BEFORE THE HON`BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE AT PUNE

ORIGINAL APPLICATION NO. 84 OF 2019
(ARISING OUT OF WP NO.11120/2019)

IN THE MATTER OF:

VINAYKUMAR VITTHALRAO JATHAR ….APPLICANT

VERSUS

STATE OF MAHARASHTRA & ORS. ….RESPONDENTS

FILE-A

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9.	**ANNEXURE-A-8** A true copy of the Environmental Clearance (EC) granted by SEIAA for 26 MW Co-gen plant, vide dated 11.09.2019	805 – 816
10.	(1997) 2 SCC 267: TN Godhavaran Vs. UoI	817 – 825
11.	(2013) 4 SCC 575: Sterlite Industry Case	826 – 857
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Date: 19.10.2023

RAHUL A. TAMBE
(ADVOCATE FOR APPLICANT)

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WRITTEN NOTES OF SUBMISSION ON BEHALF OF ORIGINAL APPLICANT: Dr. VINAYKUMAR V. JATHAR

INDEX FOR WRITTEN NOTES OF SUBMISSION

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PART-A: INDEX OF CASE COMPILATION

1. **INDEX OF CASE COMPILATION**: That the Registry of the Hon'ble NGT have maintained the case compilation with following details of pagination;

Sr.	Description of Document	Date	Page No.
1.	Writ Petition No. 11120/2019	03.09.2019	
2.	Order of High Court: Transfer of WP to NGT	09.09.2019	
3.	OA No. 84/2019 (WZ)	06.11.2019	001-204
4.	Original Applicant: IA No. 160/2019	19.12.2019	205-214
5.	R-11-PP Reply Affidavit-I	31.08.2020	215-268
6.	Joint Committee Report (**Remark**: JC failed to file complete report & Applicant have attached with Objections)		
7.	Original Applicant: Rejoinder to R-11-PP Reply Affidavit-I	24.09.2020	269-295
8.	Original Applicant: Objections & Comments to Joint Committee Report	11.12.2020	296-326
9.	R-11-PP Reply Affidavit-II	12.01.2021	327-373
10.	R-11-PP Reply Affidavit-III	14.11.2021	374-430C
11.	Original Applicant: Rejoinder to R-11-PP Reply Affidavit-II & III	15.12.2021	431-525
12.	Original Applicant: Service Affidavit	17.06.2023	526-544
13.	R-5-6: Collector Ahmednagar & SDO: Reply Affidavit	13.08.2023	545-559
14.	R-3-4: MPCB Reply Affidavit	28.07.2023	560-591
15.	R-8-9-10: CCF, Dy. CF & RFO	13.09.2023	592-612

16.	Original Applicant: Case Laws	14.08.2023	613-717

PART-B: BRIEF FACTS OF CASE

2. **Brief facts of Case**: That the Original Applicant herein filed WP No. 11120/2019 before Hon'ble High Court of Bombay Judicature at Aurangabad Bench on 03.09.2019 and Hon'ble High Court transferred said WP to the NGT for adjudication as the issue pertains to the Environmental Violations by R-11-PP and thereafter, this Original Applicant e-filed said WP online on NGT website and got registered on 06.11.2019.

2.1 That, thereafter this Hon'ble NGT vide its Order dated 05.12.2019 appointed Joint Committee of expert for fact finding report and thereafter, this NGT have passed following order;

Sr.	HC/NGT	Order date	Remark
1.	BHC	09.09.2019	WP transferred to NGT
2.	NGT-PB-VC	05.12.2019	Appointment of Joint Committee
3.	NGT-PB-VC	15.01.2020	IA No. 160/2019: Disposed-Issue of correction of gat no. will be considered finally
4.	NGT-PB-VC	05.02.2020	Time to file JC Report
5.	NGT-PB-VC	16.07.2020	General Direction
6.	NGT-PB-VC	02.09.2020	JC Report filed, time granted to parties to file responses & reply
7.	NGT-WZ-VC	21.09.2021	R-11-PP: to file detail affidavit for disclosing of Survey No. 99 and respective Gat No. 52/1 & 52/2
8.	NGT-WZ-VC	15.11.2021	R-11-PP filed affidavit dated 14.11.2019 and Time granted to parties to file replies & rejoinder, also R-11-PP to file translation of R-2 to R-15
9.	NGT-WZ-VC	12.05.2023	Issue Notice to R-1, R-5 to R-10
10.	NGT-WZ-VC	18.08.2023	R-2-PS-DoE: Don't want to file reply R-3-4-MPCB: Affidavit filed R-5-6-Collector-SDO: Affidavit filed R-8-9-10: CCF, DCF, RFO: Seek time

			R-11-PP: Affidavits Filed
11.	NGT-WZ-VC	19.10.2023	

That the Respondent No. 8-9-10: CCF, DCF, RFO have filed their affidavit vide dated 13.09.2023 and therefore, the pleadings are completed and matter is ready for final hearing.

PART-C: IMPORTANT DATES & EVENTS

3. IMPORTANT DATES & EVENTS: That the following dates and respective events are vital & important to decide the case on merit as well as preliminary objections of limitation, cause of action, jurisdiction of this Hon'ble NGT, Locus, Plural remedies, etc. as below;

SR.	Date	Event	Annx. & Page	Remark
1.	08.03.1878	Indian Forest Act, 1978 come into force		S-19: Notification declaring forest reserved
2.	13.06.1892	Govt. Notification declaring **Survey No. 99** of Village: Limpangaon, Taluka: Shrigonda, District: Ahmednagar as reserve forest		An area admeasuring **428 Acres 5R** reserved as forest
3.	21.09.1927	Indian Forest Act, 1978 come into force		S-27: Power to declare no longer reserved
4.	1935	Sub-division of Survey No. 99 into Survey No. 99A & Survey No. 99B		Sr. No. 99=99A & 99B
5.	19.09.1935	Govt. Notification declaring **Survey No. 99** of Village: Limpangaon, Taluka: Shrigonda, District: Ahmednagar as de-reserved from forest	P@51 Notification Not Available	An area admeasuring **40 Acres** de-reserved from forest out of **428 Acres 5R** reserved forest
6.	15.08.1966	Maharashtra Land & Revenue Code, 1966 (MLRC) come into force		**S-31**: Unoccupied land may be granted on conditions **S-32**: Grant of alluvial land vesting

<table>
<tr><td></td><td></td><td></td><td></td><td>in Government</td></tr>
<tr><td>7.</td><td>01.04.1969</td><td>GoM Resolution; resolved to accord Forest Land in possession of the Government to the people who were cultivating</td><td>¶4(a); P@376</td><td>Resolution not placed on record by PP;
No reference to reserve forest land to be accorded</td></tr>
<tr><td>8.</td><td>23.05.1969</td><td>Tehsildar Order granting reserved forest land from Sr. No. 99 (New Gat No. 52/1)</td><td>P@394-407</td><td>Tehsildar have no power for such transfer</td></tr>
<tr><td>9.</td><td>1970</td><td>Gat Scheme implementation and New Gat Number given to Survey No. 99
Survey No. 99A= Old Gat No. 234= Sub-division into 234/1 & 234/2 New Gat No. 52 (155.65 Ha)
= Further Divided Gat No. 52/1 (122.46.69Ha) & Gat No. 52/2 (82 Acre=33.18.41Ha)
&
Survey No. 99B= Old Gat No. 237= New Gat No. 51 (40 Acre=16Ha)</td><td>¶4 & 5
P@548</td><td>99= 99A & 99B
99A=234=52
99B=237=51

234=234/1 & 234/2
52=52/1 & 52/2</td></tr>
<tr><td>10.</td><td>28.02.1970</td><td>Govt. R & FD, Memorandum No. LCS/3370/195487-BI</td><td></td><td>Refereed in Order dated 02.04.1971</td></tr>
<tr><td>11.</td><td>17.09.1970</td><td>Govt. R & FD Letter No. 0/29198-B</td><td></td><td>Refereed in Order dated 02.04.1971</td></tr>
<tr><td>12.</td><td>10.12.1970</td><td>Govt. R & FD Letter No. FLD/1870/67084-W</td><td></td><td>Refereed in Order dated 02.04.1971</td></tr>
<tr><td>13.</td><td>25.11.1970</td><td>Govt. Notification for de-reservation of alleged land
<table>
<tr><td>Land No.</td><td colspan="2">Area</td><td>Boundary</td></tr>
<tr><td></td><td>Acre</td><td>Guntha</td><td></td></tr>
<tr><td>99A (P)</td><td>82</td><td>00</td><td>North: S.N. 99 (P) Land
South:Road
East: S.N. 99 (P) Land
West:Canal</td></tr>
</table></td><td>P@42-43</td><td>West Side & South Boundaries are fixed for 82 Acre</td></tr>
<tr><td>14.</td><td>10.02.1971</td><td>Govt. R & FD Letter No. LCS/3370/195487-BI</td><td></td><td>Refereed in Order dated 02.04.1971</td></tr>
<tr><td>15.</td><td>1971</td><td>R-11-PP: Established Sugar & Started Errection & Construction without grant of land</td><td>P@240-241</td><td>¶1 of Collector Order=02.04.1971,</td></tr>
<tr><td>16.</td><td>02.04.1971</td><td>Alleged Order of Collector of</td><td>P@240-243</td><td></td></tr>
</table>

		Ahmednagar for granting of land admeasuring an area of **82** Acres from Sr. No. **99A**		
17.	09.09.1972	Wildlife (Conservation) Act, 1972		Mandates NoC from NBWL
18.	23.03.1974	Water (P&CP) Act, 1974 came into force; Mandates prior CTE/CTO		S-25: CTE S-26: CTO
19.	27.09.1979	GoM Notification No. WLP-1078/72634-FI for GIB Sanctuary Area fixing	P@45	Entire Shrigonda Taluka **Area: 160481 Ha**
20.	29.03.1981	Air (P&CP) Act, 1981 came into force		S-21: CTE & CTO
21.	16.09.1985	GoM Notification for extending of GIB Sanctuary Area in addition to the Notification of 27.09.1979 an area from Solapur District	P@48-49	Extension of an area of Solapur district
22.	12.12.1996	SC Judgment in TN Godavarman Vs. UoI & Ors. in WP No. 202/1995	P@519-525	¶4: Forest Conservation Act, 1980 ¶5I(1): Non-forest activity not permissible, prior permission of central govt. mandatory, **P@521**
23.	27.12.2004	SDO Letter to Dy. CCF-Ahmednagar	P@50	Request for grant of NOC to exchange of forest land
24.	01.02.2005	Dy. CCF-Ahmednagar letter to SDO	P@51	Request for exchange rejected; Survey No. 99 **De-reserved Area**: 122 Acre = 49.39 Ha **Provisions of Forest Conservation Act, 1980 applicable to:** **Forest Area**: 306.05 Acres = 123.93 Ha
25.	04.12.2006	Supreme Court Judgment in WP No. 460/2004	P@761-762	ESZ=10 Kms
26.	22.12.2003 To 20.06.2013	R-6: SDO Orders allowing illegal exchange of Land from Gat No. 52/1	P@408-430C	¶4: Exchange of Land must be used for agricultural purpose only;

				Also, SDO have not power to allow transfer of forest land for other purpose than agriculture, PP is using said land for industrial purpose
27.	18.08.2008	Hon'ble Supreme Court Judgment in A. Chowgule & Co. Ltd Vs. Goa Foundation & Ors. **(2008) 12 SCC 646**	P@318-326	¶8: "No doubt land leased out was indeed forest Land- Lease deed rightly quashed" **P@325** **Ratio Decidendi:** "For the diversion of any forest land and its use for some other purpose, prior approval from central government is required and a lease obtained will be null and void" **S.2**: The Forest Conservation Act, 1980
28.	09.02.2011	Guidelines for declaration of ESZ around National Parks & Wildlife Sanctuary	P@93-104	¶1: IBWL: Meeting: 21.01.2002: 10 Km-ESZ (**P@96**) ¶4: 10 Km=ESZ (**P@98**) **ESZ**: from 09.02.2011 to 11.02.2020 = 10 Km
29.	15.03.2011	Guidelines for taking up non-forestry activities in wildlife habitats	P@105-119	Procedure for obtaining NOC
30.	27.02.2012	GoM Notification on rationalization of boundaries of GIB Sanctuary	P@121-122	Detail information about SC Orders, NBWL & State Govt. reports; Reduction of GIBS from 8496.44 Km^2 to 1222.61 Km^2

31.	11.12.2012	Secretary MoEFCC Letter to CS-Government of Andhra Pradesh	P@764	Last date for Submission of proposal for declaration of ESZ by 15.02.2012 If Failed to submit the same and therefore, ESZ is 10 Km
32.	31.12.2012	MoEFCC guidelines for declaration of ESZ around National Park & Wildlife Sanctuaries	P@763	Last date for Submission of proposal for declaration of ESZ by 15.02.2012 GoM Failed to submit the same and therefore, ESZ is 10 Km
33.	02.04.2013	Supreme Court judgment (2013) 4 SCC 575: Sterlite Industry Case	P@826-857	¶42-45-47: EDC
34.	08.08.2013	GoM Notification for no NOC required from Forest department for acquisition of non-forest land	P@120	NO NoC is required for land acquisition of non-forest land
35.	06.02.2015	Letter of CCF-Pune to Collector-Ahmednagar	P@177	Handover of remaining Reserved Forest land area of 34024 Ha to Forest Dept. as GIBS area is reduced Already handed over Reserved Forest land area is 11863 Ha
36.	14.07.2015	GoM Circular for transaction of private land for GBIS	P@154	*On Condition: No change in land use *Private Land Acquisition for GBIS: 480.29 Ha Reduced Area of GIBS: 366.37 Sq. Km.
37.	17.07.2015	SDO Letter to Tehsildar-Shrigonda	P@178	Submit information for Reserved Forest Land in possession of Revenue Department

				to hand over the same to Forest Dept. as GIBS area is reduced
38.	10.12.2015	Hon`ble NGT-PB, New Delhi; Doaba Paryavaran Samiti Vs. Union Of India; **(2015) 12 NGT CK 0010**;	P@710-716	¶11,13-16:
39.	05.03.2016	GoM Notification on rationalization of boundaries of GIB Sanctuary	P@123-152	Reduction of GIBS to 366.37 Km^2
		ABSTRACT		
		Schedule-A = Gairan & other Govt. Land in GIBS		4715.22
		Schedule-B = Private Land acquired for GIBS		480.29
		Schedule-C = Reserved Forest Area for GIBS		31477.45
		Total		36672.96 Ha
		To Say		**366.73 Sq. Km.**
40.	17.06.2016	Dy. CCF Ahmednagar to Tehsildar Shrigonda	P@158	An Area of 308 Acres 5 R from Sr. No. 99 (Old gat No. 234/New gat No. 52) is not received de-forestation and provisions of Forest Conservation Act, 1980 are applicable to the same
41.	31.01.2018	NGT-PB: Order in OA No. 368/2018 (PB) dated 31.01.2018 in Nilkanth Raskar Vs Saswad Mali Sugar Factory Ltd.	P@858-862	¶7: EDC
42.	03.05.2018	SEAC 150 meeting minutes for 26 MW Co-gen	P@768-779	Issued ToR for plant to be erected on Gat No. 51/1; P@768
43.	18.05.2018	MPCB granted CTE for establishment of 26 MW Co-gen plant of R-11-PP	P@159	CTE granted for establishment of Co-gen plant On Land Gat No. 52/1, which is reserved forest
44.	10.08.2018	Supreme Court Judgment (2018) 18 SCC 257: Goel Ganga Case	P@863-894	¶17, 26-28, 64; Natural Resources, ex-post facto EC; Conduct of PP & Govt. Officials
45.	__.10.2018	EIA Summary for setting up of 26 MW Co-gen	P@166-176	
46.	01.11.2018	Notice for public Hearing for 26 MW Co-gen unit	P@179	

47.	28.11.2018	Original Applicant: Complaint to MPCB	P@180-183G	Reserved Forest Area, ESZ, illegal exchange of reserved forest land, illegal mortgage of land & obtained loan of Rs. 131.9947 Crores
48.	01.12.2018	Original Applicant: Complaint to MPCB	P@184	PP provided false information to MPCB
49.	01.12.2018	Minutes of Public hearing for setting up of 26 MW Co-gen	P@187-192	P@191: Objections of Applicant
50.	18.01.2019	Letter of DoE to MPCB	P@193	Action taken report on complaint of Applicant herein
51.	19.01.2019	MPCB direction for stoppage of errection of 26 MW Plant of R-11-PP	P@197	R-11-PP to stop establishment of 26 MW plant; but PP continued the construction
52.	15.02.2019	SEAC 161 meeting minutes for 26 MW Co-gen	P@780-792	Gat No. 52/1 is changed to 52/2 in documents only after complaints & objection of Applicant, actual errection is on reserve forest land Gant No. 52/1; P@780
53.	22.03.2019	R-11-PP: Application for CTO	P@331-341	IMP: PP sought CTO prior to obtaining EC dated 11.09.2019, it means PP completed errection and installation of Plant without EC.
54.	01.04.2019	Report of CCF-Pune to PCCF	P@195-196	Report on complaint of Applicant; recommending for actions from various department
55.	02.04.2019	Letter of PCCF to Applicant	P@194	Above Report copy attached
56.	28.05.2019	MPCB Site visit report	P@201-202	60-65% Construction is completed

57.	31.07.2019	MPCB Site visit report on complaint of One Mr. Karim Shaikh	P@203-204	Despite Stop Work, PP continued errection without EC
58.	08.08.2019	MoEFCC Office Memorandum for considering proposal for grant of EC under EIA Notification, 2006 located under 10 Km from National Park & Wildlife Sanctuaries	P@765-767	4(iii): ESZ not notified; Prior Clearance from Sanding Committee of NBWL i.e. SCNBWL, P@766
59.	13.08.2019	RTI Application of Applicant	P@199	Seeking Site inspection & Visit Report
60.	23.08.2019	MPCB letter to collect information by payment of Rs. 8 fees.	P@200	
61.	28.08.2019	Minutes of SEIAA 174 meeting	P@793-804	SEIAA decided to grant EC for 26MW Co-gen project on reserved forest land at gat No. 52/2 in ex-post facto manner by manipulation of 52/1
62.	03.09.2019	WP No. 11120/2019 filed before Hon'ble High Court Bombay at Aurangabad		*Illegal construction of Co-gen, Distillery, Part Sugar Plant on reserved forest land; *****Illegal transfer of forest land to R-11-PP *****Illegal activity in ESZ-GIBS; *Illegal grant of CTE for Co-gen plant on forest plant & in violation of CTE, without EC, *****Subsequently Operation without CTO; *****Collusion of Govt. Authority with R-11-PP

