in favour of Respondent No.3 only on 14.07.2014. The KSPCB, pursuant to the directions, made available copies of the file relating to the renewal of Consent to operate granted to Respondent No.3, which contain the copy of application for Consent to establish, the order of Consent to establish, the application submitted for Consent to operate, the report of the inspection and the order for granting renewal of Consent. From the records it is clear that Respondent No.3 after establishing the plant, submitted the application dated 04.03.2015 for grant of Consent to operate the facility under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. True, the applications were returned and resubmitted only on 18.01.2016 and thereafter by order dated 11.02.2016 Consent to operate was granted in favour of Respondent No.3. The Consent to operate granted on 11.02.2016 was later renewed as is clear from the copies of the order made available by the KSPCB. The renewal orders of Consent granted to Respondent No.3 under the Water

(Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 are appealable orders but those orders are not challenged in appeals.

33. From the materials placed before the Tribunal, it is clear that the appellant in Appeal Nos. 46 & 47 of 2013 challenged the order of Consent to establish granted to Respondent No.3 on 24.11.2012, and got an order of stay and thus prevented Respondent No.3 from establishing the Common Bio-Medical Waste Treatment Facility. Therefore Respondent No.3 cannot be found fault for not completing the process of establishment before 14.07.2014, when the appeals were finally disposed by the Tribunal. The relevant documents filed by the KSPCB establish that after 14.07.2014, Respondent No.3 has completed the establishment and even applied for Consent to operate on 04.03.2015. Therefore, though it was returned and resubmitted by Respondent No.3 only on 18.01.2016, it is clear that Respondent No.3 had completed the establishment of the unit before 04.03.2015, one month prior to the date of coming into force of the amendment dated 17.04.2015 to the EIA Notification, 2006. Moreover, what is provided under Para 2 of Regulations, 2006 is to obtain prior EC before establishment and not before the Consent to operate. Consent to establish and Consent to operate are two different concepts. The Consent to establish has to be obtained by the Project Proponent, before proceeding with the

construction or establishment of the project. Once the project is established, complying with the conditions if any in the order of Consent to establish, the Project Proponent has to apply for Consent to operate. The Consent to operate has to be granted satisfying that the Project Proponent has established the project in accordance with the conditions of the order of Consent to establish and is satisfied with the Pollution Control Measures having been adequately taken. When Para 2 of the Regulations 2006, clearly mandates prior EC, before establishing and even before carrying on with the construction work of the project, it cannot be contended that EC is mandatory before getting the Consent to operate. The purpose of obtaining prior EC is to avoid any potential negative impact of the project on environment and it is based on Environment Impact Assessment undertaken at the planning stage of the project itself for selecting environmentally compatible sites, process technologies and required environmental safeguards. Once the project is already established, no such exercise can be undertaken. Therefore, the EIA Notification, 2006 provides prior EC, not post EC. True, if prior EC is a prerequisite to establish the industry/unit/project, no Consent to operate could be granted before the Project Proponent satisfies that requisite EC has already been granted in his favour. If that be so, we cannot agree with the submission of the learned counsel appearing for the applicant that the Consent to operate granted in favour of Respondent No.3 by the KSPCB on

11.02.2016 for the period upto 30.06.2016 or its subsequent renewal on 17.08.2016 for the period upto 30.06.2021, are invalid.

34. The fact that the Respondent No.3 was having a valid consent to establish granted on 24.11.2012, a Consent to operate which is valid upto 30.06.2016 and was also having a valid authorisation under Bio-Medical Waste (Management and Handling) Rules, 2016 is not disputed. The fact that they were subsequently renewed and in such circumstances, we hold that the applicant in the application has only contended that Respondent No.3 has not obtained prior EC, as the project of CBWTF was included under Entry 7(da) and not on the basis that prior EC is necessary under Entry 7(d) as originally stood before the amendment dated 17.04.2015 and at present there is valid Consent under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, and also authorization under Bio-Medical Waste (Management & Handling) Rules, 2016 is not disputed as the amendment under S.O. 1142(E) Notification dated 17.04.2015 is only prospective and not retrospective, the Common Bio-Medical Waste Treatment Facility run by Respondent No.3 cannot be directed to be closed for want of EC. As Respondent No.3 is having a valid Consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981

and also the authorisation under the Bio-Medical Waste (Management and Handling) Rules 2016, we find no merit in the application. The application is dismissed with no order as to costs.

Justice M.S. Nambiar
Judicial Member

Shri P.S. Rao
Expert Member

Item No. 7 (Court No. 2)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH,
NEW DELHI.

(Through Physical Hearing with Hybrid V.C. Option)

Original Application No. 774/2022

Gaurav Garg
S/o Jaipal Garg Thakur Dwara, Baghpat,
Ward 13, Baghpat, Meerut
Uttar Pradesh-250609

...Applicant

Versus

1. Union of India
Through Its Secretary,
Ministry of Environment, Forests and Climate Change,
Paryavaran Bhawan,
Jorbagh, New Delhi-110003.
secy-moef@nic.in
011-20819316

...Respondent No. 1

2. Central Pollution Control Board
Through Its Member Secretary,
Paryavaran Bhawan,
East Arjun Nagar Delhi-110032.
mscb.cpcb@nic.in

...Respondent No. 2

3. State Of Uttar Pradesh
Through Chief Secretary,
Secretariat Office Lucknow,
Uttar Pradesh.
cs-up@nic.in

...Respondent No. 3

4. UPPCB
Through Member Secretary,
UPPCB Bhawan, Building No. TC-12v,
Vibhuti Khand Gomti Nagar,
Lucknow-10.
ms@uppcb.in

...Respondent No. 4

5. Regional Officer,
UPPCB Regional Office,
Pocket-T, C-3/2, Pallav Puram,
Phase-II, Modi Puram, Meerut,
Uttar Pradesh – 250110.

...Respondent No. 5

6. MDA
Through Chief Town Planner,
Vikas Bhawan, Civil Lines, Meerut,
Uttar Pradesh-250001.
mdameerut@rediffmail.com

...Respondent No. 6

7. District Magistrate,
Meerut,
DM Office, Civil Lines, Meerut,
Uttar Pradesh.
commmee@nic.in

Respondent No. 7

8. Synergy Waste Management Pvt. Ltd.
Through Director,
Subharti Medical College Campus,
Subhartipuram,
Meerut – 250002
Uttar Pradesh.

...Respondent No. 8

Date of hearing: 02.03.2023

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.

Applicant: Mr. Gaurav Kumar Bansal, Advocate.

Respondents: Ms. Praveena Gautam and Mr. Aman Sharma, Advocates for Respondent No. 1.
Mr. Mohit Singhal, Advocate for Respondent No. 2.
Mr. Pradeep Misra, Advocate for Respondents No. 4 and 5 (through VC).
Mr. Rachit Mittal, Advocate for Respondent No. 6 (through VC).
Mr. Ajay Bansal and Mr. Gaurav Yadav, Advocates for Respondent No. 8 with Mr. Niraj Agarwal for the Project Proponent.
None for Respondents No. 3 and 7.

Application under Section 18(1) Read with Section 14 Of the National Green Tribunal Act, 2010

ORDER

1. The Applicant, resident of Thakur Dwara, Baghpat, Ward 13, Baghpat, District Meerut, Uttar Pradesh has filed the present application under Section 18(1) read with Section 14 of the National Green Tribunal Act, 2010 raising the following questions:

1. Whether the Uttar Pradesh Pollution Control Board (UPPCB) can allow a Common Bio-Medical Waste Treatment Facility (CBWTF) to operate in violation of Ministry of Environment, Forest and Climate Change, Government of India (MoEF&CC) Notification dated 17.04.2015, MoEF&CC Order dated 20.09.2021 and the Central Pollution Control Board (CPCB) Guidelines for Common Bio Medical Waste Treatment and Disposal Facilities dated 21.12.2016 (CBWTF Guidelines 2016)?

2. Whether UPPCB has the power to Grant or Renew the Consent to Operate a CBWTF in violation of Order dated 20.09.2021 issued by MoEF&CC?

3. Whether the Meerut Development Authority (MDA) can allow a CBWTF to carry out its Operation in Non-Conforming Area/Non Industrial Area?

Objections/Challenges by the Applicant to the operation of CBWTF run by the Project Proponent

2. Briefly stated, the case of the Applicant as enumerated in the application is that Respondent No. 8 has established its CBWTF in District Meerut, Uttar Pradesh. In accordance with Uttar Pradesh Urban Planning and Development Act, 1973, Respondent No. 6 MDA prepared Master Plan 2021 for Meerut. As per the above said Master Plan, the land on which the Subharti Medical College is established is not an Industrial land. However, instead of following the law of land Respondent No. 8 in connivance with the officers of MDA not only established its CBWTF within the Medical College Campus but also started operation of the same. UPPCB, instead of respecting the Notification dated 17.04.2015 issued by Respondent No. 1 and the CBWTF Guidelines issued by Respondent No. 2, not only allowed Respondent No. 8 to carry out operation of the CBWTF but also never directed Respondent No. 8 to obtain

Environmental Clearance (EC) and as such violated the Law of the land. UPPCB vide its Letter dated 10.01.2019 issued consent to operate to Respondent No. 8 but did not deliberately, willfully and intentionally mention about compliance with the MoEF&CC Notification dated 17.04.2015. Vide its Order dated 20.09.2021, Respondent No. 1 directed all the State Pollution Control Boards including the UPPCB to make it mandatory for CBWTF to obtain EC and directed all the State Pollution Control Boards including the UPPCB to not to renew the Consent to Operate unless the CBWTF obtained the EC as provided under EIA Notification. Respondent No. 8 by way of carrying on operation of its CBWTF in Non-Conforming Area and without obtaining EC as directed by UPPCB has not only violated the various provisions of Environment (Protection) Act, 1986 and the rules made thereunder but has also caused irreparable damage to the environment. By allowing Respondent No. 8 to operate a Red Category Industry in Non-Industrial Area/Non-Conforming Area, MDA has acted in violation of Bio Medical Waste Management Rules, 2016 (BMWM Rules 2016) and Revised CPCB Guidelines 2016.

3. So far as the question of limitation is concerned, the Applicant has submitted that cause of action in the present application is continuous/recurring one and as per the judgment in **Original Application No. 327 of 2015 titled as *Doaba Paryavaran Samiti Vs. Union of India and others*** the present application is within Limitation.