63.	09.09.2019	Hon'ble High Court Order for transfer of WP to NGT		Transfer of WP No. 11120/2019 to NGT
64.	11.09.2019	SEIAA granted ex-post facto EC for 26 MW plant on forest land	P@805-816	Ex-post EC Plant on reserved forest land Gat No. 52/1 by manipulating records of SEAC & SEIAA to make change of Gat No. 52/1 to 52/2
65.	27.09.2019	PP Application for CTO for 30 KLD Distillery	P@257-268	
66.	06.11.2019	OA No. 84/2019 registered before NGT	P@001-204	Same from WP as above
67.	11.02.2020	MoEF Notification S.O. 654(E) Fixing of ESZ Boundaries from 0 to 400 Mtrs with reduction in GIBS Area	P@244-254	ESZ is reduced from 10 Km to "0 to 400 Mtrs."
68.	28.02.2020	MPCB Issued Show Cause notice to R-11-PP	P@294-295	No Stoppage of Construction; violated directions; EDC imposition
69.	04.03.2020	Letter of R-6-SDO to R-5-Collector	P@552-553	
70.	15.07.2020	Letter issued by R-10-RFO	P@255-256	Industry is at 8.50 Km from ESZ
71.	28.08.2020	Joint Committee Report	P@309-317	Support the contention of Applicant
72.	13.11.2020	MPCB-CAC minutes of Meetings	P@342	Proposal in abeyance
73.	24.11.2020	R-11-PP Letter to MPCB	P@343-346	
74.	11.12.2020	Original Applicant: Objections to JC Report	P@296-308	
75.	30.12.2020	MPCB-CAC minutes of Meetings	P@349-350	
76.	12.01.2021	R-11-PP: Reply Affidavit	P@327-330	
77.	28.01.2021	MPCB granted CTO for operations of 26 MW Co-gen plant of R-11-PP	P@573-581	CTO granted for operation of Co-gen plant On Land Gat No. 52/2 valid upto 31.07.2021
78.	13.07.2021	Hon'ble NGT-PB, New Delhi Judgment in OA No. 124/2017; Sarv Jan Kalyan Sewa Samiti Vs. Union of India & Ors.	P@626-627	¶21, 22
79.	07.10.2021	Supreme Court Judgment 2021 SCC OnLine SC 897; MCGM Vs Ankita	P@895-918	¶38, 41, 42, 43, 75, 86

		Sinha		
80.	13.11.2021	R-11-PP: Reply Affidavit	P@-393	Admitted by R-11-PP ¶3; ….“whereas the Survey No. 234/1 admeasuring an area of 122.46 HR has been given a new Survey No. 52/1. Out of the total area of 122.46 HR an area of 35.90 HR is in possession of the Respondent No. 11”.(**P@376**)
81.	15.12.2021	Original Applicant: Rejoinder	P@431-448	
82.	11.11.2022	MPCB granted CTO for operations of 26 MW Co-gen plant of R-11-PP	P@582-591	CTO granted for operation of Co-gen plant On Land Gat No. 52/2 valid upto 31.07.2023
83.	19.07.2023	Letter of R-6-SDO to R-5-Collector	P@554-556	
84.	28.07.2023	R-3-4=MPCB reply affidavit	P@560-564	Support the contention of Applicant
85.	01.08.2023	Letter of R-5-Collector to Divisional Commissioner-Nashik	P@557-559	
86.	14.08.2023	R-5&6: Collector Ahmednagar & SDO reply affidavit	P@545-551	Support the contention of Applicant
87.	13.09.2023	R-8-9-10: CCF-Pune, Dy. CF-Ahmednagar & RFO-Shrigonda	P@592-612	Support the contention of Applicant

That the above dates & events shows that the R-11-PP have changed scope of the project, increased capacity of production, increased pollution load without mandatory permissions of CTO, CTE, EC as well as illegal change in land use from reserve forest to industrial without following due procedure of law and without permission from Central Government as well as illegal errection, installation &

operation of industry in GIBS and in ESZ-10 Km too since 27.09.1979 (**P@44-47**) to 11.02.2020 (**P@598-603**) i.e. reducing GIBS ESZ area to 400 Mtrs for the reserve forest lands even after enforcement of Forest Conservation Act, 1980. Despite there being specific guidelines from MoEFCC vide dated 09.02.2011 (**P@93-104**) and procedure for obtaining NOC from NBWL vide dated 15.03.2011 (**P@105-120**). However, R-11-PP failed to comply with the mandate of law and committed violations thereby misleading MPCB, SEIAA, Collector, SDO, Tehsildar, CCF, PCCF, etc. with help of some erring officers.

That the above dates & events shows the recurring actions leading the pollution & damage to the environment & ecology by procuring CTE dated 18.05.2019, ex-post facto EC dated 11.09.2019, illegal exchange from 2003 to 2013 and then errection of plant from 18.05.2019 without obtaining prior EC on reserved forest land. That, this Applicant have filed the WP before High Court in large jurisdiction on 03.09.2019 and same was transferred to this Hon'ble NGT vide 09.09.2019 for dealing with the issues pertaining to the Forest Conservation Act, 1980, Water Act, 1974, Air Act, 1981, Environment (Protection) Act, 1986 etc. and illegal exchange having overriding effect under S. 33 of NGT Act, 2010 which are schedule-I acts and WP/OA are dealing with the substantial question of environment and applicant is the aggrieved person being resident of the area & environmentalist, social activist being vigilant & whistle blower citizen having locus to file present OA. That, the OA is based on the single cause of action i.e. grant of CTE dated 18.05.2018 for establishment of 26 MW Co-gen plant on reserved forest land illegally occupied & possessed by R-11-

PP to the tune of more than 50 Ha against the grant of only 32.80 Ha vide order dated 25.11.1970 & 02.04.1971.

Therefore, this Application being WP filed under article 226 which are in equivalent to the S. 14, 15, 16, 18, 20 & 30 of NGT Act, 2010 r/w Rule No. 14 & 24 of the NGT (P&P) Rules, 2011 and this OA is maintainable before Hon'ble NGT and NGT have powers to try, entertain, decide, adjudicate and to pass appropriate orders as per the Hon'ble Supreme Court judgment passed in ¶41 of **2021 SCC Online SC 897** i.e. **MCGM-Ankita Sinha Case** and ¶38-50 of **(2019) 18 SCC 494 i.e. Mantri Techzone case**. Preliminary Objection raised by R-11-PP are meaningless and not tenable in the eyes of law. That the complete & composite cause of action to file present OA is grant of CTE dated 18.05.2018 as recurring cause of action.

PART-D: ISSUES FROM OA/WP: FACTS & GROUNDS

4. ISSUES FROM OA/WP: FACTS & GROUNDS:

That the following principal issues have raised by the Original Applicant/ Petitioner are as belwo for consideration of this Hon'ble NGT;

A) Illegal construction of Co-gen, Distillery, Part Sugar Plant on reserved forest land;

B) Illegal transfer of forest land to R-11-PP

C) Illegal activity in ESZ-GIBS;

D) Illegal grant of CTE for Co-gen plant on forest plant & in violation of CTE, without EC,

E) Subsequently Operation without CTO;

F) Collusion of Govt. Authority with R-11-PP

G) Restitution & Restoration of Area by EDC, restoring reserved forest area and stop work/operation direction

4.1 REVENUE RECORDS: OLD SURVEY NUMBERS, NEW GAT NUMBERS & RESERVED FOREST AREA AND AREA STATEMENT:

That after going through the entire pleading of case, following facts come forwards for Old Survey No., Old Gat No, New Gat No, their sub-division, conversation of forest land from revenue record, illegal transfer-exchange undertaken illegal land use change on reserved forest land and intervention of this Hon'ble NGT for its restoration, restitution etc.

AREA STATEMENT OF SURVEY No. 99

Sr.	Description	Revenue Land Number		
1.	Original Survey Number & Total Area	99 Total Area Acres=428 Acres 5 R Total Area Ha=171.25 Ha Total Area M^2= 1712500M^2 Entire land declared as Reserved Forest		
2.	Sub-division of Survey Number 99 and respective area in 1935	**99A** Area=388 Acres 5 R = 155.25 Ha =1552500 M^2		**99B** Area=40 Acres = 16 Ha =160000 M^2
3.	Sub-division into Gat Number	**234=52** Area=388 Acres 5 R = 155.25 Ha =1552500 M^2		**237=51** Area=40 Acres = 16 Ha =160000 M^2
4.	Further Sub-division into Gat Number	**234/1=52/1** Area=306 Acres 5R =122.45 Ha =1224500 M^2	**234/2=52/2** Area=82 Acres =32.80 Ha =328000 M^2	**237=51** Area=40 Acres = 16 Ha =160000 M^2
5.	New Gat Number allotted in 1970 (Presently identified)	**52/1** Area=306 Acres 5R =122.45 Ha =1224500 M^2	**52/2** Area =82 Acres =32.80 Ha =328000 M^2	**51** Area=40 Acres = 16 Ha =160000 M^2
6.		Still Reserved Forest with Applicability of FCA, 1980	De-forested On 25.11.1970	De-forested On 26.09.1935

From the above table it is clear that,

a) Total land from Original Survey No. 99 is admeasuring an area = 428 Acres 5R.

b) Land notified as reserved forest vide dated 13.06.1892 = 428 Acres 5R.

c) Land de-notified from reserved forest vide dated 26.09.1935 = 40 Acres

d) Land notified as reserved forest vide dated 13.06.1892 = 82 Acres

e) Total as reserve forest from Survey No. 99 (New Gat No. 52/1) till date is = 306 Acres 5R

f) Therefore, total land available as reserved forest land in Survey No. 99 (New Gat No. 52/1) is = 306 Acres 5R = 122.45 Ha = 1224500 M².

4.2 VIOLATION OF CTE AND GRANT OF EX-POST FACTO EC:

That the R-11-PP have violated the terms and conditions of CTE dated 18.05.2018 thereby commencing construction of 26MW Co-gen plant and completing substantial construction without obtaining prior EC and thereafter, procured ex-post facto EC dated 11.09.2019 after WP/OA; and also stat operations of plant without valid CTO

Also, CTE & EC are granted to the project following under Reserve Forest Land & ESZ till 11.02.2020 without verifying the facts from Forest Department & Revenue Department. Moreover, MPCB & SEIAA allowed the PP to manipulate their records to make illegal changes in Gat No. 52/1 to gat No. 52/2, after the complaint of this Applicant. That it is admitted fact that the PP have encroached 35.90 Ha & 7.72 Ha reserve forest land without obtaining Central Government Permission under Forest Conservation Act, 1980 for this change in use of land to Industrial purpose (Non-Forest Activity) from Reserve Forest Activity.

<table>
<tr><td>1.</td><td>25.11.1970</td><td>Govt. Notification for de-reservation of alleged land<table><tr><td>Land No.</td><td colspan="2">Area</td><td>Boundary</td></tr><tr><td></td><td>Acre</td><td>Guntha</td><td></td></tr><tr><td>99A (P)</td><td>82</td><td>00</td><td>North: S.N. 99 (P) Land
South:Road
East: S.N. 99 (P) Land
West:Canal</td></tr></table></td><td>P@42-43</td><td>West Side & South Boundaries are fixed for 82 Acre</td></tr>
<tr><td>2.</td><td>23.03.1974</td><td>Water (P&CP) Act, 1974 came into force; Mandates prior CTE/CTO</td><td></td><td>S-25: CTE
S-26: CTO</td></tr>
<tr><td>3.</td><td>29.03.1981</td><td>Air (P&CP) Act, 1981 came into force</td><td></td><td>S-21: CTE & CTO</td></tr>
<tr><td>4.</td><td>03.05.2018</td><td>SEAC 150 meeting minutes for 26 MW Co-gen</td><td></td><td>Issued ToR for plant to be erected on Gat No. 51/1</td></tr>
<tr><td>5.</td><td>18.05.2018</td><td>MPCB granted CTE for establishment of 26 MW Co-gen plant of R-11-PP</td><td>P@159</td><td>CTE granted for establishment of Co-gen plant On Land Gat No. 52/1, which is reserved forest</td></tr>
<tr><td>6.</td><td>__.10.2018</td><td>EIA Summary for setting up of 26 MW Co-gen</td><td>P@166-176</td><td></td></tr>
<tr><td>7.</td><td>01.11.2018</td><td>Notice for public Hearing for 26 MW Co-gen unit</td><td>P@179</td><td></td></tr>
<tr><td>8.</td><td>28.11.2018</td><td>Original Applicant: Complaint to MPCB</td><td>P@180-183G</td><td>Reserved Forest Area, ESZ, illegal exchange of reserved forest land, illegal mortgage of land & obtained loan of Rs. 131.9947 Crores</td></tr>
<tr><td>9.</td><td>01.12.2018</td><td>Original Applicant: Complaint to MPCB</td><td>P@184</td><td>PP provided false information to MPCB</td></tr>
<tr><td>10.</td><td>01.12.2018</td><td>Minutes of Public hearing for setting up of 26 MW Co-gen</td><td>P@187-192</td><td>P@191: Objections of Applicant</td></tr>
<tr><td>11.</td><td>18.01.2019</td><td>Letter of DoE to MPCB</td><td>P@193</td><td>Action taken report on complaint of Applicant herein</td></tr>
<tr><td>12.</td><td>19.01.2019</td><td>MPCB direction for stoppage of errection of 26 MW Plant of R-11-PP</td><td>P@197</td><td>R-11-PP to stop establishment of 26 MW plant; but PP continued the construction</td></tr>
<tr><td>13.</td><td>15.02.2019</td><td>SEAC 161 meeting minutes for 26 MW Co-gen</td><td></td><td>Gat No. 52/1 is changed to 52/2 in documents only after complaints & objection of Applicant, actual</td></tr>
</table>

				errection is on reserve forest land Gant No. 52/1
14.	22.03.2019	R-11-PP: Application for CTO	P@331-341	IMP: PP sought CTO prior to obtaining EC dated 11.09.2019, it means PP completed errection and installation of Plant without EC.
15.	28.05.2019	MPCB Site visit report	P@201-202	60-65% Construction is completed
16.	31.07.2019	MPCB Site visit report on complaint of One Mr. Karim Shaikh	P@203-204	Despite Stop Work, PP continued errection without EC
17.	28.08.2019	Minutes of SEIAA 174 meeting		SEIAA decided to grant EC for 26MW Co-gen project on reserved forest land at gat No. 52/1 in ex-post facto manner
18.	03.09.2019	WP No. 11120/2019 filed before Hon'ble High Court Bombay at Aurangabad		*Illegal grant of CTE for Co-gen plant on reserved forest land & violation of CTE, without EC, *Subsequently Operation without CTO; *Collusion of Govt. Authority with R-11-PP
19.	09.09.2019	Hon'ble High Court Order for transfer of WP to NGT		Transfer of WP No. 11120/2019 to NGT
20.	11.09.2019	SEIAA granted ex-post facto EC for 26 MW plant on forest land	P@	Ex-post EC Plant on reserved forest land Gat No. 52/1 by manipulating records of SEAC & SEIAA to make change of Gat No. 52/1 to 52/2
21.	27.09.2019	PP Application for CTO for 30 KLD Distillery	P@257-268	
22.	06.11.2019	OA No. 84/2019 registered before NGT	P@001-204	Same from WP as above
23.	28.02.2020	MPCB Issued Show Cause notice to R-11-PP	P@294-295	No Stoppage of Construction; violated

				directions; EDC imposition
24.	28.08.2020	Joint Committee Report	P@309-317	Support the contention of Applicant
25.	13.11.2020	MPCB-CAC minutes of Meetings	P@342	Proposal in abeyance
26.	24.11.2020	R-11-PP Letter to MPCB	P@343-346	
27.	11.12.2020	Original Applicant: Objections to JC Report	P@296-308	
28.	30.12.2020	MPCB-CAC minutes of Meetings	P@349-350	
29.	12.01.2021	R-11-PP: Reply Affidavit	P@327-330	
30.	28.01.2021	MPCB granted CTO for operations of 26 MW Co-gen plant of R-11-PP	P@573-581	CTO granted for operation of Co-gen plant On Land Gat No. 52/2 valid upto 31.07.2021
31.	11.11.2022	MPCB granted CTO for operations of 26 MW Co-gen plant of R-11-PP	P@582-591	CTO granted for operation of Co-gen plant On Land Gat No. 52/2 valid upto 31.07.2023
32.	28.07.2023	R-3-4=MPCB reply affidavit	P@560-564	Support the contention of Applicant

Therefore, the amount of Rs. 69 Lakhs imposed by MPCB towards the EDC is not sufficient and EDC must be exemplary to have deterrent effect on R-11-PP and remove this 26 Co-gen Plant from reserve forest land including interconnected infrastructure and make the reserve forest land enrochments free with handing over to the Forest Department.

4.3 ILLEGAL POSSESSION/OCCUPANCY/ENCROACHMENT ON RESERVED FOREST LAND & ILLEGAL INSTALLATION OF VARIOUS INFRASTRUCTURE ON RESERVED FOREST LAND: DESPITE GRANTING LAND HAVING "*FIXED BOUNDARY TOWARD*: WEST & SOUTH DIRECTION"

That the dates and events shows illegal possession/Occupancy/ Enrochments on reserved forest by R-11-PP in collusion with Government Authorities;

That the Govt. have issued Notification dated 25.11.1970 removing reserve forest to the tune of 82 Acres out of 428 Acres 5R from Survey No. 99 of Village-Limpangaon, Taluka-Shrigonda, District-Ahmednagar. That the de-reserved area of 82 Acres is having fixed boundary towards West Side-Canal and South Side: Road, therefore, South-West Point is fixed and in actual R-11-PP have erected the Industry on Reserved forest Area without obtaining necessary permission. That the illegal possession & occupancy of R-11-PP is explained with help of following table;

Sr.	Description	Total Area (Acres)	Total Area (Ha)	Total Area (M^2)
1.	Total reserved forest Area as per notification 13.06.1892	428 Acres 5 R	171.25 Ha	1712500M^2
2.	Area removed from reserved forest vide notification 26.09.1935	40 Acres	16 Ha	160000 M^2
3.	Area removed from reserved forest vide notification 25.11.1970	82 Acres	32.80 Ha	328000 M^2
4.	Total Area remaining under reserved forest till date	306 Acres 5R	122.45 Ha	1224500 M^2
5.	Area in Occupation & possession as per demarcation dated 20.01.2020	101 Acres 12R	40.52 Ha	405200 M^2
6.	**Illegal** occupation & Possession of Land from gat No. 52/1 **(Item No. #5-3)**	101-82 = **19 Acres 12 R**	40.52-32.80= **7.72 Ha**	405200-328000 = **77200 M^2**
7.	Balance Reserve Forest Area **(Item No. #4-6)**	286 Acres 33R	**114.73 Ha**	1147300 **M^2**
8.	**Illegal** occupation & Possession of Land from gat No. 52/1 due to illegal transfer **by R-11-PP (JC Report, P@314-315)**	89 Acres 30R	35.90 Ha	359000 **M^2**
9.	Final Balance Reserve Forest Area **(Item No. #7-8)**	197 Acres 3R	108.83 Ha	788300 **M^2**

10.	Total **Illegal** occupation & Possession of Land from gat No. 52/1 by R-11-PP **(Item No. #6+8)**	**109 Acres 2R**	**43.62 Ha**	**436200 M²**

Therefore, R-11-PP ought to have possession and occupation on an area admeasuring **82 Acres** from new Gat No. 52/2 (Old Survey No. 99=99A, Old Gat No. 234 & 234/2) as per Government Notification dated 25.11.1970 & Collector Order dated 02.04.1970. However, R-11-PP is in illegal possession & occupation of **19 Acres 33R** in violation of Government Notification dated 25.11.1970 & Collector Order dated 02.04.1970 apart from the illegal holding of forest land by way of illegal transactions with adjoining farmers from **Gat No. 52/1** (Old Survey No. 99=99A, Old Gat No. 234 & 234/1) for an area admeasuring 35.90 Ha as stated in Joint Committee report (**¶2 (ii) & (iii), P@311-315**) & R-8 to R-10=CCF-Pune, Dy CF-Ahmednagar & RFO-Shrigonda (**¶4(iii), P@594**) as well as in R-5 & 6-Collector & SDO **(¶5-8, P@549-551**). Therefore, PP have illegal holding, possession & Occupancy of total reserved forest land to the tune admeasuring (**7.72+35.90**) Ha = **43.62 Ha** i.e. and this Hon'ble NGT shall direct the R-11-PP to remove all illegal occupancy and restrict its plant only to 82 Acres only.

4.4 ILLEGAL EXCHANGE OF RESERVED FOREST LAND & MUTATION ENTRIES:

That the Joint Committee Report, Reply of R-5-Collector of Ahmednagar, R-6-SDO, R-8-CCF-Pune, R-9-Dy. CF-Ahmednagar & R-10-RFO-Shrignoda have confirmed and affirmed that there is illegal possession & Occupancy of an area admeasuring an area of 35.90 Ha from New Gat No. 52/1 and said land is still reserve forest and attracts

provisions of the Forest (Conservation) Act, 1980 as per the below dates and events;

<table>
<tr><th>SR.</th><th>Date</th><th>Event</th><th>Annx. & Page</th><th>Remark</th></tr>
<tr><td>1.</td><td>13.06.1892</td><td>Govt. Notification declaring Survey No. 99 of Village: Limpangaon, Taluka: Shrigonda, District: Ahmednagar as reserve forest</td><td></td><td>An area admeasuring 428 Acres 5R reserved as forest</td></tr>
<tr><td>2.</td><td>21.09.1927</td><td>Indian Forest Act, 1978 come into force</td><td></td><td>S-27: Power to declare no longer reserved</td></tr>
<tr><td>3.</td><td>19.09.1935</td><td>Govt. Notification declaring Survey No. 99 of Village: Limpangaon, Taluka: Shrigonda, District: Ahmednagar as de-reserved from forest</td><td>P@51 Notification Not Available</td><td>An area admeasuring 40 Acres de-reserved from forest out of 428 Acres 5R reserved forest</td></tr>
<tr><td>4.</td><td>15.08.1966</td><td>Maharashtra Land & Revenue Code, 1966 (MLRC) come into force</td><td></td><td>S-31: Unoccupied land may be granted on conditions
S-32: Grant of alluvial land vesting in Government</td></tr>
<tr><td>5.</td><td>01.04.1969</td><td>GoM Resolution; resolved to accord Forest Land in possession of the Government to the people who were cultivating</td><td>¶4(a); P@376</td><td>Resolution not placed on record by PP;
No reference to reserve forest land to be accorded</td></tr>
<tr><td>6.</td><td>23.05.1969</td><td>Tehsildar Order granting reserved forest land from Sr. No. 99 (New Gat No. 52/1)</td><td>P@394-407</td><td>Tehsildar have no power for such transfer</td></tr>
<tr><td>7.</td><td>1970</td><td>Gat Scheme implementation and New Gat Number given to Survey No. 99</td><td>¶4 & 5 P@548</td><td>99= 99A & 99B
99A=234=52
99B=237=51

234=234/1 & 234/2
52=52/1 & 52/2</td></tr>
<tr><td>8.</td><td>25.11.1970</td><td>Govt. Notification for de-reservation of alleged land
<table>
<tr><th>Land No.</th><th colspan="2">Area</th><th>Boundary</th></tr>
<tr><td></td><td>Acre</td><td>Guntha</td><td></td></tr>
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South:Road
East: S.N. 99 (P) Land
West:Canal</td></tr>
</table></td><td>P@42-43</td><td>West Side & South Boundaries are fixed for 82 Acre</td></tr>
<tr><td>9.</td><td>1971</td><td>R-11-PP: Established Sugar & Started Errection & Construction</td><td>P@240-241</td><td>¶1 of Collector Order=02.04.1971,</td></tr>
</table>

		without grant of land		
10.	12.12.1996	SC Judgment in TN Godavarman Vs. UoI & Ors. in WP No. 202/1995	P@519-525	¶5I(1): Non-forest activity not permissible, prior permission of central govt. mandatory, **P@521**
11.	27.12.2004	SDO Letter to Dy. CCF-Ahmednagar	P@50	Request for grant of NOC to exchange of forest land
12.	01.02.2005	Dy. CCF-Ahmednagar letter to SDO	P@51	Request for exchange rejected; Survey No. 99 **De-reserved Area**: 122 Acre = 49.39 Ha **Provisions of Forest Conservation Act, 1980 applicable to:** **Forest Area**: 306.05 Acres = 123.93 Ha
13.	22.12.2003 To 20.06.2013	R-6: SDO Orders allowing illegal exchange of Land from Gat No. 52/1	P@408-430C	¶4: Exchange of Land must be used for agricultural purpose only; Also, SDO have not power to allow transfer of forest land for other purpose than agriculture, PP is using said land for industrial purpose
14.	18.08.2008	Hon'ble Supreme Court Judgment in A. Chowgule & Co. Ltd Vs. Goa Foundation & Ors.	P@318-326	¶8: "No doubt land leased out was indeed forest Land- Lease deed rightly quashed" **P@325** **Ratio Decidendi:** "For the diversion of any forest land and its use for some other purpose, prior approval from central government is required and a lease obtained will be null and void" **S.2**: The Forest Conservation Act, 1980

15.	08.08.2013	GoM Notification for no NOC required from Forest department for acquisition of non-forest land	P@120	NO NoC is required for land acquisition of non-forest land
16.	06.02.2015	Letter of CCF-Pune to Collector-Ahmednagar	P@177	Handover of remaining Reserved Forest land area of 34024 Ha to Forest Dept. as GIBS area is reduced Already handed over Reserved Forest land area is 11863 Ha
17.	17.07.2015	SDO Letter to Tehsildar-Shrigonda	P@178	Submit information for Reserved Forest Land in possession of Revenue Department to hand over the same to Forest Dept. as GIBS area is reduced
18.	17.06.2016	Dy. CCF Ahmednagar to Tehsildar Shrigonda	P@158	An Area of 308 Acres 5 R from Sr. No. 99 (Old gat No. 234/New gat No. 52) is not received de-forestation and provisions of Forest Conservation Act, 1980 are applicable to the same
19.	28.11.2018	Original Applicant: Complaint	P@180-183G	Reserved Forest Area, ESZ, illegal exchange of reserved forest land, illegal mortgage of land & obtained loan of Rs. 131.9947 Crores
20.	01.12.2018	Original Applicant: Complaint	P@184	PP provided false information to MPCB
21.	01.04.2019	Report of CCF-Pune to PCCF	P@195-196	Report on complaint of Applicant; recommending for actions from various department
22.	02.04.2019	Letter of PCCF to Applicant	P@194	Above Report copy attached
23.	03.09.2019	WP No. 11120/2019 filed before Hon'ble High Court Bombay at Aurangabad		*Illegal exchange of reserved forest land to R-11-PP *Collusion of Govt. Authority with R-11-PP

24.	09.09.2019	Hon'ble High Court Order for transfer of WP to NGT		Transfer of WP No. 11120/2019 to NGT
25.	06.11.2019	OA No. 84/2019 registered before NGT	P@001-204	Same from WP as above
26.	04.03.2020	Letter of R-6-SDO to R-5-Collector	P@552-553	
27.	28.08.2020	Joint Committee Report	P@309-317	Support the contention of Applicant
28.	11.12.2020	Original Applicant: Objections to JC Report	P@296-308	
29.	12.01.2021	R-11-PP: Reply Affidavit	P@327-330	
30.	13.11.2021	R-11-PP: Reply Affidavit	P@-393	Admitted by R-11-PP ¶3; ...."whereas the Survey No. 234/1 admeasuring an area of 122.46 HR has been given a new Survey No. 52/1. Out of the total area of 122.46 HR an area of 35.90 HR is in possession of the Respondent No. 11".(**P@376**)
31.	15.12.2021	Original Applicant: Rejoinder	P@431-448	
32.	19.07.2023	Letter of R-6-SDO to R-5-Collector	P@554-556	
33.	01.08.2023	Letter of R-5-Collector to Divisional Commissioner-Nashik	P@557-559	Support the contention of Applicant
34.	14.08.2023	R-5&6: Collector Ahmednagar & SDO reply affidavit	P@545-551	Support the contention of Applicant
35.	13.09.2023	R-8-9-10: CCF-Pune, Dy. CF-Ahmednagar & RFO-Shrigonda	P@592-612	Support the contention of Applicant

That the followings are the mutation entries (**P@314-315**) for illegal transaction and same needs to be cancelled henceforth for restoration of land and its restitution form the damage caused by the R-11-PP. Further, involvement of Government Authorities i.e. Revenue and Forest must be dealt with strict manner imposing time bound schedule for restoration of land with forest department.

Following entries are arranged as per their dates;

Sr.	Gat / Survey No.	Area H R	Mutation No.	Date

1.	52/1/10	4.03	1854	30.11.1985
			1984	28.11.1986
2.	52/1/4	1.20	3640	06.02.2004
3.	52/1/51	3.00	3641	06.02.2004
4.	52/1/8	2.42	3642	06.02.2004
5.	52/1/5	4.04	3643	06.02.2004
6.	52/1/40	2.42	3645	06.02.2004
7.	52/1/6	1.71	3648	11.02.2004
8.	52/1/49	3.90	3650	23.02.2004
9.	52/1/25	3.20	3667	01.05.2004
10.	52/1/39	2.42	3688	11.01.2005
11.	52/1/7	2.02	3689	11.01.2005
12.	52/1/22	1.52	4081	08.06.2007
13.	52/1/42	1.20	4789	02.11.2012
14.	52/1/24	2.82	4905	21.07.2013
	Total Area	**35.90 Ha**		

That the above illegal transactions are carried out from 30.11.1985 to 21.07.2013 with adjoining farmers without obtaining necessary permission and this land is reserved forest and it attracts the provisions of Forest (Conservation) Act, 1980 as there is no prior permissions under Indian Forest Act, 1927 till the last mutation 21.07.2013 after Government Notification dated 25.11.1970 and thereafter, there is illegal expansion of industry by way of various installations & operations. Therefore, this Hon'ble NGT may kindly issue direction to R-11-PP hand over an area admeasuring 35.90 Ha for restoration to the forest department by Revenue department and carry out the restitution of the said area.

4.5 BLATANT EXPANSION/INCREASE IN SCOPE BY CAPACITY & OPERATION CAUSING GRAVE DAMAGE TO GIB SANCTUARY/ WILD LIFE/ ESZ:

That the following dates & event shows that the blatant expansions/increase in scope of Capacity & Operations

causing the grave damage to the GIB Sanctuary/ Wildlife/ESZ;

<table>
<tr><th>SR.</th><th>Date</th><th>Event</th><th>Annx. & Page</th><th>Remark</th></tr>
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South:Road
East: S.N. 99 (P) Land
West:Canal</td></tr>
</table></td><td>P@42-43</td><td>West Side & South Boundaries are fixed for 82 Acre</td></tr>
<tr><td>4.</td><td>02.04.1971</td><td>Alleged Order of Collector of Ahmednagar for granting of land admeasuring an area of 82 Acres from Sr. No. 99A</td><td>P@240-243</td><td></td></tr>
<tr><td>5.</td><td>09.09.1972</td><td>Wildlife (Conservation) Act, 1972</td><td></td><td>Mandates NoC from NBWL</td></tr>
<tr><td>6.</td><td>27.09.1979</td><td>GoM Notification No. WLP-1078/72634-FI for GIB Sanctuary Area fixing</td><td>P@45</td><td>Entire Shrigonda Taluka
Area: 160481 Ha
Entire GIBS Area: 781847 Ha = 7818.47 Sq. Km.</td></tr>
<tr><td>7.</td><td>16.09.1985</td><td>GoM Notification for extending of GIB Sanctuary Area in addition to the Notification of 27.09.1979 an area from Solapur District</td><td>P@48-49</td><td>Extension of an area of Solapur district
Increase in GIBS = 67797 Ha = 677.97 Sq. Km</td></tr>
<tr><td>8.</td><td>09.02.2011</td><td>Guidelines for declaration of ESZ around National Parks & Wildlife Sanctuary</td><td>P@93-104</td><td>¶1: IBWL: Meeting: 21.01.2002: 10 Km-ESZ (P@96)

¶4: 10 Km=ESZ (P@98)

ESZ: from 09.02.2011 to 11.02.2020 = 10</td></tr>
</table>

				Km
9.	15.03.2011	Guidelines for taking up non-forestry activities in wildlife habitats	P@105-119	Procedure for obtaining NOC
10.	27.02.2012	GoM Notification on rationalization of boundaries of GIB Sanctuary	P@121-122	Detail information about SC Orders, NBWL & State Govt. reports; Reduction of GIBS from 8496.44 Km^2 to 1222.61 Km^2
11.	08.08.2013	GoM Notification for no NOC required from Forest department for acquisition of non-forest land	P@120	NO NoC is required for land acquisition of non-forest land
12.	05.03.2016	GoM Notification on rationalization of boundaries of GIB Sanctuary	P@123-152	Reduction of GIBS to 366.37 Km^2
		ABSTRACT		
		Schedule-A = Gairan & other Govt. Land in GIBS		4715.22
		Schedule-B = Private Land acquired for GIBS		480.29
		Schedule-C = Reserved Forest Area for GIBS		31477.45
		Total		36672.96 Ha
		To Say		**366.73 Sq. Km.**
13.	17.06.2016	Dy. CCF Ahmednagar to Tehsildar Shrigonda	P@158	An Area of 308 Acres 5 R from Sr. No. 99 (Old gat No. 234/New gat No. 52) is not received de-forestation and provisions of Forest Conservation Act, 1980 are applicable to the same
14.	03.05.2018	SEAC 150 meeting minutes for 26 MW Co-gen		Issued ToR for plant to be erected on Gat No. 51/1
15.	18.05.2018	MPCB granted CTE for establishment of 26 MW Co-gen plant of R-11-PP	P@159	CTE granted for establishment of Co-gen plant On Land Gat No. 52/1, which is reserved forest
16.	__.10.2018	EIA Summary for setting up of 26 MW Co-gen	P@166-176	
17.	01.11.2018	Notice for public Hearing for 26 MW Co-gen unit	P@179	
18.	28.11.2018	Original Applicant: Complaint to MPCB	P@180-183G	Reserved Forest Area, ESZ, illegal exchange of reserved forest land, illegal mortgage of land & obtained loan of Rs. 131.9947 Crores
19.	01.12.2018	Original Applicant: Complaint to	P@184	PP provided false

		MPCB		information to MPCB
20.	01.12.2018	Minutes of Public hearing for setting up of 26 MW Co-gen	P@187-192	P@191: Objections of Applicant
21.	18.01.2019	Letter of DoE to MPCB	P@193	Action taken report on complaint of Applicant herein
22.	19.01.2019	MPCB direction for stoppage of errection of 26 MW Plant of R-11-PP	P@197	R-11-PP to stop establishment of 26 MW plant; but PP continued the construction
23.	15.02.2019	SEAC 161 meeting minutes for 26 MW Co-gen		Gat No. 52/1 is changed to 52/2 in documents only after complaints & objection of Applicant, actual errection is on reserve forest land Gant No. 52/1
24.	22.03.2019	R-11-PP: Application for CTO	P@331-341	IMP: PP sought CTO prior to obtaining EC dated 11.09.2019, it means PP completed errection and installation of Plant without EC.
25.	01.04.2019	Report of CCF-Pune to PCCF	P@195-196	Report on complaint of Applicant; recommending for actions from various department
26.	28.05.2019	MPCB Site visit report	P@201-202	60-65% Construction is completed
27.	31.07.2019	MPCB Site visit report on complaint of One Mr. Karim Shaikh	P@203-204	Despite Stop Work, PP continued errection without EC
28.	28.08.2019	Minutes of SEIAA 174 meeting		SEIAA decided to grant EC for 26MW Co-gen project on reserved forest land at gat No. 52/1 in ex-post facto manner
29.	03.09.2019	WP No. 11120/2019 filed before Hon'ble High Court Bombay at Aurangabad		*Illegal transfer of forest land to R-11-PP *Illegal activity in ESZ-GIBS; *Collusion of Govt. Authority with R-11-PP