4. The applicant has accordingly prayed for the grant of the following reliefs:-

> *"a. Direct the UPPCB to seal the Common Bio Medical Waste Treatment Facility of Respondent No. 8 as the same is operating without EC and as such is in violation of Environment (Protection) Act-1986, Bio Medical Waste Management Rules-2016, MoEF&CC Guidelines dated 17/04/2015 and CPCB Guidelines.*

b. Direct District Magistrate-Meerut to stay the operation of Common Bio Medical Waste Treatment Facility of Respondent No. 8 as the same is operating in NON INDUSTRIAL AREA / NON CONFORMING AREA and as such is in violation of Environment (Protection) Act-1986, Bio Medical Waste Management Rules-2016, MoEF&CC Guidelines dated 17/04/2015, MoEF Order dated 20/09/2021 and CPCB Guidelines.

c. Direct Respondent No. 1 to entertain its power as prescribed under Section 05 of the Environment (Protection) Act-1986 and as such issue an Order to stop the supply of electricity, water and other services provided to the Common Bio Medical Waste Treatment Facility of Respondent No. 8.

d. Direct the Central Pollution Control Board to inspect the BIL MEDICAL WASTE DISPOSAL FACILITY to calculate the ENVIRONMENTAL DAMAGE done by Respondent No. 6.

e. Impose exemplary environmental compensation against the Respondent No. 8 under the polluter pays principle as provided under Section 20 of the National Green Tribunal Act-2010.

f. Pass any such other or further order as this Hon'ble Tribunal may deems fit and proper in the facts and circumstances of the present case."

5. Vide order dated 21.10.2022, notices were ordered to be issued to the respondents. As per office report, notices were duly served on the respondents. None appeared for Respondents No. 3 and 7 despite due service. Therefore, Respondents No. 3 and 7 were proceeded against ex-parte. Reply/response has been filed by Respondent No. 2 vide email dated 25.11.2022; by Respondents No. 4 and 5 vide email dated 16.02.2023; by Respondent No. 6 vide email dated 02.02.2023 and by Respondent No. 8 vide email dated 30.01.2023.

Response on behalf of Respondent No. 2

6. In its reply Respondent No. 2-CPCB has submitted that the CBWTF operator is required to obtain 'EC (EC)' from the State Environment Impact Assessment Authority (SEIAA) or MoEF&CC, as the case may be, before any construction work, or preparation of land by the project management in accordance with amendment to the EIA Notification 2006 published vide

MoEF&CC Notification No. S.O. 1142 (E) dated 17.04.2015. As per the BMWM Rules 2016 State Pollution Control Boards/Pollution Control Committees are the Prescribed Authority in respect of States/Union Territories to ensure effective implementation of the BMWM Rules 2016. With regard to operation of CBWTF by Respondent No. 8 inside the premises of hospital, the facts may be verified by UPPCB in line with BMWM Rules 2016 as well as Revised CPCB CBWTF Guidelines 2016.

Response on behalf of Respondents No.4 and 5

7. In their response Respondents No. 4 and 5 have submitted that the Respondent No. 8 was in operation before Notification No. S.O. 1142 (E) dated 17.04.2015 was issued by MOEF&CC. The Respondent no. 8 has upgraded the existing incinerators to achieve the standards for retention time of 2 second of resident time for the purpose of emitting the gases without any increase in the capacity of the incinerators i.e. 300kg/hr. UPPCB has sought opinion from MOEF&CC vide letter dated 06.01.2021 as to whether EC is required or not and the same is still pending with MOEF&CC. Application dated 01.10.2022 of the Respondent No. 8 for renewal of the consolidated consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act) and the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) was rejected by UPPCB vide its letter no. 166365/UPPCB/Meerut/2022 dated 25.12.2022. After issuing show cause notice to the respondent no. 8, UPPCB has imposed Environmental Compensation of Rs. 10,80,000/- vide its letter dated 15.02.2023. The respondent no. 8 closed CBWTF by his own due to non-availability of mandatory consent. For the alternative arrangement for collection and treatment of the Bio-medical Waste the Project Proponent is sending Bio-medical waste to M/s Envirad Medicare Pvt. Ltd., Bareilly and M/s Synergy Waste Management Pvt. Ltd., Barabanki for disposal.

Reply on behalf of the Respondent No. 6

8. In its reply the respondent No. 6 has submitted that in the year 2009, the Subharati KKB Charitable Trust decided to open a university named Swami Vivekanand Subharti University ("SBSU"). The SBSU was established in the Institutional Area. The Subharati KKB Charitable Trust approached the Respondent No. 6 on various occasions for approval of maps for extension of the SBSU and opening new facilities and institutions. After scrutiny the layout plans were sanctioned. While granting aforesaid sanctions, the Respondent No. 6 verified all the clearances including but not limited to clearance from UPPCB under the Bio-Medical Waste (Management and Handling) Rules, 1998 (BMWH Rules 1998). The Respondent No. 8 is also running CBWTF since 2002 within the premises of SBSU. The CBWTF was established before enactment of the BMWM Rules, 2016. The BMWH Rules 1998 applied to establishment of the CBWTF. The Respondent No. 6 was not the Prescribed Authority for establishment of CBWTF. The Respondent No. 6 acted as per the provisions of the BMWH Rules 1998. No such land specification as claimed was prescribed under the The BMWH Rules 1998. The Respondent No. 8 had taken CTO in the year 2002 and subsequently from time to time from UPPCB.

Reply on behalf of Respondent No. 8-Synergy Waste Management Pvt. Ltd.

9. In its reply the Respondent No.8 has submitted that in the year 2002, all the Hospitals with 50 bedded and above capacity in the country were asked to install a Bio-Medical Waste Treatment Plant within their compound. But since operating a Bio-Medical Waste treatment plant was expensive and space consuming, therefore, hospitals decided to give their waste to the CBWTFs which was easier to them in terms of infrastructural costs and compliances. Respondent No. 8 set up the CBWTF in the year 2002 on the land taken on lease from the Subharti Medical College as per provisions of the BMWH Rules 1998 prevalent at that time. Since 2002, the Respondent No.8 has been

complying with all the statutory requirements issued by the UPPCB, CPCB and /or MOEF&CC. The CBWTF was established by fulfilling all legal and valid requirements as required at that point of time on the land taken on lease from the adjoining hospital as per norms and guidelines. The CBWTF obtained authorization from UPPCB under the BMWH Rules 1998/BMWM Rules 2016 from time to time, as mentioned here-under:

S.No.	***Authorization Issue Date***	***Validity of Authorization***
1	.....	31.12.2002
2	10.03.2003	10.03.2004
3	05.07.2004	04.07.2005
4	20.09.2005	31.12.2007
5	08.05.2008	31.12.2008
6	12.11.2008	30.09.2009
7	07.08.2009	31.12.2009
8	09.07.2010	31.12.2010
9	24.02.2011	31.12.2011
10	30.03.2012	31.12.2012
11	25.09.2013	31.12.2013
12	09.07.2014	31.12.2015
13	13.06.2016	31.12.2017
14	27.12.2017	31.12.2019
15	08.01.2020	31.12.2024

The Respondent No. 8 obtained Consent to Operate from UPPCB under the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 which was extended from time to time as mentioned hereunder:-

Consent Issued Under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981

S. No.	**Air Act/ Water Act**	**Authorization Issue Date**	**Validity of Authorization**
1	Air Act	24.12.2009	31.12.2009
2	Water Act	24.12.2009	31.12.2009
3	Air Act	09.11.2010	31.12.2010
4	Water	09.11.2010	31.12.2010
5	Air Act	30.09.2011	31.12.2011
6	Water Act	30.09.2011	31.12.2011
7	Air Act	09.07.2014	31.12.2015
8	Water Act	09.07.2014	31.12.2015
9	Air Act	06.04.2016	31.12.2017

10	Water Act	06.04.2016	31.12.2017
11	Air Act	27.12.2017	31.12.2019
12	Water Act	27.12.2017	31.12.2019
13	Air Act	10.01.2019	31.12.2022
14	Water Act	10.01.2019	31.12.2022

As a panic reaction to filing of the present application, the UPPCB rejected the application for renewal of Consent under the Air Act and the Water Act after 31.12.2022 without any valid reason and without affording an opportunity of hearing despite the fact that the same was being renewed from time to time as stated above. The Respondent No. 8 is providing services to 5,668 numbers of government as well as private hospitals/clinics/maternities/ veterinaries/ pathology centers from the CBWTF and livelihood of number of workers/employees is connected with the same.

10. The Respondent No. 8 has denied the requirement of seeking of EC from SEIAA and submitted that the mandate for the environment clearance came into picture firstly in the year 2015 when by Notification dated 17.04.2015 after Entry 7 in the Schedule, Entry 7 (da) was inserted providing that all projects of Bio-Medical Waste Treatment Facilities require prior EC. The plant in question was being run by the Respondent No.8 by fulfilling all the norms and guidelines. No further upgradation has been done which requires Environment Clearance as per 2015 amendment. MOEF&CC Notification dated 17.04.2015 is not applicable to existing units as held by this Tribunal in its judgment dated 10.05.2017 passed in Original **Application No. 169 of 2016** titled as ***D. Swamy vs. The Karnataka State Pollution Control Board & Ors*** which squarely covers the issue raised in the present application. MoEF&CC Order dated 20.09.2021 is in respect of those units which required Environment Clearance as per EIA Notification 2006, but were permitted to be established by the SPCBs by issuing CTE/CTO in ignorance of requirement of

EC. Even MoEF&CC order dated 20.09.2021 does not postulate retrospective effect of EIA Notification dated 2006 and/or Notification dated 17.04.2015. The provisions of the Revised CPCB CBWTF Guidelines 2016 also cannot be said to have retrospective effect on the CBWTFs already established. The Respondent No.8, vide its letter dated 17.11.2022 and reminder letter dated 24.11.2022, sought clarification from UPSEIAA regarding requirement of obtaining EC for CBWTF existing prior to 17.4.2015 which was considered by UPSEIAA in its meeting dated 02.01.2023.