30.	09.09.2019	Hon'ble High Court Order for transfer of WP to NGT		Transfer of WP No. 11120/2019 to NGT
31.	11.09.2019	SEIAA granted ex-post facto EC for 26 MW plant on forest land	P@	Ex-post EC Plant on reserved forest land Gat No. 52/1 by manipulating records of SEAC & SEIAA to make change of Gat No. 52/1 to 52/2
32.	27.09.2019	PP Application for CTO for 30 KLD Distillery	P@257-268	
33.	06.11.2019	OA No. 84/2019 registered before NGT	P@001-204	Same from WP as above
34.	11.02.2020	MoEF Notification S.O. 654(E) Fixing of ESZ Boundaries from 0 to 400 Mtrs with reduction in GIBS Area	P@244-254	**ESZ is reduced from 10 Km to "0 to 400 Mtrs."**
35.	28.02.2020	MPCB Issued Show Cause notice to R-11-PP	P@294-295	No Stoppage of Construction; violated directions; EDC imposition
36.	15.07.2020	Letter issued by R-10-RFO	P@255-256	**Industry is at 8.50 Km from ESZ**

That the GIB Sanctuary is notified vide dated 27.09.1979 (**P@44-47**) constituting on an area **7818.47 Sq. Km.** including entire Shrigonda Taluka reserved for GIB Sanctuary and also increased area of GIBS vide notification dated 16.09.1985 (**P@48-49**) by **677.97 Sq. Km.** from 7818.47 Sq. Km. to **8496.44 Sq. Km**. and thereafter, MoEFCC have issued guidelines vide dated 09.02.2011 (**P@93-104**) imposing Eco-sensitive zone (ESZ) upto 10 Km as per Hon'ble SC Order passed in WP No. 202/1996 around all the National Parks & Wildlife Sanctuaries. Thereafter, State Government have reduced GIB Sanctuary to 1222.61 Sq. Km. from **8496.44 Sq. Km** vide notification dated 27.02.2012 (**P@121-122**) and thereafter, again reduced GIB Sanctuary to **366.37** Sq. Km. from **1222.61 Sq. Km**. vide notification dated 05.03.2016 (**P@123-152**). That both the notifications were dealing with only reduction in the area of GIBS and ESZ around GIBS

was not fixed even in these notification and it was 10 Km as per the guidelines dated 11.02.2011. Thereafter, R-11-PP applied for the environment clearance for establishment of 26 MW Co-gen Plant, that SEAC considered the proposal in its 150th meeting held on 03.05.2018 (P@768-779) & issued ToR for preparation of EIA on a land Gat No. **52/1** i.e. Reserved Forest & ESZ of GIBS. That the R-11-PP have started errection of 26 MW Co-gen plant by procuring CTE form MPCB vide dated 18.05.2018 (**P@159-165**) on reserve forest area of Gat No. 52/1 as per CTE itself and ex-post facto EC dated 11.09.2019 (P@805-816). However, the ESZ imposed vide guidelines dated 09.02.2011 remain 10 Km in force and this ESZ limit was reduced to 0 Mtrs to 400 Mtrs. vide dated 11.02.2020 (**P@244-254**). That thee is manipulation in the records of the MPCB & SEIAA to change the Gat No. from 52/1 to 52/2, and MPCB & SEIAA knowingly involvement of such manipulation & forgery of record to overcome the violations. Therefore, R-11-PP have established/installed various units of sugar, distillery & 26 MW Co-gen unit before 11.02.2020 expanding the scope of the project and caused grave damage to the GIBS-ESZ in irreparable manner since 27.09.1979 to 11.02.2020.

4.6 ADMITTED CASE OF VIOLATIONS AND NON-ACTIONS BY GOVERNMENT AUTHORITIES AND COLLUSION WITH R-11-PP: MPCB; PS-DOE/SEIAA; FOREST; CCF; TEHSILDAR; SDO; COLLECTOR:

That the Joint Committee report, replies of the MPCB, Collector Ahmednagar, SDO-Shrigonda Karjat, CCF-Pune, Dy. CF-Ahmednagar and admission of R-11-PP itself shows following admission;

A) Measurement & Demarcation plan dated 20.01.2020 to 24.01.2020 prepared by Dy. SLR Shrigonda shows illegal occupancy & possession of 40.57 Ha against the grant of 32.80 Ha (i.e. 82 Acres). This Plan is attached with Joint Committee Report.

B) Survey No. 99 of Village-Limpangaon having total land area admeasuring 428 Acres 5R and out of 428 Acres 5 R only 40 Acres land was removed from reserved forest in 1935 and thereafter, 82 Acres of land was removed from the reserve forest on 25.11.1970. Therefore, total area de-reserved is 122 Acres out of 428 Acres 5R and till date an area admeasuring 306 Acres 5R and said Entire land is New Gat No. 52/1 is still Reserve Forest attracting provisions of Forest Conservation Act, 1980 and there is no notification for removal of reserved forest from 52/1.

C) Sugar Industry is restricted to the land area of 82 Acres granted vide order dated 02.04.1971 and de-reserved vide notification dated 25.11.1970.

D) R-11-PP himself in Para-3 of its affidavit dated 13.11.2021 have admitted the occupancy & possession of 35.90 Ha land from Gat No. 52/1. (**P@376**)

"¶3; *....*"*whereas the Survey No. 234/1 admeasuring an area of 122.46 HR has been given a new Survey No. 52/1. Out of the total area of 122.46 HR an area of 35.90 HR is in possession of the Respondent No. 11*".

E) Land admeasuring an area 35.90 Ha from reserved forest is ex-changed from 2003 to 2013 by adjoining land holders from Gat No. 52/1 i.e. reserved forest with R-11-PP without obtaining prior permission of Central Government under Section 2 of Forest Conservation Act, 1980. Therefore, these ex-changes are illegal and Revenue Department is in process

to obtain sanction from State Government by seeking permission for revision permission.

F) Joint Committee have opined that the Industrial unit of R-11-PP is not coming under ESZ of GIBS as per notification dated 11.02.2020. However, this Applicant have filed objections to this issue and clarified that the GIBS was formed on 25.09.1979 and 10 Km ESZ around GBIS was imposed since 09.02.2011. Therefore, R-11-PP have expanded scope of project/ carried out operation/ established 26 MW Co-gen unit in 2018 and caused damage to ESZ & GIBS.

G) R-11-PP have stated construction of 26 MW Co-gen plant in violation of terms of CTE dated 18.05.2018 on Gat No. 52/1 and without obtaining prior EC and thereafter, EC dated 11.09.2019 is obtained in ex-post facto manner.

H) Therefore, Applicant states that, from the above admission, it is clear that there is collusion of R-11-PP having deep unholy nexus with Revenue Department, Forest Department, MPCB, SEIAA, Collector, SDO & Tehsildar and the directors of this industry have great political influence over government machinery & its officials.

4.7 DAMAGE TO ENVIRONMENT, ECOLOGY; RESERVED FOREST; ESZ, GIBS CAUSED BY R-11-PP:

That the substantial & irreparable damage to the Reserve forest land by enrochments to the tune of 7.72 Ha (beyond granted land of 32.80 Ha), illegal exchange & illegal enjoyment of Reserve Forest to the tune of 35.90 Ha, illegal establishment of 26 MW Co-gen Plant on 52/1 i.e. Reserve forest without prior EC and by procuring CTE dated 18.05.2018 and violation of its terms & Conditions. Thereafter, procurement of ex-post facto EC dated

11.09.2019 and thereafter, illegal operations of 26 MW plant for the years 2019-2020, 2020-2021 without obtaining CTO. Damage to the ESZ of GIBS since 25.09.1979 to 11.02.2020. Considering the above facts & circumstances, PP may kindly be directed to pay an amount of more than **Rs. 25 Crores** (Total project cost is Rs. 130.44 Crores as stated in EC dated 11.09.2019) under "polluter pay principles" and direct to stop the further operation of 26 MW Co-gen plant being installed on reserve forest land. Any lessor amount of EDC will not have deterrent effect on PP, as PP is the habitual offender in environmental matters and always non-complying industries toward environment protection. As well as this Hon'ble NGT shall stop the operation of plant, removal various errection from reserve forest land and handover the reserve forest land to the Forest Department for restoration & restitution of area from the EDC imposed on PP.

PART-E: JOINT COMMITTEE REPORT

5. **JOINT COMMITTEE REPORT**: that the joint committee have supported the contention of the Original Applicant holding that

A) The ESZ around GIBS has reduced to 0 to 400 Mtrs vide notification 11.02.2020. Therefore, it means provisions of guidelines of 09.02.2011 are applicable and there is past damage to ESZ & GIBS since 25.09.1979 to 11.02.2020.

B) R-11-PP is holding land area admeasuring 35.90 Ha from Gat No. 52/1 by way of ex-change from 2003 to 2013 which is still reserve forest and provisions of Forest Conservation Act, 1980 are applicable.

C) That the R-11-PP have undertaken establishment, expansions & operations on land admeasuring 40.57 Ha against grant of an area of 32.80 ha (82 Acres).

D) PP have violated terms & Condition of CTE dated 18.05.2018 and also, carried out substantial construction of 26 MW Co-gen Plant without prior EC & in violation of CTE despite stoppage order vide dated 19.01.2019 also show Cause notice dated 24.10.2019. MPCB have imposed EDC of 69.96 Lakhs vide direction dated 28.02.2020 and PP have procured EC dated 11.09.2019. These facts have clarified by MPCB by way of submission of report dated 04.03.2020 to the joint Committee.

E) Therefore, Joint Committee Report is supporting the allegations & contentions raised by Original Applicant.

PART-F: STAND OF R-1: PS-REVENUE & FOREST DEPT.,

6. Stand of R-1: PS-Revenue & Forest Dept.,: That this Respondent have not tiled any reply, despite notice and chosen not to file reply by not attending the proceedings and therefore, matter may kindly be decided ex-partie.

PART-G: STAND OF R-2: PS-DOE

7. Stand of R-2: PS-DoE: That this Respondent have not tiled any reply, despite notice and chosen not to file reply and therefore, matter may kindly be decided accordingly.

PART-H: STAND OF R-3-4: MPCB

8. Stand of R-3-4: MPCB: That the MPCB have field its reply dated 28.07.2023 (P@**560-591**) and supported the contentions to extent of violations of CTE dated 18.05.2018 and illegal construction of 26 MW Co-gen plant without prior EC i.e. ex-post facto EC dated 11.09.2019 is procured and PP have carried out construction of more than 50% prior to obtaining EC, as stated in Stop Work Order dated 19.01.2019 and issued first CTO on 28.01.2021, it means

there was no CTO for two years 2019-2020 & 2020-2021 and PP have carried out illegal operations without CTO.

Further, this Original Applicant counter the stand of MPCB on issue of ESZ around GIBS; That the stand of MPCB of marking & declaration of ESZ around GIBS is only on 11.02.2020 for first time is totally false and in actual, ESZ was since 25.09.1979 and its was clarified by guidelines dated 09.02.2011.

PART-I: STAND OF R-5-6-7: COLLECTOR; SDO; TEHSILDAR-SHRIGONDA

9. **Stand of R-5-6-7: Collector; SDO; Tehsildar-Shrigonda**: that the R-5-6-7 have filed its affidavit 14.08.2023 (**P@545-559**) have supported the contentions of the Original Applicant on account of Reserve forest land & grant of only 82 Acres to R-11-PP for sugar factory out of 428 Acres 5R, illegal ex-change of reserve forest land to the extent of 35.90 Ha and mislead on account of ESZ of GIBS on account of subsequent Notification dated 11.02.2020 reducing ESZ from 10Km & fixing ESZ of 400 Mtrs. around GIBS. Therefore, R-11-PP have collusion with R-5-6-7 and without help of these respondents, entire scam was not possible.

PART-J: STAND OF R-8-9-10: CCF-PUNE; DY. CF-AHMEDNAGAR; ROF-SHRIGONDA

10. **STAND OF R-8-9-10: CCF-PUNE; DY. CF-AHMEDNAGAR; ROF-SHRIGONDA**: That the R-8-9-10 has filed its reply vide dated 13.09.2023 (**P@592-612**) and it is the copy paste reply of R-5 & 6. And supported the contentions from the Original Application except ESZ, which is replied by PP above.

PART-K: STAND OF R-11-PP

11. **Stand of R-11-PP**: That the PP have filed three reply affidavit vide dated 31.08.2020 (P@215-268), 12.01.2021 (P-327-373) and 13.11.2021 (P@374-340C) and as usual R-11-PP have partly admitted the violations on account of CTE dated 18.05.2018, CTO dated 28.01.2021, ex-post facto EC dated 11.09.2019 and holding of ex-change of forest land to the tune of 35.90 Ha on the basis of some resolution dated 01.04.1969 passed by Government, which is not placed on record till date. In respect of other contentions raised by PP are countered by other government authorities and supported the contentions of the Original Applicant by way of Joint Committee Report & their replies. Therefore, the Replies of the PP are totally false, misleading, baseless,

PART-L: PRELIMINARY OBJECTIONS BY PP AND REPLY BY APPLICANT

12. **PRELIMINARY OBJECTIONS BY PP AND REPLY BY APPLICANT**: That the R-11-PP have not filed any separate Application challenging the preliminary objections on account of maintainability of OA. However, some of preliminary objections are raised in its affidavit dated 31.08.2020 (P@215-268) in Para-3 to 4 as below;

A) Para-3: Challenge to the CTE dated 18.05.2018 is not maintainable in OA

B) Para-4: OA barred by Limitation U/s. 14 of NGT Act, 2010 as OA seeking revocation of CTE dated 18.05.2018 & Mutation Entries "Exhibit-G"

That the Original Applicant have filed detailed Reply to these objections of PP by way of Rejoinder dated 24.09.2020 (P@269-295) from **Para-7 & 8 (P@271-281)** and rebutted these objections strongly, as these objections of PP are itself

not maintainable and baseless. That the Original Applicant not only challenged the CTE dated 18.05.2018, but also prayed for stoppage of Construction & erection of 26 MW Co-gen unit. Therefore, consequential reliefs have to be granted considering the illegal enjoyment of Reserved Forest Land, Illegal exchange of 35.90 Ha of Reserve Forest form Gat No. 52/1, damage to ESZ since 1979 to 2020, for obtaining ex-post facto EC and not obtained prior EC, as held by Hon'ble Supreme Court in **Para-41** of "**MCGM Vs Ankita Sinh**a". It is important to note that the substantial question of environment relate to grant of CTE dated 18.05.2018 in present case was and therefore, grant of CTE dated 18.05.2018, is the cause of action to file present case as recurring cause of action and then sub-sequent but independent event of MPCB stop work order dated 19.01.2019, MPCB site visit report dated 28.05.2019, 31.07.2019 on the basis of complaint of this Applicant also constitute the case of action being bundle of actions. Moreover, this Hon'ble NGT have larger jurisdiction to decide the issue of abuse of process of law & end of justice under Rule No. 24 of NGT (P&P) Rules, 2011. Also, this Hon'ble NGT have power to decide the issue from other enactments, but related to the environment U/s. 33 of NGT Act, 2010 for overriding effect as equivalent to the writ jurisdiction.

That this Hon'ble NGT have clarified the position of all preliminary objections in "Forward Foundation Case" and same is attained finality from Hon'ble Supreme Court in "Mantri Techzone Case". Therefore, this OA shall be allowed in totality in the larger interest of protection of Reserve Forest.