11. The Respondent No.8 has further submitted that as per the Revised CPCB CBWTF Guidelines 2016, it is not mandatory to set-up CBWTF in designated industrial area only. The CBWTF falls under the essential services which can be operated from the present site. Similar types of CBWTFs are operational all over the country and the details of similar facilities being run are given as under:-

Information of Common Bio-medical Waste Treatment Facilities run in Medical College/Hospital Campus

S. No.	Name of CBWTFs	State/UT
1	M/s. Central Hospital Longswal, Apeejay Tea Tinsukia	Assam
2	M/s. Oil India Hospital, Dibrugarh, Assam	
3	Assam Medical College Hospital Dibrugarh Assam	
4	M/s. IOCL Hospital AOD Digboi, Tinsukia Assam	
5	M/s. Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna-800014 (Operated by M/s. S.S. Medical System (I) (P) Ltd. Bihar	Bihar
6	M/s. People College of Medical Science & Research Centre, Bhopal, Madhya Pradesh	Madhya Pradesh
7	M/s. Bundelkhand Medical College, Sagar, Madhya Pradesh	
8	M/s. J.A. Group of Hospital, Gwalior, Madhya Pradesh	
9	M/s. Passo Environmental Solution Pvt. Ltd. S.No. 172, 173, 1741 YCM Hospital compound, Ground Floor San Tukaram Nagar, Pimpri Pune	Maharashtra
10	M/s. Life Secure Enterprises, MIMER Medical College, Talegaon, Dabhade, Pune,	

	Maharashtra	
11	M/s. Envirovigil TMC's Chhatrapati Shivaji Maharaj Hospital Campus, Thene Belapur Road, Kalwa Thane-400605, Maharashtra	
12	Christanand Hospital Brahmapuri, Tal. Brahmapuri Dist. Chandraapur	
13	M/s. Dr. Jagtap Hospital Pvt. Ltd. Gate No. 280, A/P Dhangarwadi Tal-Khandala, Dist. Satara, Maharashtra	
14	M/s. Shija Hospital & Research Institute, Langol, Lamphelpat Manipur	Manipur
15	M/s. MediAid Marketing Services, (SCB Medical College and Hospital Cuttack) Plot No. M-3/445, IRC Village Nayapalli PO. Bramunda, Bhubaneswar 751003, Odisha	Odisha
16	M/s. Bio Tech Solution Behhampur (VSS Medical College and Hospital, Burla, Sambalpur) Jyoti Nagar, 2nd Lane Extn. Odisha	
17	M/s. MediAid Marketing Services, (MKCG Medical College and Hospital) Plot No. M-3/445, IRC Village Nayapalli PO. Bramunda, Bhubaneswar 751003, Odisha	

12. The respondent No. 8 has also challenged credentials and bona fides of the Applicant and submitted that the applicant is guilty of suppression of material facts and has not approached this Tribunal with clean hands and antecedents. In O.A. No. 165 of 2022 titled as ***Vinod Khanna Vs State of U.P.***, which was disposed of vide order dated 5.4.2022, similar allegations were made against the Respondent No.8 and this Tribunal issued general directions to the State and called for the report and after having gone through the report of Oversight Committee headed by Justice SVS Rathore in O.A. No. 180/2021 in ***Mukul Kumar Vs State of U.P. & Ors.***, this Tribunal has already issued directions for compliance by the Competent Authority. Therefore the present original application is liable to be dismissed on this score only. No cause of action has arisen in favour of the Applicant and against the respondent No.8 as there is neither any privity of contract nor any public interest is involved. It is not in the interest of principles of natural justice and reasonableness to entertain interested litigation which has been filed in collusion with and at the behest of interested parties. The opponents of the Respondent No.8 are bent

upon destroying its business since long time and on several occasions such frivolous attempts have been made by instituting false complaints and cases at their behest. The jurisdiction of this Tribunal cannot be allowed to be misused by interested litigants for their ulterior motives.

13. The Respondent No. 8 has submitted that the Project Proponent's Unit having been established prior to 17.04.2015 does not require EC as per the Notification dated 17.04.2015 but still the Respondent No. 8 is ready and willing to take the same from UPSEIAA as per rules.

Rejoinder filed by the Applicant

14. The Applicant filed rejoinder vide email dated 21.02.2023. The Applicant has submitted that the MDA vide its Board meeting dated 13.03.1996 allotted the land in question to Subharti K.K.B. Charitable Trust for Medical Institution purpose only and the MDA never permitted the Subharthi K.K.B. to further sublet the land to Respondent No. 8 for the purpose of the CBWTF. The Respondent No 08 has changed its Incinerator thrice i.e. in the year 2010 (50kg/hour to 100 Kg/hour), 2013 (100kg/hour to 300 kg/hour) and 2018 (Old Incinerator of 300 Kg/hour removed by New Incinerator of 300 kg/hour). The Respondent No. 8 was duty bound to take EC from UPSEIAA and NOC from UPPCB as per notification dated 17.04.2015 and Clarification letter dated 27.10.2017. The Director of Respondent No. 8 himself admitted before this Tribunal that his unit is collecting and sending the Bio Medical Waste to its Bareilly plant (M/s Envirad Medicare Pvt. Ltd.) and Barabanki (M/s Synergy Waste Management Private Limited). The UPPCB affidavit also states that the Respondent No. 8 is transporting all the collected Bio Medical Waste to its plant situated in District Barabanki, Uttar Pradesh. The Respondent No. 8 was treating the Bio Medical Waste from Saharanpur, Muzzafarnagar, Bijnore, Baghpat etc. and the distance from Meerut to Barabanki is around 550 Km.

Such collection, transportation and treatment of Bio Medical Waste by Respondent No. 8 is violative of the environmental norms/rules.

15. The applicant has further submitted that on the complaint of an environmental activist, one of the Expert Member of CPCB also stated that as far as the issue regarding establishment of CBWTF inside the Medical Campus is concerned the same is serious matter. Relevant part of email of Expert Member of CPCB has been reproduced which is extracted herein below:-

> *"This is serious matter. From infection control perspective and from the perspective of Air Pollution Control, one of our Australian Expert who had come to help us in stream lining Bio Medical Waste Management commented it is like putting up a factory in Hospital. Now in this COVID Era this has become even more hazardous. I am sure CPCB will take cognizance of this Matter."*

16. The applicant has further submitted that recently this Tribunal constituted a Committee under the Chairmanship of Retd. Hon'ble Justice Sh. D.P. Singh which visited and inspected the CBWTF situated in District Barabanki operated by Respondent No 08 and found various illegalities in treating the Bio Medical Waste by Respondent No. 8 for which Environmental Compensation of Rs. 2 Crores was imposed on Respondent No. 8 but Respondent No. 8 without depositing the said Environmental Compensation of Rs. 2 Crores is illegally and unlawfully carrying on the operation of its CBWTF situated in District Bababanki, Uttar Pradesh. Vide its letter dated 13.02.2023, Special Secretary, Government of Uttar Pradesh has also intimated the Member Secretary UPPCB not to grant CTO without recovery of environmental compensation of Rs. 2 Crores. The applicant has accordingly prayed this tribunal to (a) direct Respondent No. 8 to deposit Rs 2 Crores of Environmental Compensation as imposed by Court Constituted Committee headed by Hon'ble Justice D. P. Singh (b) Direct Respondent No. 8 not to collect and treat the Bio Medical Waste in absence of EC and Consent to Operate and (c) Direct the UPPCB to direct the nearest CBWTF situated within

50 Km to treat Bio Medical Waste of Respondent No. 8 as an Alternate Arrangement.

17. We have heard learned Counsel for the parties and gone through the relevant record carefully.

Credentials and *Locus Standi* of the Applicant

18. At the very outset learned Counsel for the Respondent No. 8 has challenged the credentials and bona fides of the Applicant and argued that the Applicant is not even a resident of Meerut City and not being a resident of the locality is not personally affected in any manner by operation of the CBWTF and has no *locus standi* and cause of action as there is neither any privity of contract nor any public interest is involved and it is not in the interest of principles of natural justice and reasonableness to entertain interested litigation filed in collusion with and at the behest of interested parties. The opponents of the Respondent No.8 are bent upon destroying its business since long time and on several occasions such frivolous attempts have been made by instituting false complaints and cases at their behest. Fabulous and private interests should not be allowed to be masquerade as genuine claims and this Tribunal must be cautious when examining *locus standi* and must look into the bona-fides of the party in terms of recent judgment of the Hon'ble Supreme Court of India in ***Esteem Properties Private Limited versus Chetan Kembley*** (2022 SCC Online SC 246). The jurisdiction of this Tribunal may not be allowed to be misused by interested litigants for their ulterior motives and the application may be dismissed on this ground.

19. On the other hand, learned Counsel for the Applicant has argued that the Applicant has raised substantial questions relating to environment while pointing out serious violations of the MOEF&CC Notification dated 17.04.2015 and order dated 20.09.2022 and Revised CPCB CBWTF Guidelines 2016 in

Public Interest and the application is maintainable in view of settled law governing Public Interest Litigation.

20. Even though the argument that the Applicant is not a resident of Meerut City and not being a person residing in the vicinity of the CBWTF cannot be said to be personally affected in any manner, by operation of the CBWTF seems to be valid, but this Tribunal cannot lose sight of the fact that right to life includes within its sweep right to clean and healthy environment which cannot be denied and has to be protected and implemented in the fullest measure by all the instrumentalities of the State and the Project Proponents. The Applicant has raised substantial questions relating to environment while pleading serious violations of the MOEF&CC Notification dated 17.04.2015 and MOEF&CC order dated 20.09.2022 and CBWTF Guidelines 2016 in Public Interest and the application is maintainable in view of settled law governing Public Interest Litigation and enforcement of fundamental rights. Even otherwise, it is now well settled that this Tribunal can take cognizance of questions relating to environment arising out of implementation of the enactments specified in Schedule I to the National Green Tribunal Act, 2010 *suo motu* as held by Hon'ble Supreme Court in ***Municipal Corporation of Greater Mumbai v. Ankita Sinha*** (2021) SCC Online SC 897: Law Finder Doc Id # 1890858: 2021 AIR (Supreme Court) 5147) and can adjudicate upon the questions involved in the present case.

Questions related to environment which arise in the case for adjudication

21. In the present case the applicant has pleaded that the CBWTF in question is being run in Non-confirming/Non-industrial area which is not permissible and that the CBWTF in question is not entitled to operate as it requires EC from UPSEIAA which has not been obtained. In view thereof the following substantial questions relating to environment arise in the present case for adjudication:

1. Whether the CBWTF is located in Non-Conforming Area /Non Industrial Area and is not entitled to carry out its Operations in the same in view of the CBWTF Guidelines 2016.
2. Whether the CBWTF requires EC in view of MoEF&CC Notification dated 17.04.2015 and is not entitled to Grant or Renewal of the Consent to Operate from the UPPCB in view of MoEF&CC Order dated 20.09.2021 and the CBWTF Guidelines 2016.

Question No.1 Whether CBWTF in question is located in Non-Conforming Area /Non Industrial Area and is not entitled to carry out its Operations in the same in view of the Revised CPCB CBWTF Guidelines 2016.

22. Mr. Gaurav Kumar Bansal, learned Counsel for the Applicant has argued that as per Column 3 of Schedule III of the BMWM Rules 2016, it is the duty of the CPCB to (a) prepare Guidelines on Bio Medical Waste Management as well as to (b) Lay down criteria for establishing Bio Medical Waste Treatment Facilities in the Country. The CPCB issued Revised CCBWTF Guidelines 2016. Rule 5 of the BMWM Rules 2016 provides that it is the duty of the Operator of CBWTF to take all necessary steps to act in accordance with the rules and Guidelines issued by the Central Government or, as the case may be, the CPCB from time to time. Rule 6 of the BMWM Rules-2016 mandates the authorities mentioned in column 2 of Schedule III to perform the duties as specified in Column 3 thereof in accordance with the provisions of the said Rules. Due to the likely impacts that may be caused to the patients undergoing treatment, operation of the captive treatment equipment within the health care facilities (HCFs) is not favoured by the CPCB which has categorized CBWTF as Red Category Industry and mandated location thereof in Industrial Area or at place reasonably far away from notified residential area with buffer zone distance or as integral part of the Hazardous Waste Treatment Storage

and Disposal Facility (TSDF). The BMWM Rules 2016 restrict the Occupier from setting up captive BWTF and mandate the Occupier to ensure treatment and disposal of generated bio-medical waste through a CBWTF, located within a distance of 75 KM. The MDA allotted 55 acres land to Subharti KKB Charitable Trust, Meerut for setting up Medical College and operation of CBWTF on land taken on lease from the same is violative of permissible land use. As per the Revised CBWTF Guidelines 2016 it is the duty of the project proponent to act in accordance with the law related to Land Use. In the present case, the CBWTF is carrying on its operation inside the Hospital premises which is not permissible. By allowing the Respondent No. 8 to run CBWTF in Non- Industrial Area , the MDA is not only violating its own Master Plan but is also acting in contravention of the provisions of the BMWM Rules 2016 as well as the Revised CBWTF Guidelines 2016.

23. Learned Counsel for the Applicant has accordingly argued that the reliefs as prayed for including closure of the CBWTF may be granted.

24. On the other hand, Ms. Praveena Gautam and Mr. Aman Sharma, learned Counsel for Respondent No. 1 and Mr. Mohit Singhal, learned Counsel for the Respondent No. 2 have submitted that Respondent No.5 UPPCB being the Prescribed Authority under the BMWM Rules, 2016 has to verify the facts and take action.

25. Mr. Pradeep Misra, learned Counsel for the Respondents No. 4 and 5 has submitted that due to not obtaining of EC by the CBWTF, the UPPCB has refused consent to operate and CBWTF has closed its operations.

26. Mr. Rachit Mittal, learned Counsel for Respondent No. 6 has argued that CBWTF in question was established in 2002 under the BMWMH Rules, 1998 much before enactment of the BMWM Rules, 2016 and issuance of CBWTF Guidelines 2016. The Respondent No. 6 acted as per the provisions of the

BMWMH Rules, 1998. No such land specification/location criteria, as now claimed to be applicable, was prescribed under the BMWMH Rules, 1998. The Respondent No.6 has not violated the Master Plan or the CBWTF Guidelines 2016 by allowing the CBWTF in question to operate in the Medical College Campus.

27. Mr. Ajay Bansal and Mr. Gaurav Yadav, learned Counsel for the Respondents No.8 have argued that the CBWTF run by the Respondent No. 8 was established in 2002 under the BMWMH Rules, 1998. No such land specification/location criteria, as now claimed to be applicable, was prescribed under the BMWMH Rules, 1998. The Respondent No. 8 acted as per the provisions of BMWMH Rules, 1998. The location criteria under the BMWM Rules, 2016 and CBWTF Guidelines 2016 is not applicable to the CBWTF run by the Respondent No. 8.

28. Mr. Ajay Bansal and Mr. Gaurav Yadav, learned Counsel for the Respondents No.8 have argued in the alternative that after categorization of CBWTF as Red Category Industry, CPCB has clarified that the same falls under the Non Industrial Operations and essential services. As per CBWTF Guidelines 2016, it is not absolute mandatory to set-up such facility in designated industrial area only. The CBWTF can be operated from the present site. Similar types of CBWTF are operational all over the country and CBWTF is legally permissible to be established in medical colleges/hospitals as per the CBWTF Guidelines 2016.

29. Mr. Ajay Bansal and Mr. Gaurav Yadav, learned Counsel for the Respondents No. 6 and 8 have accordingly argued that the CBWTF is not operating in violation of any location criteria applicable to it and the application may be dismissed with costs.

30. In the present case CBWTF was established in 2002 under the BMWMH

Rules, 1998 much before enactment of the BMWM Rules, 2016 and issuance of CBWTF Guidelines, 2016. The Respondents No. 5, 6 and 8 acted as per the provisions of BMWMH Rules, 1998. No such land specification/location criteria as now claimed to be applicable was prescribed under the BMWM Rules, 1998. The CPCB issued the revised CBWTF Guidelines on 21.12.2016 for Common Bio-Medical Wastes Treatment and Disposal Facility. Guideline No.5 in the CBWTF Guidelines 2016 embodies the location criteria for CBWTF and the same reads as under:

> ***"6) Location criteria***
> *In the context of these guidelines, buffer zone represents a separation distance between the source of pollution in CBWTF and the receptor - following the principle that the degree of impact reduces with increased distance. The following parameters may be considered for ascertaining buffer distance on case-to-case basis:*
> *(i) potential for spread of infection from wastes stored in the premises.*
> *(ii) applicable standards for pollution control and the relative efficiency of the existing incinerators and emission control systems,*
> *(iii) potential of fugitive dust emission from incinerators,*
> *(iv) potential for discharge of wastewater*
> *(v) the potential for odour production,*
> *(vi) the potential for noise pollution,*
> *(vii) the risk posed to human health and safety due to exposure to emissions from incinerator,*
> *(viii) the risk of fire and*
> *(ix) Significance of the residual impacts such as bottom ash and fly ash.*
> *As far as possible, the CBWTF shall be located near to its area of operation in order to minimize the transportation distance in waste collection, thus enhancing its operational flexibility as well as for ensuring compliance to the time limit for treatment and disposal of bio-medical waste as stipulated under the BMWM Rules (i.e., within 48 hours). Also, the location of the CBWTF should be in conformity to the CRZ Norms and other provisions notified under the Environment (Protection) Act, 1986. The location shall be decided in consultation with the State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC). The location criteria for development of a CBWTF are as follows:*
>
> *(a)* ***A CBWTF shall preferably be developed in a notified industrial area without any requirement of buffer zone*** *(or)*
>
> *(b)* ***A CBWTF can be located at a place reasonably far away from notified residential and sensitive areas and should have a buffer distance*** *of preferably 500 m so that it shall have minimal impact on these areas. In case of non-availability of such a land, the buffer zone distance from the notified residential area may be reduced to less than 500 m by SPCB/PCC without referring the matter to CPCB by prescribing additional control*

measures such as (i) adoption of best available technologies (BAT) by the proponent of CBWTF; (ii) prescribing stringent standards for operation of the CBWTF by the SPCB/PCC; (iii) adoption of zero liquid discharge by the CBWTF and (iv) in case of any complaints from the public, then CBWTF should prove that the facility is not causing any adverse impact on environment and habitation in the vicinity. If SPCB/PCC is not in a position to resolve the issue relating to buffer zone while selecting the site for CBWTFs, in such a case, SPCBs/PCCs may refer the matter to CPCB.

(c) ***The CBWTF can also be developed as an integral part of the Hazardous Waste Treatment Storage and Disposal Facility*** *(TSDF) subject to obtaining of necessary approvals from the authorities concerned including 'EC' as per Environmental Impact Assessment 2006 and further amendments notified under the Environment (Protection) Act, 1986, provided there is no CBWTF exist within 150 KM distance from the existing TSDF."*

(Emphasis added)

31. Guideline No. 4 of the CBWTF Guidelines 2016, which specifies applicability of the guidelines, reads as under:

"4) Applicability of these guidelines
These guidelines are applicable to all the upcoming or new CBWTFs. In case of the existing CBWTFs, these guidelines shall be applicable in case
(a)the existing CBWTFs desires to expand or enhance the existing treatment capacity (or)
(b)the existing CBWTFs desires to modernize the existing treatment equipment with the new equipment with enhancement in the existing treatment capacity."

32. Since the CBWTF run by the Respondent No. 8 was set up in the year 2002, the location Criteria laid down in Guideline No. 6 of the CBWTF Guidelines 2016 is not applicable to the same in view of the applicability criteria embodied in Guideline No. 4 of the CBWTF Guidelines 2016 and the CBWTF run by the Respondent No. 8 cannot be said to be violative of the environmental norms on the ground of applicability thereof.

33. Even otherwise, though CBWTF is categorized by the CPCB as Red Category Industry but the CPCB has issued letter dated 30.04.2020 clarifying that CBWTF may be considered as Non-Industrial Operations (Activities/ Facilities/ Infrastructure/ Services). For facility of reference the same is reproduced as under:

"SUB: DIRECTIONS UNDER SECTION 18(1)(b) OF TIIE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974 und THE AIR (PREVENTION & CONTROL OF POLLUTION) ACT, 1981 REGARDING HARMONTZATION or CLASSIFICATION OF INDUSTRIAL SECTORS INTO RED. ORANGE, GREEN AND WHITE CATEGORY.

x x x x x

NOW THEREFORE, in view of the above and exercising the powers conferred to Chairman, Central Pollution Control Board under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974, and 18(1)(b) of the Air (Prevention & Control of Pollution) Act, 1981, all the SPCBs/PCCs are directed to:

i. Adopt the categorization finalized by CPCB for following sectors·

a. Scrapping Centres (for End of Life of Vehicles and other scraps such as plant and machineries, structural material, railway coaches and wagons etc.).
b. Used Cooking Oil (UCO) collection centers.
c. Compressed/Refined Bio-Gas Production from Bio-degradable Wastes.
d. Railway Stations.

ii. Consider the sectors given at Annexure-II under Non-Industrial Operations (Activities/Facilities/ Infrastructure / Services).

The SPCBs/PCCs shall acknowledge the receipt of directions and submit the action taken report (ATR) in compliance of these directions to CPCB within 15 days from the receipt of directions."