PART-M: CASE LAWS RELIED BY APPLICANT

13. **Case laws Relied by Original Applicant**: that the Original Applicant would like to rely on the following case laws in view to support the contentions from WP/OA;

Sr.	Case Law	Para & Purpose of reliance	Page
1.	T. N. Godavaram Thirumulpad Vs. Union of India and Ors. **(1997) 2 SCC 267**	¶4: Forest Conservation Act, 1980 ¶5I(1): Non-forest activity not permissible, prior permission of central govt. mandatory, **P@521 Definition of Forest**	P@519-525
2.	Hon'ble Supreme Court Judgment in A. Chowgule & Co. Ltd Vs. Goa Foundation & Ors. **(2008) 12 SCC 646**	¶8: "No doubt land leased out was indeed forest Land- Lease deed rightly quashed" **P@325** **Ratio Decidendi:** "For the diversion of any forest land and its use for some other purpose, prior approval from central government is required and a lease obtained will be null and void" **S.2**: The Forest Conservation Act, 1980	P@318-326
3.	Sterlite Industry (I) Ltd. & Ors. Vs. UoI & Ors **(2013) 4 SCC 575**	**¶42: Impact on Environment ¶45: CTO Violation ¶46-47:** Total production; revenue generated; rich & mightiness of the PP; exemplary EDC to have deterrent effect on PP	**P@**
4.	Hon`ble NGT-PB, New Delhi; The Forward Foundation Vs State of Karnataka & Ors. **2015 SCC OnLine NGT 5**	¶20-33: Cause of Action ¶29: Plural Remedies/Single Cause of action	**P@642-649**
5.	Hon`ble NGT-PB, New Delhi; Doaba Paryavaran Samiti Vs. Union Of India **(2015) 12 NGT CK 0010**;	¶11: Limitation & Cause of Action **¶: 13-16:** Restoration & Restitution of Area on account of complex nature of eco-system	**P@710-716**
6.	M/s. Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC & Ors. **(2018) 18 SCC 257**	¶17: Natural Resource, ¶26-28: Ex-post facto EC ¶64: Manipulation of Government Officials Conduct of PP: Careless, reckless approach of PP, convenient ignorance towards environment & forest compliances	**P@**
7.	Hon'ble NGT-PB, New	**¶7:** EDC of Rs. 10 Crores	**P@**

	Delhi **OA No. 368/2018**, Judgment dated 31.01.2019 Mr. Nilkanth R. Rasker Vs. M/s. Saswad Mali Sugar Factory Ltd.	imposed on PP for violations of Consent & Illegal Operations & establishment without Consent.	
8.	Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors. **(2019) 18 SCC 494**	¶39-48: Maintainability, Cause of Action, Limitation, powers u/s. 14, 15, 20, 33 (Overriding Effect) ¶49: Environmental Degradation ¶50: No mention of provisions	P@700-702
9.	Hon'ble NGT-PB, New Delhi OA No. 124/2017 Judgment dated 13.07.2021 Sarv Jan Kalyan Sewa Samiti Vs. Union of India & Ors.	**¶21:** Protected Forest Area restored and handed over to forest department, **¶22:** Transfer of protected forest without due procedure being an offence, this order may not be treated as condoning the illegal action but remedying the situation in peculiar fact situation. **(Hospital Case)**	P@626-627
10.	Hon`ble SC: CA No. 7728 of 2021 Order dated 12.01.2022 HUDA Vs. Sarv Jan Kalyan Sewa Samiti & Ors.	¶Appeal dismissed by Hon'ble SC against the Order & Judgment dated 13.07.2021 Passed in OA No. 124/2017 (PB)	P@629-630
11.	MCGM Vs Ankita Sinha & Ors. **2021 SCC Online SC 897**	**¶38-40:** Rule 24: to prevent abuse of its process or to secure the ends of justice **¶41:** NGT is conferred with power of moulding any relief. **justified in the facts and circumstances of the case,** **¶42:** *locus standi* **¶43:** Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution **¶75**: **Principle 10 of the Rio Declaration** which speaks of three fundamental rights i.e., **access to information, access to public participation and access to justice**, **¶86**: Larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus	**P@**

		standi.	

PART-N: SUGGESTIONS ON BEHALF OF APPLICANT

14. Suggestions on behalf of Applicant: In the above facts & circumstance of the case, admissions of Government Authorities, R-11-PP, Original Applicant would like to give following suggestions;

14.1 Direct R-11-PP to stop the operation of Co-gen Plant, distillery plant & other Infrastructure etc. following on Reserved forest land and remove the illegal errection & installations from forest lands;

14.2 Direct the Dy. Superintendent of Land Records & Collector Ahmednagar to fix the boundaries of the Land admeasuring 82 Acres (32.80 Hectors) towards "North Side and East Side" by measuring & demarcating the same as per Government of Maharashtra Notification dated 25.11.1970, as boundaries towards the West Side: Canal & South Side: Janglewadi-Limpangoan Road" is permanent & fixed by Notification dated 25.11.1970.

14.3 Direct the R-11-PP, after measurement & demarcation, to remove the encroachment/ illegal occupancy/ of Co-gen plant, distillery unit, ETP Units, Water Tanks, Composting pits, ETP Tanks, Spent wash Tanks, Lagoons, from Forest land and close the operations of till removal, restitution and restoration of reserve forest area as well as remove the encroachments on an area admeasuring 35.90 Ha from Gat No. 52/1 of Village-Limpangaon as recommended by Joint Committee in its report in "**Para-1(iii) & Para-2 on {Page@311-315}**" on account of illegal exchange in violation of Forest (Conservation) Act, 1980 and cancel the said exchange;

14.4 Direct Collector of Ahmednagar to complete the process of correcting the Revenue records to restore the forest land and further direct Collector of Ahmednagar to handover the possession of said forest land to Principal Chief Conservator of Forest (PCCF/CCF);

14.5 Direct the R-11-PP to pay heavy amount of EDC on account of causing damage to the GIBS since 27.09.1979 i.e. inclusion of forest area into Great Indian Bustard (GIBS) Sanctuary to 11.02.2020 i.e. till reduction of area of GIBS thereby installation of various infrastructure on forest land/ GBIS Land.

14.6 Direct the R-11-PP to pay heavy amount of EDC on account of violation of terms and condition of CTE dated 18.05.2018 issued on Gat No. 52/1 as per consent and for procuring ex-post facto EC dated 11.09.2019 by misleading the MPCB & SEIAA.

14.7 Cost of this Application may kindly be given to the applicant.

14.8 Pass any other relief(s), Order(s), direction(s) in the interest of environment & ecology;

Date: 19.10.2023

RAHUL A. TAMBE
(ADVOCATE FOR APPLICANT)

IN THE SUPREME COURT OF INDIA

WRIT PETITION NO.460/2004

GOA FOUNDATION V/S UNION OF INDIA

ORDER DATED 4.12.2006

UPON hearing counsel the Court made the following

O R D E R

The order dated 16th October, 2006 refers to a letter dated 27th May, 2005 which was addressed by the Ministry of Environment and Forests (MoEF) to the Chief Wildlife Wardens of all States/Union Territories requiring them to initiate measures for identification of suitable areas and submit detailed proposals at the earliest. The order passed on that date was that MoEF shall file an affidavit stating whether the proposals received pursuant to the letter of 27th May, 2005 have been referred to the Standing Committee of National Board for Wildlife under the Wild Life (Protection) Act, 1972 or not. It was further directed that such of the States/Union Territories who have not responded to the letter dated 27th May, 2005 shall do the needful within four weeks of the communication of the directions of this Court by the Ministry to them.

It seems that despite the letter dated 27th May, 2005 and despite the Ministry having issued reminders and also bringing to the notice of the States/Union Territories the orders of this Court dated 16th October, 2006, the States/Union Territories have not responded. However, we are told that the State of Goa alone has sent the proposal but that too does not appear to be in full conformity with what was sought for in the letter dated 27th May, 2005.

The order earlier passed on 30th January, 2006 refers to the decision which was taken on 21st January, 2002 to notify the areas within 10 km. of the boundaries of national parks and sanctuaries as eco-sensitive areas. The letter dated 27th May, 2005 is a departure from the decision of 21st January, 2002. For the present, in this case, we are

not considering the correctness of this departure. That is being examined in another case separately. Be that as it may, it is evident that the States/Union Territories have not given the importance that is required to be given to most of the laws to protect environment made after Rio Declaration, 1972.

The Ministry is directed to give a final opportunity to all States/Union Territories to respond to its letter dated 27th May, 2005. The State of Goa also is permitted to give appropriate proposal in addition to what is said to have already been sent to the Central Government. The communication sent to the States/Union Territories shall make it clear that if the proposals are not sent even now within a period of four weeks of receipt of the communication from the Ministry, this Court may have to consider passing orders for implementation of the decision that was taken on 21st January, 2002, namely, notification of the areas within 10 km. of the boundaries of the sanctuaries and national parks as eco-sensitive areas with a view to conserve the forest, wildlife and environment, and having regard to the precautionary principles. If the States/Union Territories now fail to respond, they would do so at their own risk and peril.

The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5 (b) and 5 (c) (ii) of the Wild Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km. zone.

List the matter after eight weeks.

(N. Annapurna) 5/12/06
Court Master

(V.P. Tyagi) 5/12/06
Asstt. Registrar.

F.No.1-9/2007 WL-I
Government of India
Ministry of Environment and Forests
(Wildlife Division)

Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi- 110003
Date: 31.12.2012

To,
The Chief Wildlife Warden
All State/Union Territories

Sub: Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries - reg.

Sir,

As you are aware that the Ministry of Environment and Forests has issued guidelines for notification of Eco-Sensitive Zones around National Parks and Sanctuaries on 9th February 2011. However, the progress on this front has been far from satisfactory. Only very few States have come forward with proposal, that too for few of the National Parks and Sanctuaries in their respective States. It may be pertinent to mention that the Hon'ble Supreme Court is also considering this issue in I.A 1000 in Writ Petition (Civil) No. 202/1995 and Writ Petition (Civil) No. 460/2004.

The Ministry of Environment and Forests is of the view that the State/Union Territory Governments be given one last opportunity to submit site specific proposal for declaration of eco-sensitive zones around National Parks and Sanctuaries, **latest by 15th February, 2013**. In this regard a letter from the Secretary, Ministry of Environment and Forests, has been issued to all the Chief Secretaries of all states/union territories.

Kindly find enclosed the letter issued to the Chief Secretary, regarding the submission of site specific proposals for declaration of eco-sensitive zones around National Parks and Sanctuaries, latest by 15th February, 2012. It is requested to kindly take the necessary action in this regard.

Yours faithfully

(Vivek Saxena)
Deputy Inspector General (WL)

Encl: as above

Copy to:

1. The NIC Cell- with a request to kindly upload the same on the official website of the Ministry

Representative Letter

वी० राजगोपालन
Dr. V. RAJAGOPALAN, IAS

सचिव
भारत सरकार
पर्यावरण एवं वन मंत्रालय
Secretary
Government of India
Ministry of Environment and Forests

D.O. No. 1-9/2007 WL (pt)
Dated: 11th December, 2012

Dear Smt. Mathew

It has been more than a decade since the Wildlife Conservation Strategy-2002, adopted by the Indian Board for Wildlife, *inter alia*, envisaging declaring land falling within 10 kms of the boundary of National Parks and Sanctuaries as eco-fragile zones was communicated to State/Union Territory Governments. Due to the reservations expressed by few States, the matter had been once again examined by the National Board for Wildlife in its 2nd Meeting held on 17th March 2005, wherein it was decided to have site specific eco-sensitive zones. This decision was communicated to all the State/Union territories vide letter dated 27th May 2005. It was also requested that site specific proposals be submitted to this Ministry at the earliest. This Ministry has been since been pursuing with State/Union Territory Governments on this issue.

In order to facilitate the submission of proposals, this Ministry had also brought out guidelines on 9th February 2011. However, the progress on this front has been far from satisfactory. Only very few States have come forward with proposals, that too for few of the National Parks and Sanctuaries in their respective States. It may be pertinent to mention that the Hon'ble Supreme Court is also considering this issue in I.A 1000 in Writ Petition (Civil) No. 202/1995 and Writ Petition (Civil) No. 460/2004.

The Ministry of Environment and Forests is of the view that the State/Union Territory Governments be given one last opportunity to submit site specific proposals for declaration of eco-sensitive zones around National Parks and Sanctuaries, **latest by 15th February, 2013**. In case the State/Union Territory Governments fail to submit the proposals within the stipulated period, the activities that have been prohibited as per the guidelines of the Ministry dated 9th February 2011 would stand prohibited within 10 kms of the boundary of National Parks and Sanctuaries.

In view of the above position, I would request you to kindly instruct the concerned authorities for appropriate action on priority.

Regards,

Yours sincerely,

(V. Rajagopalan)

Encl: As above.

Ms. Minnie Mathew
Chief Secretary
Government of Andhra Pradesh
Hyderabad

D/C issued by Speed post
dtd 18/12/12

जहाँ है हरियाली।
वहाँ है खुशहाली॥

पर्यावरण भवन, सी.जी.ओ. कॉम्प्लेक्स, नई दिल्ली 110 003 फोन : 24360721, 24361896, फैक्स : (011) 24362746
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F.No. 22-43/2018-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
(IA Division)

Indira ParyavaranBhawan
JorBagh Road, Aliganj,
New Delhi – 110003

Dated: 8th August, 2019

OFFICE MEMORANDUM

Subject: Procedure for consideration of developmental projects located within 10 km of National Park/Wildlife Sanctuary seeking environmental clearance under the provisions of the Environmental Impact Assessment (EIA) Notification, 2006 - regarding.

The Hon'ble Supreme Court vide its Order dated 4.12.2006 in Writ Petition No. 460 of 2004 – Goa Foundation Vs. Union of India, has inter-alia directed that Ministry of Environment and Forests *"(MoEF) would also refer to the Standing Committee of the National Board for Wildlife, under section 5(b) & 5(c) (ii) of the Wildlife Protection Act, 1972, the cases where environmental clearances has already been granted where activities are within 10km. zone" of the boundaries of the Sanctuaries and National Parks."*

2. In this regard, the erstwhile MoEF vide Circular No. L-11011/7/2004-IAII (I)(Part) dated 27.02.2007 and Office Memorandum No. J-11013/41/2006-IA.II(I) dated 02.12.2009 delineated a procedure for consideration of developmental projects located within 10 km of National Park/Wildlife Sanctuary for grant of environmental clearance under EIA Notification, 2006. As per the stipulated procedure, prior clearance from Standing Committee of the National Board for Wildlife (SCNBWL) would be required for the developmental projects located within 10km of the National Park/Wildlife Sanctuary.

3. Over a period of time, Ministry has notified number of Eco-Sensitive Zones (ESZs) around Protected Areas (PAs). Many of developmental activities are prohibited/regulated in these ESZs *inter-alia* including mining operations to be carried out in accordance with the order of the Hon'ble Supreme Court dated 4.08.2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in

W.P.(C) No. 202 of 1995 and dated 21.4.2014 in the matter of Goa Foundation Vs. UOI in W.P.(C) No. 435 of 2012 as per the notifications issued for their constitution.

4. In light of the aforesaid Orders passed by the Hon'ble Supreme Court, the issues related to the prior clearance from SCNBWL for the notified ESZs and the remaining areas have been examined in detail. In this regard, it has been decided by the Competent Authority in the Ministry to adopt a following procedure for consideration of developmental projects located within 10 km of National Park/Wildlife Sanctuary seeking environmental clearance under the provisions of the EIA Notification, 2006, in supersession of the earlier O.M.s dated 27.2.2007 and 2.12.2009:

i. Proposals involving developmental activity/project located within the notified Eco-Sensitive Zones (ESZ) shall be regulated and governed by the concerned ESZ notification. However, for the developmental project/activity located within the notified ESZ and covered under the schedule of the EIA Notification 2006, prior clearance from Standing Committee of the National Board for Wildlife (SCNBWL) is mandatory. In such cases, the project proponent shall submit the application simultaneously for grant of Terms of Reference as well as wildlife clearance.

ii. Proposals involving developmental activity/project located outside the stipulated boundary limit of notified ESZ and located within 10 km of National Park/Wildlife Sanctuary, prior clearance from Standing Committee of the National Board for Wildlife (SCNBWL) may not be applicable. However, such proposals from environmental angle including impact of developmental activity/project on the wildlife habitat, if any, would be examined by the sector specific Expert Appraisal Committee and appropriate conservation measures in the form of recommendations shall be made. These recommendations shall be explicitly mentioned in the environmental clearance letter and shall be ensured by the member secretary concerned.

iii. Proposals involving developmental activity/project located within 10 km of National Park/Wildlife Sanctuary wherein final ESZ notification is not notified (or) ESZ notification is in draft stage, prior clearance from Standing Committee of the National Board for Wildlife (SCNBWL) is mandatory. In such cases, the project proponent shall submit the application simultaneously for grant of Terms of Reference/environmental clearance as well as wildlife clearance.

iv. Proposals involving mining of minerals within the ESZ (or) one kilometer from the boundaries of National Parks and Sanctuaries whichever is higher is prohibited in accordance with the order of the Hon'ble Supreme Court dated 4.08.2006 in the matter of T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated 21.4.2014 in the matter of Goa Foundation Vs. UOI in W.P.(C) No. 435 of 2012.

5. This issues with the approval of the Competent Authority.

8/8/19

(Sharath Kumar Pallerla)
Director

To

1. Chairman, Central Pollution Control Board (CPCB).
2. Chairman of all the Expert Appraisal Committees
3. Chairperson/Member Secretaries of all the SEIAAs/SEACs
4. All the Officers of I.A. Division
5. Chairpersons/Member Secretaries of all SPCBs/UTPCCs

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary(EF&CC)
4. PPS to SS(AKJ)
5. PPS to AS (RSP)
6. PPS to JS (GM)/ JS(RS)/JS(AKN)
7. Website, MoEF&CC
8. Guard file.