Emphasis supplied

34. The relevant part of Annexure-II attached with the abovesaid letter reads as under:-

"List of Non-Industrial Operations (Activities/Facilities/Infrastructure/Services)

x x x x x

6	-	*Common treatment and disposal facilities (CETP, TSDF, CBMWTF, effluent conveyance project, incinerator, MSW sanitary land fill site)* ***Note:*** *Solvent/acid recovery plant and E-waste recycling are considered as industrial operations.*	-	*i. All such facilities are classified as Red but special category projects as these are parts of pollution control facilities.* *ii. In case of CETP, the categorization will depend upon the category of member industries being served.*

"

35. No doubt, Guideline 6 (a) of the CBWTF Guidelines 2016 prefers location

and development of a CBWTF in a notified industrial area without any requirement of buffer zone but there is no absolute bar to establishment of CBWTF in non-industrial Area and CBWTF can be established under Guideline 6 (b) of the CBWTF Guidelines 2016 in non-industrial area at a place reasonably far away from notified residential and sensitive areas with a buffer distance of preferably 500 meters and in case of non-availability of such a land the buffer zone distance from the notified residential area is allowed to be reduced to less than 500 meters subject to fulfilment of the conditions laid down therein. It may also be observed here that by considering the likely impacts that may be caused by operation of the captive bio medical waste treatment facility within the health care facilities (HCFs) to the patients undergoing treatment therein, the BMWM Rules 2016 restrict the Occupier from setting up captive bio medical waste treatment facility and require the Occupier to ensure treatment and disposal of generated bio-medical waste through a CBWTF but the BMWM Rules 2016 and the CBWTF Guidelines 2016 do not absolutely bar establishment and operation of captive CBWTF or CBWTF in the Hospital Campus. This conclusion also emerges from Guideline 2(f) of the CBWTF Guidelines 2016 which lays down that **in the absence of expression of interest by any proponent, then SPCB/PCC shall insist health care facilities to form association and to develop its own CBWTF in line with these guidelines or to have captive treatment facilities for ensuring treatment and disposal of generated bio-medical waste as stipulated under the BMWM Rules, 2016.**

36. In the present case the CBWTF was admittedly located in Institution Area when established in the year 2002. There is no denial that residential colonies have come up in the vicinity of the Institution area subsequently as pleaded by the Respondent No. 8. There is no averment that the CBWTF is not having buffer zone distance of 500 meters from notified residential area. Therefore,

location of the CBWTF run by respondent No. 8 cannot be said to be violative of the prescribed location criteria and operation thereof cannot be said to be violative of environmental norms on that ground.

37. In any case it may be observed that in the present case there is no cogent material on record to show that the CBWTF is causing any adverse impact on environment and habitation in the vicinity. In the event of there being cogent material showing that the facility is causing adverse impact on environment and habitation in the vicinity by environmental pollution beyond prescribed limits, UPPCB, being the prescribed statutory Authority under the BMWM Rules 2016, shall be at liberty to pass appropriate remedial orders including order of closure or imposition of environmental compensation in accordance with law.

Question No.2 Whether the CBWTF requires EC in view of MoEF&CC Notification dated 17.04.2015 and is not entitled to Grant or Renewal of the Consent to Operate from the UPPCB in view of MoEF&CC Order dated 20.09.2021 and the CBWTF Guidelines 2016.

38. Mr. Gaurav Kumar Bansal, learned Counsel for the applicant has argued that in the present case, the UPPCB has not only ignored the MoEF Notification dated 17.04.2015 but has also willfully, deliberately and intentionally ignored MOEF&CC Order dated 20.09.2021 issued by Respondent No. 1 and has provided wrongful gain to the CBWTF by allowing it to operate its activities without EC in violation of the MoEF&CC Notification dated 17.04.2015, MoEF Order dated 20.09.2022, the BMWM Rules 2016 and the CBWTF Guidelines 2016.

39. On the other hand, Ms. Praveena Gautam and Mr. Aman Sharma, learned Counsel for Respondent No. 1 and Mr. Mohit Singhal, learned Counsel for the Respondent No. 2 have submitted that Respondent No.5 UPPCB being the

Prescribed Authority under the BMWM Rules 2016 has to verify the facts and take action.

40. Mr. Pardeep Mishra, learned Counsel for respondents No. 4 and 5 has argued that the CBWTF run by the Respondent No. 8 was in operation before MOEF&CC Notification dated 17.04.2015 which did not apply to existing units but the Respondent no. 8 has upgraded the existing incinerators to achieve the standards for retention time of 2 second of resident time for the purpose of emitting the gases without any increase in the capacity of the incinerators. UPPCB has sought opinion from MOEF&CC vide letter dated 06.01.2021 as to whether EC is required or not and the same is still pending with MOEF&CC. UPPCB rejected application dated 01.10.2022 of the Respondent No.8 for renewal of the consolidated consent to operate vide its letter dated 25.12.2022 and imposed Environmental Compensation of Rs. 10,80,000/- vide its letter dated 15.02.2023. The respondent no. 8 closed CBWTF himself due to non-availability of mandatory consent and the application has become infructuous.

41. Mr. Ajay Bansal and Mr. Gaurav Yadav, learned Counsel for the Respondents No.8 have argued that the CBWTF run by the Respondent No. 8 was in operation before MOEF&CC Notification dated 17.04.2015 which did not apply to existing units as has been held by this Tribunal in its judgment dated 10.05.2017 passed in Original Application No. 169 of 2016 titled as ***D. Swamy vs. The Karnataka State Pollution Control Board & Ors*** which squarely covers the issue raised in the present application. The Respondent No. 8 has not done any such upgradation of incinerator which requires EC. The CBWTF in question was being run by the Respondent No.8 by complying with all the environmental norms and guidelines. MOEF&CC Order dated 20.09.2021 applies to those units which required EC as per EIA Notification of 2006 but were permitted to be established by the SPCB/PCC by issuing CTE/CTO in ignorance of the requirement of EC. Even MoEF&CC order

dated 20.09.2021 does not postulate retrospective effect of EIA Notification 2006 as amended vide Notification dated 17.04.2015 and the CBWTF Guidelines 2016 relied upon by the learned Counsel for the Applicant do not have retrospective effect on the CBWTF already established. The CBWTF run by the Respondent No. 8 having been established prior to 17.04.2015 did not require EC as per the Notification dated 17.04.2015. As a panic reaction to filing of the present proceedings, the UPPCB rejected the application for renewal of Consent under the Air Act 1981 and the Water Act 1974 after 31.12.2022 without any valid reason and without affording opportunity of being heard despite the fact that the same was being renewed earlier from time to time. Therefore, the Application being devoid of any merit may be dismissed with costs and the UPPCB may be directed to renew consent to operate.

42. Mr. Ajay Bansal and Mr. Gaurav Yadav, learned Counsel for the Respondents No.8 have argued in the alternative that the Respondent No.8 is providing services to 5,668 numbers of government as well as private hospitals/ clinics/maternities/veterinaries/pathology centers and livelihood to large number of workers/employees. In case of this Tribunal holding that there is any such requirement of obtaining EC, the Respondent No. 8 is ready and willing to take the same from SEIAA as per rules.

43. The Government of India made the BMWMH Rules 1998 published vide Notification number S.O. 630 (E) dated 20.07.1998 for providing a regulatory frame work for management of bio-medical waste generated in the country. The Government of India reviewed the existing rules and made the BMWM Rules 2016 to implement the rules more effectively and to improve the collection, segregation, processing, treatment and disposal of the bio-medical wastes in an environmentally sound manner thereby, reducing the bio- medical waste generation and its impact on the environment.

44. The MOEF&CC through its notification dated 14.09.2006 made it mandatory to obtain Prior EC prior to establishment or expansion of any such project or activity which is listed in the schedule of notification. Objective of the process is to impose certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts. The EC has to be taken from Central Government in the MOEF&CC 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. The SEIAA is required to base its decision on the recommendations of a State level Expert Appraisal Committee (SEAC). The SEIAA and SEAC have been constituted by the MOEF&CC in UP vide notification bearing no. S.O 3338(E) dated 16.10.2017 and subsequently reconstituted through notification bearing no. S.O. 2276(E) dated 11.06.2021. Para 2 of the notification dated 14.09.2006 reads as under:

> *"**2. Requirements of prior EC (EC):-** The following projects or activities shall require prior EC from the concerned regulatory authority, which. shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:*
> *(i) **All new projects or activities** listed in the Schedule to this notification;*
> *(ii)**Expansion and modernization of existing projects or activities** listed in the Schedule to this notification **with addition of capacity** beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;*
> *(iii)Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range."*

45. The MoEF&CC amended the Notification dated 14.09.2006 in view of the Judgment dated 28th November 2013 passed by the National Green Tribunal,

Principal Bench, New Delhi in Appeal No. 63 of 2012. By the amendment Entry 7(da) was inserted after Entry 7(d) in the Schedule. Entry 7(da) provided that Common Bio-Medical Waste Treatment Facilities would be required to obtain EC from the MOEF&CC. The said notification reads as under:

> ***"S.O.1142(E).****-In exercise of the powers conferred by sub section (I) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule(4) of rule 5 of the Environment (Protection) Act, 1986, the Central Government hereby makes the following further amendments to the notification of the Government of India, in the Ministry of Environment and Forests number S.O. 1533(E), dated the 14th September, 2006 after dispensed with the requirement of notice under clause(a) of sub-rule(3) of the said rule 5 in public interest, namely:-*
>
> *In the said notification, in the Schedule, after item 7(d) and the entries relating thereto, the following item and entries shall be inserted, namely:-*

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"7(da)	*Bio-Medical Waste Treatment Facilities*	*-*	*All projects*	*-*

46. The CPCB issued Revised Guidelines for Common Bio-Medical Wastes Treatment and Disposal Facility on 21.12.2016. Guideline 5 of the CBWTF Guidelines 2016 also reiterates the legal requirements for commissioning or operation of a CBWTF which reads as under:

> ***"5) Environmental laws applicable for commissioning or operation of a CBWTF***
> *Operation of a CBWTF leads to air emissions as well as waste water generation as in case of an industrial operation. Most common sources of waste water generation in CBWTFs are vehicle washing, floor washing, and scrubbed liquid effluent from air pollution control systems attached with the incinerator/plasma pyrolysis. Incineration as well as DG Set is the general source of air emissions.*
> ***5.1*** *Any other approvals (such as Land Use /Change in Land Use as applicable) required from the concerned authorities under various laws have to be complied with by the proponent of the CBWTF prior to development of a CBWTF.*
> ***5.2 Consents under The Water Act and The Air Act as well as Authorization under the BMWM Rules, 2016***
> *The project proponent of the CBWTF is required to obtain 'Consent to Establishment' under Rule 25 of the The Water Act and under Rule 21 of the The Air Act, from the respective prescribed authority i.e. SPCB/PCC. Upon installation of the requisite equipment, the CBWTF Operator is also required to obtain authorization under BMWM Rules, 2016 co-terminus with consent to operate under Water (Prevention and Control of Pollution) Act, 1976 & The Air Act from the respective*

SPCB/PCC prior to commencement of the CBWTF.

5.3 EC under EIA Notification 2006

Ministry of Environment, Forest & Climate Change (MoEF & CC), notified amendment to the EIA Notification 2006 and published vide MoEF & CC Notification of S.O. 1142 (E) dated April 17, 2015. According to this notification, the 'bio-medical waste treatment facility' is categorized under the Item 7 (da) in the schedule, requiring 'EC' from the State Environment Impact Assessment Authority (SEIAA). Therefore, the CBWTF operator is also required to obtain 'EC (EC)' from the respective SEIAA or Ministry of Environment, Forest& Climate Change (MoEF& CC), as the case may be, before any construction work, or preparation of land by the projects management, which include the following:

a) All new projects or activities pertaining to the bio-medical waste treatment facility; and

b) Expansion and modernization with additional treatment capacity of existing bio-medical waste treatment facility (excluding augmentation of incineration facility for compliance to the residence time as well as Dioxins and Furans without enhancing the existing treatment capacity).

c) Any expansion or modification in the treatment capacity or relocation of the existing CBWTF (requires compliance to the relevant provisions notified under the Environment (Protection) Act, 1986 by the MoEF & CC."

47. Further, MOEF&CC vide its Order dated 20.09.2021 issued under Section 5 of the Environment Protection Act, 1986 directed UPPCB as well as other PCBs/PCCs to ensure that all the CBWTFs possess valid EC and not to grant or renew CTO till EC has been obtained.

48. It may be observed here that the Respondent No.8 sought clarification from UPSEIAA regarding necessity of obtaining EC for CBWTF existing prior to 17.4.2015 vide its letter dated 17.11.2022 and reminder letter dated 24.11.2022 which was considered by UPSEIAA in its meeting dated 02.01.2023. The minutes of the meeting of UPSEIAA held on 2.1.2023 considered the representation at Item no. 2 and observed as under:

2. Letter of Mr. Neeraj Agarwal dated 24.11.2022 and 17.11.2022 regarding clarification to obtain EC for CBWTF existing before 17.4.2015.

"SEIAA gone through the letter of Sh. Neeraj Aggarwal Director Synergy waste Management Private Limited regarding the above subject in which they have informed that existing CBWTF facility is in operation since 2002. MoEFCC vide its amendment S.O. 1142(E) dated 17.4.2015 made further amendment to the notification of the GoI no. S.O. 1533 (E)

dated 14.9.2006 inserting biomedical waste treatment facility as 7(da). Hence. SEIAA opined that the project proponent should proceed as per EIA notification, 2006, (as amended).”

49. In **Original Application No. 169 of 2016 (SZ) titled as *D. Swamy vs. The Karnataka State Pollution Control Board and Others***, M/s GIPS Biotech applied for consent to establish a CBWTF. Consent to establish was granted on 24.11. 2012. Vide notification dated 17.04.2015 the MOEFCC amended EIA Notification 2006 by inserting entry providing that Environment Clearance under EIA Notification 2006 is required for establishing of a common biomedical waste treatment facility. Application was filed under Section 14 of the National Green Tribunal Act 2010 seeking directions for closure of the CBWTF run by M/s GIPS Biotech on account of non-compliance of the provisions of EIA Notification, 2006 as amended. Hon'ble Southern Zone Bench of this Tribunal in its order dated 10.05.2017 dealt with the question as to whether Notification dated 17.04.2015 issued by MOEF&CC has retrospective effect and held that said Notification does not have retrospective effect and is not applicable to existing units. For proper understanding of the view taken in that case, relevant paras of the order are reproduced as under:

"21. The main question to be settled is therefore whether the amendment to EIA Notification, 2006 dated 17.04.2015 is retrospective in nature or is only prospective.

22. Environment Clearance Regulations, 2006 (in short ‘Regulations 2006’) was published in the Gazette of India dated 14th September, 2006. That Notification was promulgated in supersession of the earlier Notification issued in S.O.60(E), dated 27th January, 1994. Both Notifications were issued exercising the powers under Section 3 of the Environment (Protection) Act, 1986. It is not in dispute that the Regulations, 2006 is not having any retrospective effect. The said Regulations, 2006 provide as follows:

“ Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the Notification Number S.O.60(E), dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in

process and or technology shall be undertaken in any part of India only after the prior EC from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification. "

The identical provision in 1994 Notification was considered by the Hon'ble Supreme Court in Narmada Bachao Andolan vs. Union of India (2000 (10) SCC, 664) and held as follows:

"This notification is clearly prospective and inter alia prohibits the undertaking of a new project listed in Schedule I without prior EC of the Central Government in accordance with the procedure now specified. In the present case clearance was given by the Central Government in 1987 and at that time no procedure was prescribed by any statute, rule or regulation. The procedure now provided in 1994 for getting prior clearance cannot apply retrospectively to the project whose construction commenced nearly eight years prior thereto."

Paragraph 2 of the EIA Notification, 2006 provides the requirement of prior EC (EC). It reads as follows:

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

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

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

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

23. It is thus clear that prior EC is required for all new projects or activities listed in the Schedule to the notification, expansion and modernization of existing projects or activities listed in the Schedule to the notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule after expansion or modernization and also for any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified limits.

24. Schedule to the Notification provides the list of projects or activities requiring prior EC. Setting up of Bio-Medical Waste Treatment Facility (in short 'BMWTF') as such was not included in the list of projects or activities shown in the Schedule. Entry 7 of the Schedule comprises the project of Airports under (a), All ship breaking yards including ship breaking units under (b), Industrial estates/ parks/

complexes/ areas, Export Processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes under (c), Common hazardous waste treatment, storage and disposal facilities (TSDFs) under (d), Ports, harbours, break waters, dredging under (e), Highways under (f), Aerial ropeways under (g), Common Effluent Treatment Plants (CETPs) under (h) and Common Municipal Solid Waste Management Facility (CMSWMF) under (i). By Notification S.O.1142 (E) dated 17.04.2015 in Entry 7 of the Schedule, Entry 7(da) was inserted providing that all projects of Bio-Medical Waste Treatment Facilities require prior EC under Paragraph 2 of Regulations 2006. The Notification reads as follows:

"MINISTRY OF ENVIRONMENT AND FORESTS NOTIFICATION
New Delhi, the 17th April, 2015

S.O.1142 (E):- In exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments to the notification of the Government of India, in the Ministry of Environment and Forests number S.O.1533(E), dated the 14th September, 2006 after dispensed with the requirement of notice under clause (a) of sub-rule (3) of the said rule 5 in public interest, namely:-

In the said notification, in the Schedule, after item 7(d) and the entries relating thereto, the following item and entries shall be inserted, namely:-

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"7(da)	***Bio-Medical Waste Treatment Facilities***		***All projects***	

(F. No. 3-9/2014-IA.III)
MANOJ KUMAR SINGH, Jt. Secy."

25. All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity, if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect has to be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Therefore, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. The Hon'ble Supreme Court in M/s. Punjab Tin Supply Co., Vs. Central Government (AIR 1984 SC 87) considered the question and held that if the language is clear and unambiguous, effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not.

26. The Notification S.O.1142(E) which was quoted above, does not show that retrospective operation was intended. There is nothing in the Notification to assume that retrospective operation is implied. First of all, Paragraph 2 of the Regulations, 2006 contemplates prior EC, before establishing the unit or industry which require EC. What is

provided under Paragraph 2 is that prior EC is required for all new projects or activities listed in the Schedule to the notification from the Central Government in the Ministry of Environment and Forests or at the State level the State Environment Impact Assessment Authority (SEIAA) as the case may be, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity. Therefore, by amending the Regulations, 2006, inserting a new project within the ambit of the EIA Notification, 2006 requiring prior EC which was not required earlier when the project was established, it can never be provided that prior EC is required for such project, before preparation of land or before any construction work is started. If retrospective operation is to be given for all such projects, established prior to the date of the amendment of the Schedule to EIA Notification, 2006 requiring prior EC, it would open the Pandora's box, as projects which have been established long back prior to the date of amendment would also require to take prior EC, which itself is impossible as it was established earlier. Paragraph 2 of the EIA Notification, 2006 specifically provides that EC is to be taken prior to the starting of any construction work or preparation of land by the project management, except for securing the land. Therefore, we have no hesitation to hold that the EIA Notification, S.O.1142(E) dated 17.04.2015 has no retrospective effect and would operate only prospectively from 17.04.2015. Therefore, we cannot agree with the contention of the learned counsel appearing for the applicant that as entry 7(da) was inserted in the Regulations, 2006, by Notification dated 17.04.2015, respondent No.3 is bound to obtain prior EC, even if he has established the project prior to 17.04.2015.

27. Learned counsel appearing for the applicant argued that dehors of the insertion of entry 7(da) in the EIA Notification, 2006, dated 17.04.2015, the Principal Bench of the Tribunal in Haat Supreme Wastech Private Ltd., and others Vs. State of Haryana and others (Appeal No.63 of 2012, dated 28.11.2013) considered the question whether CBWTF require prior EC and already found that establishment of CBWTF would come under Entry 7(d) of the Notification and hence require prior EC and therefore, respondent No.3 cannot contend that prior EC is not necessary for establishment of the bio-medical waste treatment plant. Learned counsel also argued that at least from the date of Judgment in the said case dated 28.11.2013, it is to be taken that establishment of CBWTF would come under Entry 7(d) and even if Entry 7(da) is not there, prior EC for such project is required and therefore as respondent No.3 did not obtain prior EC, it is to be held that respondent No.3 is bound to close the unit and seek EC before starting its operation.

28. True, in Haat Supreme Wastech Private Ltd (supra), the Five Member Bench of the Tribunal considered the question "Whether or not the Bio-Medical Waste Treatment Plants require EC in terms of the EC Regulations, 2006". Finding that the establishment of Bio-Medical Waste Treatment Plants are not specifically included in any of the entries in the Schedule to the EIA Notification, 2006, the Tribunal considered the question whether it would attract any other entry of the Regulation. Based on the legislative intent, object of that and rules and the purpose sought to be achieved, it was held that all regulatory regimes whether relating to municipal solid waste, hazardous waste or bio- medical waste, owe their allegiance to the substantive provisions and the object of the Environment (Protection) Act, 1986. It was

therefore held that liberal construction would help in giving a purposeful meaning and interpretation to the provisions of the Act and the Rules for attainment of the basic object. Finding that Bio- Medical Waste undisputedly is a hazardous waste, it was held that to serve the object and purpose of the Environment (Protection) Act, 1986 and the Rules framed thereunder, a liberal interpretation to the relevant provision particularly Entry 7(d) to include bio-medical waste is to be given and held that it would require prior EC. It was held that the entry is wide enough and is intended to cover the CBWTF, and such an approach, even otherwise, would be in consonance with the legislative intent and scheme of the Act of 1986. It was therefore held that the CBWTF would require to obtain prior EC in terms of Entry of 7(d) of the Notification, 2006. The argument of the learned counsel appearing for the applicant is that even if there was no amendment to EIA Notification, 2006, as the establishment of CBWTF requires prior EC under the Entry 7(d) of the Schedule to the Notification of 2006, respondent No.3 cannot contend that prior EC is not required for the project.