State Expert Appraisal Committee (SEAC-1)

SEAC Meeting number: 150th (Day 1) **Meeting Date** May 3, 2018

Subject: Environment Clearance for Proposed 26 MW bagasse based Co-generation unit

Is a Violation Case: No

1.Name of Project	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd, Plot No 51/1, Limpangaon Village, Tal- Shrigonda, Dist- Ahmednagar, Maharashtra
2.Type of institution	TOR
3.Name of Project Proponent	Mr. R.S.Naik
4.Name of Consultant	M/s SGM Corporate Consultants Pvt. Ltd.
5.Type of project	Industrial Project
6.New project/expansion in existing project/modernization/diversification in existing project	It is a Proposed New Project of 26 MW bagasse based Co-generation Plant with 180 Operational days
7.If expansion/diversification, whether environmental clearance has been obtained for existing project	Not Applicable
8.Location of the project	Gat. No. 51/1
9.Taluka	Shrigonda
10.Village	Limpangaon
Correspondence Name:	Mr. R.S.Naik
Room Number:	Gat No. 51/1
Floor:	Not Applicable
Building Name:	Not Applicable
Road/Street Name:	Not Applicable
Locality:	Village- Limpangaon, Tal- Shrigonda, District- Ahmednagar
City:	Shrigonda
11.Area of the project	Grampanchayat Limpangaon
12.IOD/IOA/Concession/Plan Approval Number	Not Applicable
	IOD/IOA/Concession/Plan Approval Number: Not Applicable
	Approved Built-up Area: 5545
13.Note on the initiated work (If applicable)	Not Applicable
14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)	Not Applicable
15.Total Plot Area (sq. m.)	333960
16.Deductions	Not applicable
17.Net Plot area	Not applicable
18 (a).Proposed Built-up Area (FSI & Non-FSI)	**a) FSI area (sq. m.):** Not applicable
	b) Non FSI area (sq. m.): Not applicable
	c) Total BUA area (sq. m.): 5545
18 (b).Approved Built up area as per DCR	**Approved FSI area (sq. m.):**
	Approved Non FSI area (sq. m.):
	Date of Approval:
19.Total ground coverage (m2)	Not applicable
20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	Not applicable
21.Estimated cost of the project	1304350000

22.Number of buildings & its configuration

Serial number	Building Name & number	Number of floors	Height of the building (Mtrs)
1	Not applicable	Not applicable	Not applicable
2	Not applicable	Not applicable	Not applicable

23.Number of tenants and shops	Not applicable
24.Number of expected residents / users	Not applicable
25.Tenant density per hectare	Not applicable
26.Height of the building(s)	
27.Right of way (Width of the road from the nearest fire station to the proposed building(s)	9 m
28.Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation	9 m
29.Existing structure (s) if any	Existing Sugar & Distillery Unit is present at site. Adequate space is available for proposed Co-gen Unit.
30.Details of the demolition with disposal (If applicable)	Not applicable

31.Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Co-generation power plant	0	26 MW	26 MW
2	Sugar	11550 MT/M	0	11550 MT/M
3	Rectified spirit	900 KL/M	0	900 KL/M
4	Fusel Oil	2 KL/M	0	2 KL/M
5	ENA	600 KL/M	0	600 KL/M

32.Total Water Requirement

Dry season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Proposed overhead water tank of 100 m3
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Wet season:	**Source of water**	Not applicable
	Fresh water (CMD):	Not applicable
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	Not applicable
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Proposed overhead water tank of 100 m3
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Details of Swimming pool (If any)	Not applicable	

33.Details of Total water consumed

Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
Water Requirement	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Domestic	0	6	6	0	1	1	0	5	5
Industrial Process	0	5105.6	5105.6	0	Loss= 938.4 m3, Recycle = 4120.2 m3	Loss= 938.4 m3, Recycle = 4120.2 m3	0	53	53

34.Rain Water Harvesting (RWH)	**Level of the Ground water table:**	Around 50 m
	Size and no of RWH tank(s) and Quantity:	Will be detailed & given in EIA report
	Location of the RWH tank(s):	Will be detailed & given in EIA report
	Quantity of recharge pits:	Will be detailed & given in EIA report
	Size of recharge pits :	Will be detailed & given in EIA report
	Budgetary allocation (Capital cost) :	20 Lacs
	Budgetary allocation (O & M cost) :	2 Lac
	Details of UGT tanks if any :	Existing water reservoir capacity = 88500 m3
35.Storm water drainage	**Natural water drainage pattern:**	Will be detailed in EIA report
	Quantity of storm water:	Will be detailed in EIA report on the basis of on site meteorological data & maximum rainfall data
	Size of SWD:	Will be detailed in EIA report
Sewage and Waste water	**Sewage generation in KLD:**	5
	STP technology:	Septic tank & Soak Pit
	Capacity of STP (CMD):	NA
	Location & area of the STP:	-
	Budgetary allocation (Capital cost):	15 Lac
	Budgetary allocation (O & M cost):	1.5 Lac
36.Solid waste Management		
Waste generation in the Pre Construction and Construction phase:	**Waste generation:**	Construction waste debris
	Disposal of the construction waste debris:	To Authorized dealers
Waste generation in the operation Phase:	**Dry waste:**	Boiler Ash= 19.06 MT/D
	Wet waste:	Canteen waste
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable

Mode of Disposal of waste:	**Dry waste:**	Boiler Ash- Biocomposting
	Wet waste:	canteen waste- As manure in factory green belt area
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable
Area requirement:	**Location(s):**	Not applicable
	Area for the storage of waste & other material:	0.5 Acre for Storage of Boiler Ash
	Area for machinery:	BUA= 5545 sq.m.
Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	Capital cost for plant & Machinery = 1076748000
	O & M cost:	-

37.Effluent Charecterestics

Serial Number	Parameters	Unit	Inlet Effluent Charecterestics	Outlet Effluent Charecterestics	Effluent discharge standards (MPCB)
1	pH	-	6-6.5	5.5-8.5	5.5-8.5
2	SS	mg/lit	250-300	<100	<100
3	BOD	mg/lit	650-750	<100	<100
4	COD	mg/lit	1200-1400	<250	<250
5	TDS	mg/lit	800-950	<2100	<2100

Amount of effluent generation (CMD):	53
Capacity of the ETP:	Existing sugar ETP capacity of 1000 CMD will accomodate the effluent from proposed co-gen unit also.
Amount of treated effluent recycled :	36 M3 /day
Amount of water send to the CETP:	Nil
Membership of CETP (if require):	Not applicable
Note on ETP technology to be used	ETP technofeasibility report is attached
Disposal of the ETP sludge	Solid waste generated from Existing sugar ETP (Primary & secondary sludge) is being dried on separated sludge drying beds. Dried sludge is used as manure in company's farm land for cultivation.

38.Hazardous Waste Details

Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	NA	NA	NA	NA	NA	NA	NA

39.Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	Proposed cogeneration unit boiler of 140 TPH	Bagasse requirement for 180 operational days = 228786.75 MT	1	70 m	4	150 Degree.C

40.Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Bagasse requirement for 180 operational days	0	228786.75 MT	228786.75 MT
41.Source of Fuel		Bagasse From Existing Sugar Unit		
42.Mode of Transportation of fuel to site		Bagasse From Existing Sugar Unit - Inline conveyor system. Through RBC (Return bagasse carrier)		

43.Green Belt Development	**Total RG area :**	110206.8 sq.m.
	No of trees to be cut :	0
	Number of trees to be planted :	Industry have already planted 2260 No. of trees. In future industry will plant about 19781 trees.
	List of proposed native trees :	Refer Point v) below
	Timeline for completion of plantation :	Green belt development plan is attached

44.Number and list of trees species to be planted in the ground

Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance
1	Polyalthia longifolia	Ashoka	3502	Small evergreen tree. It is tolerant to air pollution & is effective in alleviating noise pollution.
2	Aegle marmelos	Bel	1679	Native, deciduous shrub, cleans atmosphere by absorbing harmful gases.
3	Eucalyptus	Nilgiri	789	Evergreen, sturdy, fast growing graceful tree. It is particularly good in sequestering carbon.
4	Cocos nucifera	Nariyal	715	Native, coconut palms are medium sized, solitary herbaceous plant.
5	Mangifera indica	Mango	987	Large evergreen tree with dense dome shaped crown.
6	Azadirachta indica	Neem	1056	Evergreen deciduous plant, helps to control soil erosion, effective for odour management.
7	Ficus racemosa	Umbar	953	Evergreen deciduous plant
8	Samanea saman	Rain Tree	878	Rain tree is an attractive, large spreading deciduous tree with low, dense, dome shaped crown. The dome-shaped, low crown provides a very strong shade even at low sun positions. The leaves fold up during rain, allowing more moisture to reach the crops below.
9	Tamarindus indica	Chinch	980	Tamarind is a long lived and beautiful fruiting tree, growing up to 30 metres tall with a dense, spreading crown. The deep roots make it very resistant to storms and suitable for windbreaks.

10	Casuarina equisetifolia	Suru	798	Evergreen tree with a finely branched, feathery crown, usually growing growing from 6 - 35 metres tall.With high productivity and properties that enhance soil fertility, it shows promise as an agroforestry species for arid and semi-arid areas.
11	Banyan	Wad	983	Has the ability to survive & grow for centuries. Helpful in prevention of soil erosion.
12	Ficus religiosa	Peepal	982	Deciduous, evergreen, used as traditional medicine.
13	Acacia nilotica	Babul	754	Medium sized, thorny, nearly evergreen. Useful fodder source particularly in dry regions.
14	Tabernaemontana divaricata	Tagar	745	Native, Antioxidant, Antitumor, anti-infection, analgesic
15	Delonix regia	Gulmohar	935	Native, flowering plant, ornamental tree.
16	Plumeria	Chafa	746	Small ornamental tree, evergreen shrub.
17	Manilkara zapota	Chiku	528	Grow well in wide range of climatic conditions. Medically useful.
18	Terminalia catappa	Badam	987	Fast growing, deciduous or semi-evergreen tree. Its vast roots binds together both sands & poor soils. It has heavy leaf fall & so is a good provider of mulch for the protection of the soil.
19	Ziziphus mauritiana	Bor	784	Plants have an extensive root system and can be used to aid in the fixation of sand.
45.Total quantity of plants on ground				

46.Number and list of shrubs and bushes species to be planted in the podium RG:

Serial Number	Name	C/C Distance	Area m2
1	Not Applicable	Not Applicable	0

47.Energy

Power requirement:	**Source of power supply :**	Startup with MSEDCL & Susequently through own TG set.
	During Construction Phase: (Demand Load)	500 KW
	DG set as Power back-up during construction phase	Proposed DG sets- 2 x 900 KVA
	During Operation phase (Connected load):	7 MW for Sugar Unit, Distillery Unit, Boiler & Utilities.
	During Operation phase (Demand load):	7 MW for Sugar Unit, Distillery Unit, Boiler & Utilities
	Transformer:	Existing transformer of 500 KVA.
	DG set as Power back-up during operation phase:	Proposed DG sets- 2 x 900 KVA
	Fuel used:	HSD for Proposed DG sets (2 x 900 KVA) - 400 lit/hr
	Details of high tension line passing through the plot if any:	Not Applicable

48.Energy saving by non-conventional method:

-

49.Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	Recovery of Energy from condensate, Flue Gases	Will be detailed in EIA report
2	Variable Frequency Drives for fans & motors	Will be detailed in EIA report

50.Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Stack of Proposed co-gen unit boiler of 140 TPH	NA	Electrostatic Precipitator

Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	Details will be provided in EIA
	O & M cost:	Details will be provided in EIA

51.Environmental Management plan Budgetary Allocation

a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	Noise, Water & Soil Pollution control & Occupational health & safety	-	2 Lacs

b) Operation Phase (with Break-up):

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Electrostatic Precipitator will be provided to the stack	The boiler will be equipped with high efficiency three field Electro Static Precipitator, which will remove the suspended particles and ash particles from the flue gas.	70	02
2	ETP	Existing sugar ETP of 1000 CMD will accomodate the effluent from co-gen unit also	150	10
3	Rainwater Harvesting	-	20	02
4	Occupational Health & Safety	-	15	03
5	Laboratory Equipment, Monitoring & Environmental Audit	-	15	03
6	Green belt development	-	20	04
7	Fire fighting for co-gen unit	-	45	2.5
8	Proposed Boiler Stack of co-gen unit	-	100	-
9	Ash handling system	-	100	03
10	Environmental Monitoring	-	-	02

51.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not application

52.Any Other Information

No Information Available

53.Traffic Management

	Nos. of the junction to the main road & design of confluence:	Not applicable

Parking details:	**Number and area of basement:**	Not applicable
	Number and area of podia:	Not applicable
	Total Parking area:	Adequate space for parking will be provided
	Area per car:	Not applicable
	Area per car:	Not applicable
	Number of 2-Wheelers as approved by competent authority:	Not applicable
	Number of 4-Wheelers as approved by competent authority:	Not applicable
	Public Transport:	Not applicable
	Width of all Internal roads (m):	6 m
	CRZ/ RRZ clearance obtain, if any:	Not applicable
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	Not applicable
	Category as per schedule of EIA Notification sheet	Category B, Sr. No. 1 (d)
	Court cases pending if any	Not applicable
	Other Relevant Informations	NA
	Have you previously submitted Application online on MOEF Website.	Yes
	Date of online submission	11-12-2013

SEAC DISCUSSION ON ENVIRONMENTAL ASPECTS

Environmental Impacts of the project	Not Applicable
Water Budget	Not Applicable
Waste Water Treatment	Not Applicable
Drainage pattern of the project	Not Applicable
Ground water parameters	Not Applicable
Solid Waste Management	Not Applicable

Air Quality & Noise Level issues	Not Applicable
Energy Management	Not Applicable
Traffic circulation system and risk assessment	Not Applicable
Landscape Plan	Not Applicable
Disaster management system and risk assessment	Not Applicable
Socioeconomic impact assessment	Not Applicable
Environmental Management Plan	Not Applicable
Any other issues related to environmental sustainability	Not Applicable

Brief information of the project by SEAC

PP submitted their application for the grant of TOR under category 1(d)B1 as per EIA Notification, 2006. PP presented draft TOR based on standard TOR issued by MoEF & CC published in April, 2015 for installation of 26 MW cogeneration pant based o baggase.

DECISION OF SEAC

PP to collect base line data as per Office Memorandum issued by MoEF&CC dated 27.08.2017.

The validity of the TOR will be for three yeatrs as per OM issued by MoEF and CC on 29.08.2017.

PP to submit Form - 2 along with EIA/EMP report as per OM issued by MoEF&CC on 20.04.2018.

Based on the presentation made by PP; committee decided to approve the TOR for the preparation of EIA/EMP report as per standard TOR and additional TOR points mentioned below.

PP to carry out Public Consultation as per EIA Notification, 2006 and submit point wise compliance of all the issues raised during Public Consultation.

Specific Conditions by SEAC:

1) PP to submit lay out plan showing entry/exit gates, internal road width of six meters, turning radius of nine meters, location of pollution control equipment, parking areas, waste storage areas,33% green belt, rain water harvesting etc.
2) PP to carry out HAZOP and QRA and submit Disaster Management Plan.
3) PP to submit detailed water balance calculations required for Cogeneration plant.
4) PP to submit design details of Effluent Treatment Plant.
5) PP to submit copy of approval for water lifting from the competent Authority and copy of agreement in this regard.
6) PP to submit baggase balance calcualtions.
7) PP to submit details of 100% fly ash utilization plan as per latest fly ash Utilization Notification of GOI along with firm agreements/ MoU with contracting parties including other usages etc. The plan shall include disposal methodology of bottom ash.
8) PP to submit detailed plan for carrying out rainwater harvesting.
9) PP to submit their plan to utilize CER (Corporate Environment Responsibility) along with timelines as per OM issued by MoEF&CC dated 01.05.2018

FINAL RECOMMENDATION

The Committee decided to Grant ToR subject to the above observations,PP requested to prepare and submit EIA report as per EIA Notification, 2006 and amendments thereof.

Agenda of 161th Meeting of State Level Expert Appraisal Committee (SEAC-1) (Day-3)

SEAC Meeting number: 161 **Meeting Date** February 15, 2019

Subject: Environment Clearance for Proposed 26 MW bagasse based Co-generation unit

Is a Violation Case: No

1.Name of Project	Proposed 26 MW bagasse based co-generation unit by M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd, Plot No 52/2, Limpangaon Village, Tal- Shrigonda, Dist- Ahmednagar, Maharashtra
2.Type of institution	Private
3.Name of Project Proponent	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
4.Name of Consultant	M/s SGM Corporate Consultants Pvt. Ltd.
5.Type of project	Industrial Project
6.New project/expansion in existing project/modernization/diversification in existing project	It is a Proposed New Project of 26 MW bagasse based Co-generation Plant with 180 Operational days
7.If expansion/diversification, whether environmental clearance has been obtained for existing project	Not Applicable
8.Location of the project	Gat. No. 52/2
9.Taluka	Shrigonda
10.Village	Limpangaon
Correspondence Name:	Mr. R.S.Naik
Room Number:	Gat. No. 52/2
Floor:	Not Applicable
Building Name:	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
Road/Street Name:	Not Applicable
Locality:	Village- Limpangaon, Tal- Shrigonda, District- Ahmednagar
City:	Shrigonda
11.Area of the project	Grampanchayat Limpangaon
12.IOD/IOA/Concession/Plan Approval Number	Not Applicable **IOD/IOA/Concession/Plan Approval Number:** Not Applicable **Approved Built-up Area:** 5545
13.Note on the initiated work (If applicable)	Not Applicable
14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)	Not Applicable
15.Total Plot Area (sq. m.)	331800
16.Deductions	Not applicable
17.Net Plot area	Not applicable
18 (a).Proposed Built-up Area (FSI & Non-FSI)	**a) FSI area (sq. m.):** Not applicable **b) Non FSI area (sq. m.):** Not applicable **c) Total BUA area (sq. m.):** 5545
18 (b).Approved Built up area as per DCR	**Approved FSI area (sq. m.):** NA **Approved Non FSI area (sq. m.):** NA **Date of Approval:** 01-01-1900
19.Total ground coverage (m2)	Not applicable
20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	Not applicable
21.Estimated cost of the project	1304350000

22.Number of buildings & its configuration

Serial number	Building Name & number	Number of floors	Height of the building (Mtrs)
1	Not applicable	Not applicable	Not applicable
2	Not applicable	Not applicable	Not applicable

23.Number of tenants and shops	Not applicable
24.Number of expected residents / users	Not applicable
25.Tenant density per hectare	Not applicable
26.Height of the building(s)	
27.Right of way (Width of the road from the nearest fire station to the proposed building(s)	9 m
28.Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation	9 m
29.Existing structure (s) if any	Existing Sugar & Distillery Unit is present at site. Adequate space is available for proposed Co-gen Unit.
30.Details of the demolition with disposal (If applicable)	Not applicable

31.Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Proposed 26 MW bagasse based cogeneration unit	0	26 MW	26 MW

32.Total Water Requirement

Dry season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Not Applicable
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Wet season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Not Applicable
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Details of Swimming pool (If any)	Not applicable	

33.Details of Total water consumed

Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
Water Requirement	**Existing**	**Proposed**	**Total**	**Existing**	**Proposed**	**Total**	**Existing**	**Proposed**	**Total**
Domestic	0	6	6	0	1	1	0	5	5
Industrial Process	0	5111.6	5111.6	0	Loss= 938.4 m3, Recycle = 4120.2 m3	Loss= 938.4 m3, Recycle = 4120.2 m3	0	53	53

34.Rain Water Harvesting (RWH)	**Level of the Ground water table:**	Around 50 m
	Size and no of RWH tank(s) and Quantity:	Will be detailed & given in EIA report
	Location of the RWH tank(s):	Will be detailed & given in EIA report
	Quantity of recharge pits:	Will be detailed & given in EIA report
	Size of recharge pits :	Will be detailed & given in EIA report
	Budgetary allocation (Capital cost) :	20 Lacs
	Budgetary allocation (O & M cost) :	2 Lac
	Details of UGT tanks if any :	Existing water reservoir capacity = 88500 m3
35.Storm water drainage	**Natural water drainage pattern:**	Will be detailed in EIA report
	Quantity of storm water:	Will be detailed in EIA report on the basis of on site meteorological data & maximum rainfall data
	Size of SWD:	Will be detailed in EIA report
Sewage and Waste water	**Sewage generation in KLD:**	5
	STP technology:	Septic tank & Soak Pit
	Capacity of STP (CMD):	NA
	Location & area of the STP:	-
	Budgetary allocation (Capital cost):	15 Lac
	Budgetary allocation (O & M cost):	1.5 Lac
36.Solid waste Management		
Waste generation in the Pre Construction and Construction phase:	**Waste generation:**	Construction waste debris
	Disposal of the construction waste debris:	To Authorized dealers
Waste generation in the operation Phase:	**Dry waste:**	Boiler Ash= 19.6 MT/D
	Wet waste:	Canteen waste
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable

Mode of Disposal of waste:	**Dry waste:**	Boiler Ash- Biocomposting
	Wet waste:	canteen waste- As manure in factory green belt area
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable
Area requirement:	**Location(s):**	Not applicable
	Area for the storage of waste & other material:	0.5 Acre for Storage of Boiler Ash
	Area for machinery:	BUA= 5545 sq.m.
Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	25 Lakh
	O & M cost:	1.25 Lakh

37.Effluent Charecterestics

Serial Number	Parameters	Unit	Inlet Effluent Charecterestics	Outlet Effluent Charecterestics	Effluent discharge standards (MPCB)
1	pH	-	6-6.5	5.5-8.5	5.5-8.5
2	SS	mg/lit	250-300	<100	<100
3	BOD	mg/lit	650-750	<100	<100
4	COD	mg/lit	1200-1400	<250	<250
5	TDS	mg/lit	800-950	<2100	<2100

Amount of effluent generation (CMD):	53
Capacity of the ETP:	Existing sugar ETP capacity of 1000 CMD will accomodate the effluent from proposed co-gen unit also.
Amount of treated effluent recycled :	53 CMD
Amount of water send to the CETP:	Nil
Membership of CETP (if require):	Not applicable
Note on ETP technology to be used	ETP technofeasibility report is attached
Disposal of the ETP sludge	Solid waste generated from Existing sugar ETP (Primary & secondary sludge) is being dried on separated sludge drying beds. Dried sludge is used as manure in company's farm land for cultivation.

38.Hazardous Waste Details

Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	NA	NA	NA	NA	NA	NA	NA

39.Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	Proposed cogeneration unit boiler of 140 TPH	Bagasse requirement for 180 operational days = 228786.75 MT	1	73 m	4	150 Degree.C

40.Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Bagasse requirement for 180 operational days	0	228786.75 MT	228786.75 MT
41.Source of Fuel		Bagasse From Existing Sugar Unit		
42.Mode of Transportation of fuel to site		Bagasse From Existing Sugar Unit - Inline conveyor system. Through RBC (Return bagasse carrier)		

43.Green Belt Development	**Total RG area :**	109494 sq.m.
	No of trees to be cut :	0
	Number of trees to be planted :	Industry have already planted 2260 No. of trees. In future industry will plant about 19781 trees.
	List of proposed native trees :	Refer Point v) below
	Timeline for completion of plantation :	Green belt development plan is attached

44.Number and list of trees species to be planted in the ground

Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance
1	Aegle marmelos	Bel	1679	Native, deciduous shrub, cleans atmosphere by absorbing harmful gases.
2	Eucalyptus	Nilgiri	789	Evergreen, sturdy, fast growing graceful tree. It is particularly good in sequestering carbon.
3	Cocos nucifera	Nariyal	715	Native, coconut palms are medium sized, solitary herbaceous plant.
4	Mangifera indica	Mango	4489	Large evergreen tree with dense dome shaped crown.
5	Azadirachta indica	Neem	1056	Evergreen deciduous plant, helps to control soil erosion, effective for odour management.
6	Ficus racemosa	Umbar	953	Evergreen deciduous plant
7	Samanea saman	Rain Tree	878	Rain tree is an attractive, large spreading deciduous tree with low, dense, dome shaped crown. The dome-shaped, low crown provides a very strong shade even at low sun positions. The leaves fold up during rain, allowing more moisture to reach the crops below.
8	Tamarindus indica	Chinch	980	Tamarind is a long lived and beautiful fruiting tree, growing up to 30 metres tall with a dense, spreading crown. The deep roots make it very resistant to storms and suitable for windbreaks.

9	Casuarina equisetifolia	Suru	798	Evergreen tree with a finely branched, feathery crown, usually growing growing from 6 - 35 metres tall.With high productivity and properties that enhance soil fertility, it shows promise as an agroforestry species for arid and semi-arid areas.
10	Banyan	Wad	983	Has the ability to survive & grow for centuries. Helpful in prevention of soil erosion.
11	Ficus religiosa	Peepal	982	Deciduous, evergreen, used as traditional medicine.
12	Acacia nilotica	Babul	754	Medium sized, thorny, nearly evergreen. Useful fodder source particularly in dry regions.
13	Tabernaemontana divaricata	Tagar	745	Native, Antioxidant, Antitumor, anti-infection, analgesic
14	Delonix regia	Gulmohar	935	Native, flowering plant, ornamental tree.
15	Plumeria	Chafa	746	Small ornamental tree, evergreen shrub.
16	Manilkara zapota	Chiku	528	Grow well in wide range of climatic conditions. Medically useful.
17	Terminalia catappa	Badam	987	Fast growing, deciduous or semi-evergreen tree. Its vast roots binds together both sands & poor soils. It has heavy leaf fall & so is a good provider of mulch for the protection of the soil.
18	Ziziphus mauritiana	Bor	784	Plants have an extensive root system and can be used to aid in the fixation of sand.
45.Total quantity of plants on ground				

46.Number and list of shrubs and bushes species to be planted in the podium RG:

Serial Number	Name	C/C Distance	Area m2
1	Not Applicable	Not Applicable	0

47.Energy

Power requirement:	**Source of power supply :**	Startup with MSEDCL & Susequently through own TG set.
	During Construction Phase: (Demand Load)	500 KW
	DG set as Power back-up during construction phase	Proposed DG sets- 1 x 750
	During Operation phase (Connected load):	Proposed DG sets- 1 x 750 KVA
	During Operation phase (Demand load):	7 MW for Sugar Unit, Distillery Unit, Boiler & Utilities
	Transformer:	Existing transformer of 500 KVA.
	DG set as Power back-up during operation phase:	Proposed DG sets- 2 x 900 KVA
	Fuel used:	HSD for Proposed DG sets (1 x 750 KVA) - 200 lit/h
	Details of high tension line passing through the plot if any:	Not Applicable

48.Energy saving by non-conventional method:

-

49.Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	Recovery of Energy from condensate, Flue Gases	Will be detailed in EIA report
2	Variable Frequency Drives for fans & motors	Will be detailed in EIA report

50.Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Stack of Proposed co-gen unit boiler of 140 TPH	NA	Electrostatic Precipitator

Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	Details will be provided in EIA
	O & M cost:	Details will be provided in EIA

51.Environmental Management plan Budgetary Allocation

a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	Noise, Water & Soil Pollution control & Occupational health & safety	-	2 Lacs

b) Operation Phase (with Break-up):

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Electrostatic Precipitator will be provided to the stack	The boiler will be equipped with high efficiency three field Electro Static Precipitator, which will remove the suspended particles and ash particles from the flue gas.	70	02
2	ETP	Existing sugar ETP of 1000 CMD will accomodate the effluent from co-gen unit also	150	10
3	Rainwater Harvesting	-	20	02
4	Occupational Health & Safety	-	15	03
5	Laboratory Equipment, Monitoring & Environmental Audit	-	15	03
6	Green belt development	-	20	04
7	Fire fighting for co-gen unit	-	45	2.5
8	Proposed Boiler Stack of co-gen unit	-	100	-
9	Ash handling system	-	100	03
10	Environmental Monitoring	-	-	02

51.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not application

52.Any Other Information

No Information Available

53.Traffic Management

	Nos. of the junction to the main road & design of confluence:	Not applicable

Parking details:	**Number and area of basement:**	Not applicable
	Number and area of podia:	Not applicable
	Total Parking area:	Adequate space for parking will be provided
	Area per car:	Not applicable
	Area per car:	Not applicable
	Number of 2-Wheelers as approved by competent authority:	Not applicable
	Number of 4-Wheelers as approved by competent authority:	Not applicable
	Public Transport:	Not applicable
	Width of all Internal roads (m):	6 m
	CRZ/ RRZ clearance obtain, if any:	Not applicable
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	Not applicable
	Category as per schedule of EIA Notification sheet	Category B, Sr. No. 1 (d)
	Court cases pending if any	Not applicable
	Other Relevant Informations	NA
	Have you previously submitted Application online on MOEF Website.	No
	Date of online submission	-

SEAC DISCUSSION ON ENVIRONMENTAL ASPECTS

Environmental Impacts of the project	PP submitted EIA report to the committee. Various aspects of the Environment are discussed in the report. PP has conducted base line data collection for Air, Water, Soil & Noise parameters as per EIA Notification, 2006 amended from time to time. As per data submitted by the PP in the EIA report environmental parameters are found within the prescribed limits at site.
Water Budget	PP submitted water budget calculations in the EIA report and also indicated water requirement at Sr. No 33 of the Consolidated Statement.
Waste Water Treatment	PP proposes fullfledged effluent treatment plant. Treated effluent will be used in the farms owned by the PP and for the deveopment of green belt. PP to provide adequate capaccity of sewage treatment plant.
Drainage pattern of the project	PP considered the contour level in designing of the storm drains.

Ground water parameters	As per data submitted by PP ground water parameters are within the prescribed limits at project site.
Solid Waste Management	PP proposes fly ash conversion in to the biocomposting fertlizer.
Air Quality & Noise Level issues	As per data submitted by PP Air Quality and Noise parameters are within the prescribed limits at project site.
Energy Management	PP proposes 26 MW bagasse based Co-generation plant.
Traffic circulation system and risk assessment	PP proposes to provide minimum width of internal roads as six meter with nine meter turining radius.
Landscape Plan	PP proposes to provide 33% green belt.
Disaster management system and risk assessment	PP has prepared an Emergency Plan for handling emergency situations.
Socioeconomic impact assessment	PP has carried out socio economic impact study and included in the EIA report.
Environmental Management Plan	PP propsoes EMP cost of Rs. 535 lakhs as capital cost and Rs. 31.5 lakhs as operation & maintenance cost to maintian environmental parameters.
Any other issues related to environmental sustainability	Not Applicable

Brief information of the project by SEAC

PP submitted their application for the grant of TOR under category 1(d)B1 as per EIA Notification, 2006. PP presented draft TOR based on standard TOR issued by MoEF & CC published in April, 2015 for installation of 26 MW cogeneration pant based on baggase in 150th meeting of SEAC-1 wherein ToR was granted to the PP.

PP to collect base line data as per Office Memorandum issued by MoEF&CC dated 27.08.2017.

The validity of the TOR will be for three yeatrs as per OM issued by MoEF and CC on 29.08.2017.

PP to submit Form - 2 along with EIA/EMP report as per OM issued by MoEF&CC on 20.04.2018.

Based on the presentation made by PP; committee decided to approve the TOR for the preparation of EIA/EMP report as per standard TOR and additional TOR points mentioned below.

PP to carry out Public Consultation as per EIA Notification, 2006 and submit point wise compliance of all the issues raised during Public Consultation.

Public Hearing was conducted on 01.12.2018.

Now PP submitted EIA/EMP reprot for appraisal.

DECISION OF SEAC

After detailed deliberations with the PP and their accredited consultant, SEAC-1 decided to recommend the proposal to the SEIAA for prior Environment Clearance subject to the following conditions.

Specific Conditions by SEAC:

1) PP to upload agreement/ permisison obtianed from the competent Authority to draw water from Ghod canal.
2) PP to ensure that no waste either liquid or solid shall be disposed off outside the premises without adequate treatment.
3) PP to prepare and implement CER plan in consultation with the District Collector as per OM issue dby MoEF&CC dated 01.05.2018.
4) PP to use new and renewable energy source for the illumination of street lights and office buildings.

FINAL RECOMMENDATION

SEAC-I have decided to recommend the proposal to SEIAA for Prior Environmental clearance subject to above conditions

174 th Meeting of SEIAA (Day-1)

SEIAA Meeting number: 174 **Meeting Date** August 28, 2019

Subject: Environment Clearance for Proposed 26 MW bagasse based Co-generation unit

Is a Violation Case: No

1.Name of Project	Proposed 26 MW bagasse based co-generation unit by M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd, Plot No 52/2, Limpangaon Village, Tal- Shrigonda, Dist- Ahmednagar, Maharashtra
2.Type of institution	Private
3.Name of Project Proponent	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
4.Name of Consultant	M/s SGM Corporate Consultants Pvt. Ltd.
5.Type of project	Industrial Project
6.New project/expansion in existing project/modernization/diversification in existing project	It is a Proposed New Project of 26 MW bagasse based Co-generation Plant with 180 Operational days
7.If expansion/diversification, whether environmental clearance has been obtained for existing project	Not Applicable
8.Location of the project	Gat. No. 52/2
9.Taluka	Shrigonda
10.Village	Limpangaon
Correspondence Name:	Mr. R.S.Naik
Room Number:	Gat. No. 52/2
Floor:	Not Applicable
Building Name:	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
Road/Street Name:	Not Applicable
Locality:	Village- Limpangaon, Tal- Shrigonda, District- Ahmednagar
City:	Shrigonda
11.Whether in Corporation / Municipal / other area	Grampanchayat Limpangaon
12.IOD/IOA/Concession/Plan Approval Number	Not Applicable
	IOD/IOA/Concession/Plan Approval Number: Not Applicable
	Approved Built-up Area: 5545
13.Note on the initiated work (If applicable)	Not Applicable
14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)	Not Applicable
15.Total Plot Area (sq. m.)	331800
16.Deductions	Not applicable
17.Net Plot area	Not applicable
18 (a).Proposed Built-up Area (FSI & Non-FSI)	**a) FSI area (sq. m.):** Not applicable
	b) Non FSI area (sq. m.): Not applicable
	c) Total BUA area (sq. m.): 5545
18 (b).Approved Built up area as per DCR	**Approved FSI area (sq. m.):** NA
	Approved Non FSI area (sq. m.): NA
	Date of Approval: 01-01-1900
19.Total ground coverage (m2)	Not applicable
20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	Not applicable
21.Estimated cost of the project	1304350000

22.Number of buildings & its configuration

Serial number	Building Name & number	Number of floors	Height of the building (Mtrs)
1	Not applicable	Not applicable	Not applicable
2	Not applicable	Not applicable	Not applicable

23.Number of tenants and shops	Not applicable
24.Number of expected residents / users	Not applicable
25.Tenant density per hectare	Not applicable
26.Height of the building(s)	
27.Right of way (Width of the road from the nearest fire station to the proposed building(s)	9 m
28.Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation	9 m
29.Existing structure (s) if any	Existing Sugar & Distillery Unit is present at site. Adequate space is available for proposed Co-gen Unit.
30.Details of the demolition with disposal (If applicable)	Not applicable

31.Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Proposed 26 MW bagasse based cogeneration unit	0	26 MW	26 MW

32.Total Water Requirement

Dry season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Not Applicable
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Wet season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Not Applicable
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Details of Swimming pool (If any)	Not applicable	

33.Details of Total water consumed

Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
Water Requirement	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Domestic	0	6	6	0	1	1	0	5	5
Industrial Process	0	5111.6	5111.6	0	Loss= 938.4 m3, Recycle = 4120.2 m3	Loss= 938.4 m3, Recycle = 4120.2 m3	0	53	53

34.Rain Water Harvesting (RWH)	**Level of the Ground water table:**	Around 50 m
	Size and no of RWH tank(s) and Quantity:	Will be detailed & given in EIA report
	Location of the RWH tank(s):	Will be detailed & given in EIA report
	Quantity of recharge pits:	Will be detailed & given in EIA report
	Size of recharge pits :	Will be detailed & given in EIA report
	Budgetary allocation (Capital cost) :	20 Lacs
	Budgetary allocation (O & M cost) :	2 Lac
	Details of UGT tanks if any :	Existing water reservoir capacity = 88500 m3
35.Storm water drainage	**Natural water drainage pattern:**	Will be detailed in EIA report
	Quantity of storm water:	Will be detailed in EIA report on the basis of on site meteorological data & maximum rainfall data
	Size of SWD:	Will be detailed in EIA report
Sewage and Waste water	**Sewage generation in KLD:**	5
	STP technology:	Septic tank & Soak Pit
	Capacity of STP (CMD):	NA
	Location & area of the STP:	-
	Budgetary allocation (Capital cost):	15 Lac
	Budgetary allocation (O & M cost):	1.5 Lac
36.Solid waste Management		
Waste generation in the Pre Construction and Construction phase:	**Waste generation:**	Construction waste debris
	Disposal of the construction waste debris:	To Authorized dealers
Waste generation in the operation Phase:	**Dry waste:**	Boiler Ash= 19.6 MT/D
	Wet waste:	Canteen waste
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable

Mode of Disposal of waste:	**Dry waste:**	Boiler Ash- Biocomposting
	Wet waste:	canteen waste- As manure in factory green belt area
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable
Area requirement:	**Location(s):**	Not applicable
	Area for the storage of waste & other material:	0.5 Acre for Storage of Boiler Ash
	Area for machinery:	BUA= 5545 sq.m.
Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	25 Lakh
	O & M cost:	1.25 Lakh

37.Effluent Charecterestics

Serial Number	Parameters	Unit	Inlet Effluent Charecterestics	Outlet Effluent Charecterestics	Effluent discharge standards (MPCB)
1	pH	-	6-6.5	5.5-8.5	5.5-8.5
2	SS	mg/lit	250-300	<100	<100
3	BOD	mg/lit	650-750	<100	<100
4	COD	mg/lit	1200-1400	<250	<250
5	TDS	mg/lit	800-950	<2100	<2100

Amount of effluent generation (CMD):	53
Capacity of the ETP:	Existing sugar ETP capacity of 1000 CMD will accomodate the effluent from proposed co-gen unit also.
Amount of treated effluent recycled :	53 CMD
Amount of water send to the CETP:	Nil
Membership of CETP (if require):	Not applicable
Note on ETP technology to be used	ETP technofeasibility report is attached
Disposal of the ETP sludge	Solid waste generated from Existing sugar ETP (Primary & secondary sludge) is being dried on separated sludge drying beds. Dried sludge is used as manure in company's farm land for cultivation.