29. Though this argument is attractive, we find that in the application filed under Section 14 of the National Green Tribunal Act, 2010 the applicant has not taken such a ground at all. In the application the applicant has no case that establishment of the CBWTF requires prior EC under Entry 7(d) of EIA Notification, 2006. On the other hand, the very application is filed based only on the amendment dated 17.04.2015 in the EIA Notification, 2006 where Entry 7(da) was inserted requiring prior EC for establishment of Bio-Medical Waste Treatment Facility. In such circumstances, when the case of the applicant is only that respondent No.3 is bound to take prior EC, as the project for establishment of Bio-Medical Waste Treatment Facility Plant would come under Entry 7(da), we hold that the question whether dehors of amendment dated 17.04.2015 prior EC is required for the project is not to be decided in the application in view of the pleadings. Moreover, when entry 7(da) is inserted in the Schedule providing the requirement of prior EC for Bio-Medical Waste Treatment Projects, Entry 7(d) no more applies to a Bio-Medical Waste Treatment Project. When there is a specific entry to cover a particular type of industry or activity, only that Entry in the Schedule will apply. If based on the decision of the Principal Bench in Haat Supreme Wastech Private Ltd (supra) that prior EC is required for all projects is to be implemented for all projects of CBWTF that came into existence subsequent to 14.09.2006, the date of commencement of the EC Notification, 2006, even Shree Consultants common facility for Bio-Medical Waste Treatment and Disposal, the appellant in appeal Nos.46 & 47 of 2013, that challenged the order of Consent to establish granted to Respondent No.3 before the Tribunal, may also require prior EC. As the object and intent of EIA Notification 2006, is to require prior EC for all new projects or activities listed in the Schedule to the Notification, expansion or modernization of existing projects or activities listed in the Schedule or any change in product-mix in an existing manufacturing units included in the Schedule, we cannot hold that prior EC is required for all those projects which came into existence after 14.09.2006 and prior to 17.04.2015.41."

50. It may be observed here that **Civil Appeal No. 3132 of 2018** ***D. Swamy Vs. Karnataka State Pollution Control Board & Others.***

(2022 LiveLaw (SC) 791: LawFinder Doc ID# 2038527) filed before Hon'ble Supreme Court under Section 22 of the National Green Tribunal Act 2010 against order dated 10.05.2017 passed by the Southern Zone Bench of this Tribunal **Original Application No. 169 of 2016 (SZ) titled as *D. Swamy vs. The Karnataka State Pollution Control Board and Others.*** Hon'ble Supreme Court did not go into the question as to whether Notification dated 17.04.2015 issued by MOEF&CC has retrospective effect and is applicable to existing units or not and did not expressly affirm or overrule the view taken by the Southern Zone Bench of this Tribunal and dismissed the appeal holding that issues raised/involved in the appeal are squarely covered by the judgments of Hon'ble Supreme Court in ***Electrosteel Steels Limited Vs. Union of India,*** (2021) SCC Online SC 1247 and ***Pahwa Plastics Pvt. Ltd. & Anr. Vs. Dastak NGO and Others***, (2022) SCC Online SC 362. While dismissing the appeal Hon'ble Supreme Court observed as under:

> *"In our considered view, the NGT rightly found that when the Bio-Medical Waste Treatment facility of the Appellant was being operated with the requisite consent to operate, it could not be closed on the ground of want of prior EC. The issues raised/involved in this appeal are squarely covered by the judgment of this Court in Electrosteel Steels Limited (supra) and Pahwa Plastics Pvt. Ltd. (supra). This Court cannot lose sight of the fact that the operation of a Bio-Medical Waste Treatment Facility is in the interest of prevention of environmental pollution. The closure of the facility only on the ground of want of prior EC would be against public interest. There are no grounds to interfere with the judgment and order of the NGT in appeal as rightly argued by KSPCB and the Respondent No.3. The appeal is barred by delay. In any case, the appeal does not raise any substantial question of law. The appeal is therefore dismissed."*

51. So far as the question as to whether Notification dated 17.04.2015 issued by MOEF&CC has retrospective effect and is applicable to existing units or not is concerned, we do not find any cogent material and valid reasons to disagree with the view taken by Hon'ble Southern Zone Bench of this Tribunal that said Notification does not have retrospective effect and is not applicable to existing

units which is also acknowledged by MOEF&CC, CPCB and UPPCB to be the legal position governing the field.

52. In the present case CBMWTF was not required to obtain EC from SEIAA immediately on issuance of Notification dated 17.04.2015 in view of acknowledgement of the above referred legal position that the same did not have retrospective effect and did not apply to existing CBWTFs and existing CBWTFs required EC in case of Expansion and modernization of existing projects or activities listed in the Schedule to the EIA Notification 2006 with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization; and Any change in product-mix in an existing manufacturing unit included in the said Schedule beyond the specified range as mentioned in EIA Notification 2006 and Expansion and modernization with additional treatment capacity and/or expansion or modification in the treatment capacity or relocation of the existing CBWTF as mentioned in Guideline 5.3 of the CBWTF Guidelines 2016. It needs to be noted that augmentation of incineration facility for compliance to the residence time as well as Dioxins and Furans without enhancing the existing treatment capacity was specifically mentioned in Guideline 5.3 of the CBWTF Guidelines 2016 to be excluded thereby clarifying that the same does not require EC.

53. It may be observed here that Rule 5 of the BMWM Rules 2016 enlists the duties of the operator of a common bio-medical waste treatment and disposal facility and clause (q) thereof imposes duty to augment the incinerators. The same reads as under:

> *"**5) Duties of the operator of a common bio-medical waste treatment and disposal facility.**- It shall be the duty of every operator to-*
> *x x x x*
>
> *(q) upgrade existing incinerators to achieve the standards for retention time in secondary chamber and Dioxin and Furans within two years*

from the date of this notification."

54. Guideline 3 of the CBWTF Guidelines 2016 lays down duties of the operator of a CBWTF which includes the duty to complete augmentation of the existing incineration facility and duty to make alternative arrangement in case of closure of CBWTF. The same reads as under:

> ***"3) Duties of the operator of a common bio-medical waste treatment and disposal facility***
>
> *The duties of the operator of a common bio-medical waste treatment and disposal facility (CBWTF) as enunciated under Rule 5 of the Bio-medical Waste Management Rules, 2016 shall be ensured and complied with. Also, all the existing CBWTFs shall also* ***complete augmentation of the existing incineration facility so as to comply w.r.to the residence time as well as emission norms including for Dioxins and Furans prescribed under BMWM Rules, 2016 within two years from the date of notification of the BMWM Rules, 2016 (i.e., prior to 27.03.2018). ....."***

55. In the present case Respondent No. 8 is stated to have changed its Incinerator number of times. The Applicant has submitted that the Respondent No.8 changed incinerators as mentioned in the following table:

Sl. No.	Date	Capacity	Remarks
1	2010	50Kg/hour to 100 Kg/hour	Increased the capacity by 50Kg/hour
2	2013	100 Kg/hour to 300 Kg/hour	Increased the capacity by 200 Kg/hour
3	2018	300 Kg/hour to 300 Kg/hour (by way of Changing the Incinerator	Respondent No. 08 removed his Old Incinerator and installed a New one.

56. This factual position also emerges from show cause notices dated 09.04.2019 and 09.08.2019 issued by UPPCB to the Respondent No. 8. In its letter dated 18.08.2018, the Respondent No. 8 had mentioned that the unit shall upgrade its existing incinerator with the new incinerator of same capacity i.e. 300 kg per hour so as to comply with the provisions of the BMWM Rules 2016 and that the work of upgradation shall be completed by 31.10.2018. Even though in its reply the Respondent No. 8 has denied replacement of the

incinerators but the claim is falsified by the fact that the Respondent No. 8 did not send any reply to the Respondent No. 4 denying the replacement of the incinerators as mentioned above implying admission of the above stated factual position.

57. The applicant has relied on letter dated 27.10.2017 sent by the MOEF&CC With reference to CPCB letter no F.No.B-31011/BWM(50)/ 2017WMD-I/629 dated 20.10.2017 clarifying the legal position regarding the queries mentioned therein and the relevant part thereof is reproduced as under:-

> *"x x x x*
> *Subject: Amendment to the EIA notification, 2006 issues by MOEFCC vide S.O. No. 1142(E), dated 17.04.2015-regarding.*
> *x x x x*
> *The clarification to the queries that whether EC is required in the following cases; may please be seen as below:*
>
> *1. CBMWTF desires to replaces the existing incinerator and install new incinerator of same capacity.*
> *Clarification: EC will be required, as there might be configuration changes that might impact the performance efficiency of the incinerator.*
> *2. After installing new incinerator, the old incinerator is kept as standby and operated only in case there is any breakdown.*
> *Clarification: Since capacity is increasing on installation of new incinerator, hence, EC is required.*
> *3. CBMWTF increases its capacity only for disinfection by autoclaving/ microwaving (but not incinerator);*
> *Clarification: EC in this case can be applied under Clause 7(ii) of EIA Notification, 2006.*
> *4. CBMWTF desires to enhance the existing capacity while up-grading the facility to comply with the stringent norms stipulated under BMWM Rules, 2016.*
> *Clarification: EC is required, however, application under Clause 7(ii) may be acceptable."*

58. Since the Respondent No. 8 replaced its old incinerator 300 kg/hour with new and advanced incinerator of the same capacity300 kg/hour in the year 2018, case of the Respondent No.8 seems to fall under clarification to query No.1 leading to the conclusion that the Respondent No.8 is bound to take the EC under EIA Notification 2006 as amended vide notification dated 17.04.2015.

59. The Regional Officer, UPPCB issued letter dated 09.04.2019 to Respondent No. 8 on the basis of clarification letter dated 27.10.2017 stating that because the said CBWTF has changed its old Incinerator by way of installing a new incinerator, the Unit is bound to take EC. Again on 09.08.2019 the Chief Environmental Officer, Circle 3, UPPCB issued a Show Cause Notice dated 09.08.2019 as to why not Respondent No. 8 be prosecuted for not taking the EC. However, subsequently UPPCB has sought opinion from MOEF&CC vide letter dated 06.01.2021 as to whether EC is required by the Respondent No.8 or not and the s

60. We find that letter dated 27.10.2017 has ignored the terms of EIA Notification 2006 which by itself stipulates that the same applies to (i) All new projects or activities listed in the Schedule; (ii) Expansion and modernization of existing projects or activities listed in the Schedule with addition of capacity or (iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range and also the fact that Rule 5 (q) of the BMWM Rules 2016 and Guideline 3 of the CBWTF Guidelines 2016 do not, while mandating upgradation/augmentation of incinerator, lay down any requirement of EC for such upgradation/augmentation (without change in capacity). The clarification to query No.1 that replacement of the existing incinerator by installation of new incinerator of the same capacity requires EC on the ground that there might be configuration changes also seems to be vague. There are reasonable grounds seriously challenging legality of clarification letter qua query No.1 but the legality of the same has not been challenged before us by the Respondent No. 8 or anyone else and it will not be appropriate to go into the question of legality thereof without contest by pleadings and opportunity of being heard to all concerned including MOEF&CC in this regard.

61. It may also be observed here that in the present case the Respondent No.

8 has not applied for and obtained EC from UPSEIAA and UPPCB initially issued show cause notices dated 09.04.2019 and 09.08.2019 but subsequently made reference vide letter dated 06.01.2021 to MOEF&CC as to whether EC is required by the Respondent No.8 or not. Even though UPPCB rejected application dated 01.10.2022 of the Respondent No.8 for renewal of consents under the Water Act 1974 and Air Act 1981 vide letter dated 25.12.2022 but UPPCB did not order closure of the CBWTF. The Respondent No.8 is stated to have closed its operations due to rejection of its application for renewal of the consents under the Water Act 1974 and Air Act 1981 by UPPCB as mentioned above. However, it is noteworthy that UPPCB issued authorization under BMWM Rules 2016 to the CBWTF which is valid upto 31.12.2024 whereas it granted consents to operate under the Water Act 1974 and Air Act 1981 which were valid upto 31.12.2022 rejected application dated 01.10.2022 of the Respondent No.8 for renewal of consents under the Water Act 1974 and Air Act 1981 vide letter dated 25.12.2022 without revoking authorization under BMWM Rules 2016 and making alternative arrangement for Bio-medical Waste Management. Questions as to legality of rejection by UPPCB vide letter dated 25.12.2022 of Application dated 01.10.2022 of the respondent No. 8 for renewal of the consents under the Water Act 1974 and the Air Act 1981 to operate beyond 31.12.2022 and liability of the CBWTF to closure arise in the present case.

62. Guideline 5.2 of the CBWTF Guidelines 2016 postulates that authorization under BMWM Rules 2016 must be co-terminus with consents to operate under the Water Act 1974 and the Air Act 1981. The same reads as under:

> *5) Environmental laws applicable for commissioning or operation of a CBWTF*
>
> *x x x x*
>
> *5.2 Consents under The Water Act and The Air Act as well as*

Authorization under the BMWM Rules, 2016

The project proponent of the CBWTF is required to obtain 'Consent to Establishment' under Rule 25 of the The Water Act and under Rule 21 of the The Air Act, from the respective prescribed authority i.e. SPCB/PCC. Upon installation of the requisite equipment, the CBWTF Operator is also required to obtain authorization under BMWM Rules, 2016 co-terminus with consent to operate under Water (Prevention and Control of Pollution) Act, 1976 & The Air Act from the respective SPCB/PCC prior to commencement of the CBWTF."

(Emphasis added)

63. Guideline 3 of the CBWTF Guidelines 2016 lays down duties of the operator of a common bio-medical waste treatment and disposal facility which includes the duty to make alternative arrangement in case of closure of CBWTF. The same reads as under:

3) Duties of the operator of a common bio-medical waste treatment and disposal facility

The duties of the operator of a common bio-medical waste treatment and disposal facility (CBWTF) as enunciated under Rule 5 of the Bio-medical Waste Management Rules, 2016 shall be ensured and complied with. Also, all the existing CBWTFs shall also complete augmentation of the existing incineration facility so as to comply w.r.to the residence time as well as emission norms including for Dioxins and Furans prescribed under BMWM Rules, 2016 within two years from the date of notification of the BMWM Rules, 2016 (i.e., prior to 27.03.2018).

In addition to the above, to ensure proper management of bio-medical waste in the respective coverage area, as a mitigation measure, especially in the event of

(a) a temporary break down (not more than a week) of a CBWTF especially for rectification of the refractory lining of the incineration chambers or change of requisite APCD due to failure; and

(b) Closure of a CBWTF for violation of the provisions of the BMWM Rules or any other reason.

Prior to commencement of a new CBWTF as well as all the existing CBWTF Operators are required to submit action plan, to the respective SPCB/PCC, for imposing suitable condition while granting authorisation under the BMWM Rules, 2016. The action plan should also include:

(a) a MoU made with the nearest CBWTF located within the respective State/UT, as alternate arrangement. In case, if there is no CBWTF located nearby then such CBWTF should have to install stand by treatment equipment (equal to the existing treatment capacity as per consents granted by the SPCB/PCC), and

(b) decontamination plan of the CBWTF for execution of such plan prior to closure of a CBWTF."

Guideline 2(g) of the Revised Guidelines for Common Bio-Medical Wastes Treatment and Disposal Facility mandatorily requires making of alternative arrangements in the eventuality of closure of CBWTF. The same reads as under:

2) Criteria for development of a new Common Bio-medical Waste Treatment and Disposal Facility for a locality or region.

x x x x

g) In case of any regulatory action including closure of any existing CBWTF is inevitable, the respective SPCB/PCC may take action under the BMWM Rules including for making alternate arrangement to ensure safe disposal of the bio-medical waste generated from the member health care facilities of such default CBWTF through CBWTF located nearby.

x x x x

64. In the present case authorization under BMWM Rules 2016, which was valid upto 31.12.2024, was not made co-terminus with consents to operate under the Water Act 1974 and the Air Act 1981 which were valid upto 31.12.2022 and in view of authorization under BMWM Rules 2016 being valid upto 31.12.2024 renewal of consents under the Water Act 1974 and the Air Act 1981 could not be refused during the validity period of Authorization under BMWM Rules 2016 without revoking the same and making alternative arrangement for Bio-Medical Waste Management as mentioned above.

65. In the present case the applicant, while complaining that no order of closure has been passed by UPPCB against the Respondent No. 8 despite the fact that the Respondent No. 8 has not obtained EC from UPSEIAA, has prayed for directing closure of the CBWTF but It may be observed here that CBWTF run by the Respondent No. 8 is providing services to 5,668 numbers of government as well as private hospitals/clinics/maternities/veterinaries/ pathology centers and livelihood to number of workers/employees. The Respondent No. 8 has submitted that in case this Tribunal holds that the Respondent No. 8 is required to obtain EC from UPSEIAA, the Respondent No.8 is ready and willing to take the same from UPSEIAA as per rules. We are of the considered view that the facts and circumstances of the case do not warrant issuance of any order against the respondent No.8 for closure of CBWTF on the ground of its failure to obtain EC from UPSEIAA earlier as the question of grant of EC to the Respondent No. 8 ex-post facto by UPSEIAA is required to be considered and any such closure at this stage will be against public interest. The issues regarding requirement of EC and closure of CBWTF involved in the

present application are squarely covered by the judgment of Hon'ble Supreme Court in ***Electrosteel Steels Limited*** (supra) and ***Pahwa Plastics Pvt. Ltd.*** (supra) and ***D. Swamy*** (supra).

66. In its judgment in Civil Appeal No. 3132 0f 2018 titled as ***D. Swamy Versus Karnataka State Pollution Control Board And Ors.*** reported Hon'ble Supreme Court observed as under:

> *"40.As held by this Court in Electrosteel Steels Limited (supra) 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 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.*
>
> *41. The EP Act does not prohibit ex post facto EC. 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."*
>
> *xxxxxx*
>
> *46. 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.*
>
> *47. Ex post facto EC should ordinarily 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. In a given case, 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.*

> *48. It is reiterated that the EP 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 for their survival.*
>
> *49. 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."*

67. In these facts and circumstances of the case the application is disposed of with the directions to the Respondent No.8 to apply for EC within one month from the date of receipt of a copy of this order and (iii) to the UPPCB to allow the Respondent No.8 to run the CBWTF for at least three months till filing of the application and consideration of the same for grant of EC *expost facto*, subject to extension in case of delay in disposal of the application for grant of EC.

68. The Questions raised by the applicant and enlisted by this Tribunal in the present order are answered in terms of the above discussion.

69. In view of peculiar facts and circumstances of the case the parties are left to bear their own costs.

70. In case of any further delay in disposal of the application for grant of EC the Respondent No. 8-Project Proponent may apply to UPPCB for extension of the validity period of consents to operate and may also move this Tribunal by appropriate proceedings for such extension.

71. The Applicant shall also be at liberty to move this Tribunal by appropriate proceedings in case of violation of the BMWM Rules 2016, the CBWTF Guidelines 2016 EC/Consent Conditions and environmental norms.

72. A copy of this order be supplied to the applicant and respondents by email for information/compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

March 02, 2023
AVT

From	:	Abhishek Dwivedi <abhishek@vidhivakta.in>
To	:	"kausar raza faridi"<advkrfaridi@gmail.com>
Subject	:	Re: Original Application No. 636 of 2022 | Written Submissions on behalf of Respondent No. 3 |National Green Tribunal
Date	:	Tue, 29 Apr 2025 01:20:01 +0530
Attachments	:	[WS by R3] Ashish Chaubey.pdf

Dear Sir,

Please find attached the Written Submissions on behalf of the Respondent No. 3, by way of service.

Please acknowledge the same.

Regards,
Abhishek Dwivedi
Counsel for Respondent No. 3

--
Abhishek Dwivedi
Advocate

_____
Law Chambers of Abhishek Dwivedi
m: +91-8960505261
t: +91-522-7964565
w: www.vidhivakta.in | l: LinkedIn | e: abhishek@vidhivakta.in
a: C-78, South City, Raibareilly Road, Lucknow-226025

---- On Mon, 01 Apr 2024 21:22:46 +0530 **Abhishek Dwivedi <abhishek@vidhivakta.in>** wrote ---

Dear Sir,

Please find attached the Supplementary Counter-Affidavit with additional documents on behalf of Respondent No. 3, by way of service.

This email will also record that the Counsel for the Respondent No. 3 has not received a copy of the I.A No. 40 of 2024 as directed by the Hon'ble Tribunal
at the last hearing.

Please acknowledge the service.

Regards,

Abhishek Dwivedi
Counsel for Respondent No. 3

Supplementary CA by R3 | 636 of 2022 .pdf

On Thu, 17 Aug 2023 at 09:15, Abhishek Dwivedi <abhishek@vidhivakta.in> wrote:

> Dear Sir,
>
> Please find attached the Counter-Affidavit on behalf of Respondent No. 3, by way of advanced service.
>
> Please acknowledge the advance service.
>
> Regards,
> Abhishek Dwivedi
> Counsel for Respondent No. 3
>
> --
> ***Abhishek Dwivedi***
> Advocate
>
> **Law Chambers of Abhishek Dwivedi**
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> t: +91-522-7964565
> w: www.vidhivakta.in | l: LinkedIn | e: chambers@vidhivakta.in
> a: C-78, South City, Raibareilly Road, Lucknow-226025
>
>
>
> **4. Counter-Affidavit (Respondent No. 3:UPSHA:**

--
Abhishek Dwivedi
Advocate

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