38.Hazardous Waste Details

Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	NA	NA	NA	NA	NA	NA	NA

39.Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	Proposed cogeneration unit boiler of 140 TPH	Bagasse requirement for 180 operational days = 228786.75 MT	1	73 m	4	150 Degree.C

40.Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Bagasse requirement for 180 operational days	0	228786.75 MT	228786.75 MT
41.Source of Fuel		Bagasse From Existing Sugar Unit		
42.Mode of Transportation of fuel to site		Bagasse From Existing Sugar Unit - Inline conveyor system. Through RBC (Return bagasse carrier)		

43.Green Belt Development	**Total RG area :**	109494 sq.m.
	No of trees to be cut :	0
	Number of trees to be planted :	Industry have already planted 2260 No. of trees. In future industry will plant about 19781 trees.
	List of proposed native trees :	Refer Point v) below
	Timeline for completion of plantation :	Green belt development plan is attached

44.Number and list of trees species to be planted in the ground

Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance
1	Aegle marmelos	Bel	1679	Native, deciduous shrub, cleans atmosphere by absorbing harmful gases.
2	Eucalyptus	Nilgiri	789	Evergreen, sturdy, fast growing graceful tree. It is particularly good in sequestering carbon.
3	Cocos nucifera	Nariyal	715	Native, coconut palms are medium sized, solitary herbaceous plant.
4	Mangifera indica	Mango	4489	Large evergreen tree with dense dome shaped crown.
5	Azadirachta indica	Neem	1056	Evergreen deciduous plant, helps to control soil erosion, effective for odour management.
6	Ficus racemosa	Umbar	953	Evergreen deciduous plant
7	Samanea saman	Rain Tree	878	Rain tree is an attractive, large spreading deciduous tree with low, dense, dome shaped crown. The dome-shaped, low crown provides a very strong shade even at low sun positions. The leaves fold up during rain, allowing more moisture to reach the crops below.
8	Tamarindus indica	Chinch	980	Tamarind is a long lived and beautiful fruiting tree, growing up to 30 metres tall with a dense, spreading crown. The deep roots make it very resistant to storms and suitable for windbreaks.

9	Casuarina equisetifolia	Suru	798	Evergreen tree with a finely branched, feathery crown, usually growing growing from 6 - 35 metres tall.With high productivity and properties that enhance soil fertility, it shows promise as an agroforestry species for arid and semi-arid areas.
10	Banyan	Wad	983	Has the ability to survive & grow for centuries. Helpful in prevention of soil erosion.
11	Ficus religiosa	Peepal	982	Deciduous, evergreen, used as traditional medicine.
12	Acacia nilotica	Babul	754	Medium sized, thorny, nearly evergreen. Useful fodder source particularly in dry regions.
13	Tabernaemontana divaricata	Tagar	745	Native, Antioxidant, Antitumor, anti-infection, analgesic
14	Delonix regia	Gulmohar	935	Native, flowering plant, ornamental tree.
15	Plumeria	Chafa	746	Small ornamental tree, evergreen shrub.
16	Manilkara zapota	Chiku	528	Grow well in wide range of climatic conditions. Medically useful.
17	Terminalia catappa	Badam	987	Fast growing, deciduous or semi-evergreen tree. Its vast roots binds together both sands & poor soils. It has heavy leaf fall & so is a good provider of mulch for the protection of the soil.
18	Ziziphus mauritiana	Bor	784	Plants have an extensive root system and can be used to aid in the fixation of sand.
45.Total quantity of plants on ground				

46.Number and list of shrubs and bushes species to be planted in the podium RG:

Serial Number	Name	C/C Distance	Area m2
1	Not Applicable	Not Applicable	0

47.Energy

Power requirement:	**Source of power supply :**	Startup with MSEDCL & Susequently through own TG set.
	During Construction Phase: (Demand Load)	500 KW
	DG set as Power back-up during construction phase	Proposed DG sets- 1 x 750
	During Operation phase (Connected load):	Proposed DG sets- 1 x 750 KVA
	During Operation phase (Demand load):	7 MW for Sugar Unit, Distillery Unit, Boiler & Utilities
	Transformer:	Existing transformer of 500 KVA.
	DG set as Power back-up during operation phase:	Proposed DG sets- 2 x 900 KVA
	Fuel used:	HSD for Proposed DG sets (1 x 750 KVA) - 200 lit/h
	Details of high tension line passing through the plot if any:	Not Applicable

48.Energy saving by non-conventional method:

-

49.Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	Recovery of Energy from condensate, Flue Gases	Will be detailed in EIA report
2	Variable Frequency Drives for fans & motors	Will be detailed in EIA report

50.Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Stack of Proposed co-gen unit boiler of 140 TPH	NA	Electrostatic Precipitator

Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	Details will be provided in EIA
	O & M cost:	Details will be provided in EIA

51.Environmental Management plan Budgetary Allocation

a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	Noise, Water & Soil Pollution control & Occupational health & safety	-	2 Lacs

b) Operation Phase (with Break-up):

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Electrostatic Precipitator will be provided to the stack	The boiler will be equipped with high efficiency three field Electro Static Precipitator, which will remove the suspended particles and ash particles from the flue gas.	70	02
2	ETP	Existing sugar ETP of 1000 CMD will accomodate the effluent from co-gen unit also	150	10
3	Rainwater Harvesting	-	20	02
4	Occupational Health & Safety	-	15	03
5	Laboratory Equipment, Monitoring & Environmental Audit	-	15	03
6	Green belt development	-	20	04
7	Fire fighting for co-gen unit	-	45	2.5
8	Proposed Boiler Stack of co-gen unit	-	100	-
9	Ash handling system	-	100	03
10	Environmental Monitoring	-	-	02

51.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not application

52.Any Other Information

No Information Available

53.Traffic Management

	Nos. of the junction to the main road & design of confluence:	Not applicable

Parking details:	**Number and area of basement:**	Not applicable
	Number and area of podia:	Not applicable
	Total Parking area:	Adequate space for parking will be provided
	Area per car:	Not applicable
	Area per car:	Not applicable
	Number of 2-Wheelers as approved by competent authority:	Not applicable
	Number of 4-Wheelers as approved by competent authority:	Not applicable
	Public Transport:	Not applicable
	Width of all Internal roads (m):	6 m
	CRZ/ RRZ clearance obtain, if any:	Not applicable
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	Not applicable
	Category as per schedule of EIA Notification sheet	Category B, Sr. No. 1 (d)
	Court cases pending if any	Not applicable
	Other Relevant Informations	NA
	Have you previously submitted Application online on MOEF Website.	No
	Date of online submission	-

SEAC DISCUSSION ON ENVIRONMENTAL ASPECTS

Summorised in brief information of Project as below.

Brief information of the project by SEAC

PP submitted their application for the grant of TOR under category 1(d)B1 as per EIA Notification, 2006. PP presented draft TOR based on standard TOR issued by MoEF & CC published in April, 2015 for installation of 26 MW cogeneration pant based on baggase in 150th meeting of SEAC-1 wherein ToR was granted to the PP.

PP to collect base line data as per Office Memorandum issued by MoEF&CC dated 27.08.2017.

The validity of the TOR will be for three yeatrs as per OM issued by MoEF and CC on 29.08.2017.

PP to submit Form - 2 along with EIA/EMP report as per OM issued by MoEF&CC on 20.04.2018.

Based on the presentation made by PP; committee decided to approve the TOR for the preparation of EIA/EMP report as per standard TOR and additional TOR points mentioned below.

PP to carry out Public Consultation as per EIA Notification, 2006 and submit point wise compliance of all the issues raised during Public Consultation.

Public Hearing was conducted on 01.12.2018.

Now PP submitted EIA/EMP reprot for appraisal.

DECISION OF SEAC

After detailed deliberations with the PP and their accredited consultant, SEAC-1 decided to recommend the proposal to the SEIAA for prior Environment Clearance subject to the following conditions.

Specific Conditions by SEAC:

1) PP to submit CER plan to District Collector and submit the acknowledgement to Member Secretary, SEIAA.
2) PP to ensure to comply with the conditions stipulated in the Office Memorandum issued by MoEF & CC dated 9th August, 2018.
3) SEIAA decided to grant EC for: FSI:28031.38 m2, Non-FSI: 303768.62 m2 and Total BUA: 331800.00 m2 Approval no-KaVi/Jamin/BAP/SR/19/2019, Date-06.08.2019)

SEIAA DECISION

Proposal was recommended in the 161th meeting of SEAC-1. Proposal was then considered in 165th meeting of SEIAA and deferred for compliance. Now, PP submitted compliance.

SEIAA decided to grant EC for: FSI:28031.38 $m^{2,}$ Non-FSI: 303768.62 m^2 and Total BUA: 331800.00 m^2 Approval no-KaVi/Jamin/BAP/SR/19/2019, Date-06.08.2019)

SEIAA **decided to grant EC** subject to following conditions-

1.PP to submit CER plan to District Collector and submit the acknowledgement to Member Secretary, SEIAA.

2. PP to ensure to comply with the conditions stipulated in the Office Memorandum issued by MoEF & CC dated 9th August, 2018.

Specific Conditions by SEIAA:

1) PP to submit CER plan to District Collector and submit the acknowledgement to Member Secretary, SEIAA.
2) PP to ensure to comply with the conditions stipulated in the Office Memorandum issued by MoEF & CC dated 9th August, 2018.
3) SEIAA decided to grant EC for: FSI:28031.38 m2, Non-FSI: 303768.62 m2 and Total BUA: 331800.00 m2 Approval no-KaVi/Jamin/BAP/SR/19/2019, Date-06.08.2019)

FINAL RECOMMENDATION

SEIAA have decided to grant the proposal for Prior Environmental Clearance subject to above conditions

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

Environment department,
Room No. 217, 2nd floor,
Mantralaya, Annexe,
Mumbai- 400 032.
Date:September 11, 2019

To,
M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
at Gat. No. 52/2

Subject: Environment Clearance for Proposed 26 MW bagasse based Co-generation unit

Sir,

This has reference to your communication on the above mentioned subject. The proposal was considered as per the EIA Notification - 2006, by the State Level Expert Appraisal Committee-I, Maharashtra in its 161st meeting and recommend the project for prior environmental clearance to SEIAA. Information submitted by you has been considered by State Level Environment Impact Assessment Authority in its 174th meetings.

2. It is noted that the proposal is considered by SEAC-I under screening category Category B, Sr. No. 1 (d) as per EIA Notification 2006.

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

1.Name of Project	Proposed 26 MW bagasse based co-generation unit by M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd, Plot No 52/2, Limpangaon Village, Tal- Shrigonda, Dist- Ahmednagar, Maharashtra
2.Type of institution	Private
3.Name of Project Proponent	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
4.Name of Consultant	M/s SGM Corporate Consultants Pvt. Ltd.
5.Type of project	Industrial Project
6.New project/expansion in existing project/modernization/diversification in existing project	It is a Proposed New Project of 26 MW bagasse based Co-generation Plant with 180 Operational days
7.If expansion/diversification, whether environmental clearance has been obtained for existing project	Not Applicable
8.Location of the project	Gat. No. 52/2
9.Taluka	Shrigonda
10.Village	Limpangaon
Correspondence Name:	Mr. R.S.Naik
Room Number:	Gat. No. 52/2
Floor:	Not Applicable
Building Name:	M/s Sahakar Maharshi Shivajirao Narayanrao Nagawade SSK Ltd.
Road/Street Name:	Not Applicable
Locality:	Village- Limpangaon, Tal- Shrigonda, District- Ahmednagar
City:	Shrigonda
11.Whether in Corporation / Municipal / other area	Grampanchayat Limpangaon
12.IOD/IOA/Concession/Plan Approval Number	Not Applicable
	IOD/IOA/Concession/Plan Approval Number: Not Applicable
	Approved Built-up Area: 5545

13.Note on the initiated work (If applicable)	Not Applicable
14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)	Not Applicable
15.Total Plot Area (sq. m.)	331800
16.Deductions	Not applicable
17.Net Plot area	Not applicable
18 (a).Proposed Built-up Area (FSI & Non-FSI)	**FSI area (sq. m.):** Not applicable
	Non FSI area (sq. m.): Not applicable
	Total BUA area (sq. m.): 5545
18 (b).Approved Built up area as per DCR	**Approved FSI area (sq. m.):** NA
	Approved Non FSI area (sq. m.): NA
	Date of Approval: 01-01-1900
19.Total ground coverage (m2)	Not applicable
20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)	Not applicable
21.Estimated cost of the project	1304350000

22.Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Proposed 26 MW bagasse based cogeneration unit	0	26 MW	26 MW

23.Total Water Requirement

Dry season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Not Applicable
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Wet season:	**Source of water**	Ghod canal
	Fresh water (CMD):	938.4
	Recycled water - Flushing (CMD):	Not applicable
	Recycled water - Gardening (CMD):	Not applicable
	Swimming pool make up (Cum):	Not applicable
	Total Water Requirement (CMD) :	5111.6
	Fire fighting - Underground water tank(CMD):	Prposed underground water tank of 1000 m3
	Fire fighting - Overhead water tank(CMD):	Not Applicable
	Excess treated water	Recycled water for industrial use= 4120.2 m3
Details of Swimming pool (If any)	Not applicable	

24.Details of Total water consumed

Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
Water Requirement	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Domestic	0	6	6	0	1	1	0	5	5
Industrial Process	0	5111.6	5111.6	0	Loss= 938.4 m3, Recycle = 4120.2 m3	Loss= 938.4 m3, Recycle = 4120.2 m3	0	53	53

25.Rain Water Harvesting (RWH)	**Level of the Ground water table:**	Around 50 m
	Size and no of RWH tank(s) and Quantity:	Will be detailed & given in EIA report
	Location of the RWH tank(s):	Will be detailed & given in EIA report
	Quantity of recharge pits:	Will be detailed & given in EIA report
	Size of recharge pits :	Will be detailed & given in EIA report
	Budgetary allocation (Capital cost) :	20 Lacs
	Budgetary allocation (O & M cost) :	2 Lac
	Details of UGT tanks if any :	Existing water reservoir capacity = 88500 m3
26.Storm water drainage	**Natural water drainage pattern:**	Will be detailed in EIA report
	Quantity of storm water:	Will be detailed in EIA report on the basis of on site meteorological data & maximum rainfall data
	Size of SWD:	Will be detailed in EIA report
27.Sewage and Waste water	**Sewage generation in KLD:**	5
	STP technology:	Septic tank & Soak Pit
	Capacity of STP (CMD):	NA
	Location & area of the STP:	-
	Budgetary allocation (Capital cost):	15 Lac
	Budgetary allocation (O & M cost):	1.5 Lac

28.Solid waste Management		
Waste generation in the Pre Construction and Construction phase:	**Waste generation:**	Construction waste debris
	Disposal of the construction waste debris:	To Authorized dealers
Waste generation in the operation Phase:	**Dry waste:**	Boiler Ash= 19.6 MT/D
	Wet waste:	Canteen waste
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable
Mode of Disposal of waste:	**Dry waste:**	Boiler Ash- Biocomposting
	Wet waste:	canteen waste- As manure in factory green belt area
	Hazardous waste:	Not applicable
	Biomedical waste (If applicable):	Not applicable
	STP Sludge (Dry sludge):	Not applicable
	Others if any:	Not applicable
Area requirement:	**Location(s):**	Not applicable
	Area for the storage of waste & other material:	0.5 Acre for Storage of Boiler Ash
	Area for machinery:	BUA= 5545 sq.m.
Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	25 Lakh
	O & M cost:	1.25 Lakh

29.Effluent Charecterestics					
Serial Number	**Parameters**	**Unit**	**Inlet Effluent Charecterestics**	**Outlet Effluent Charecterestics**	**Effluent discharge standards (MPCB)**
1	pH	-	6-6.5	5.5-8.5	5.5-8.5
2	SS	mg/lit	250-300	<100	<100
3	BOD	mg/lit	650-750	<100	<100
4	COD	mg/lit	1200-1400	<250	<250
5	TDS	mg/lit	800-950	<2100	<2100
Amount of effluent generation (CMD):		53			
Capacity of the ETP:		Existing sugar ETP capacity of 1000 CMD will accomodate the effluent from proposed co-gen unit also.			
Amount of treated effluent recycled :		53 CMD			
Amount of water send to the CETP:		Nil			
Membership of CETP (if require):		Not applicable			
Note on ETP technology to be used		ETP technofeasibility report is attached			
Disposal of the ETP sludge		Solid waste generated from Existing sugar ETP (Primary & secondary sludge) is being dried on separated sludge drying beds. Dried sludge is used as manure in company's farm land for cultivation.			

30.Hazardous Waste Details

Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	NA	NA	NA	NA	NA	NA	NA

31.Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	Proposed cogeneration unit boiler of 140 TPH	Bagasse requirement for 180 operational days = 228786.75 MT	1	73 m	4	150 Degree.C

32.Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Bagasse requirement for 180 operational days	0	228786.75 MT	228786.75 MT

33.Source of Fuel	Bagasse From Existing Sugar Unit
34.Mode of Transportation of fuel to site	Bagasse From Existing Sugar Unit - Inline conveyor system. Through RBC (Return bagasse carrier)

35.Energy

Power requirement:	**Source of power supply :**	Startup with MSEDCL & Susequently through own TG set.
	During Construction Phase: (Demand Load)	500 KW
	DG set as Power back-up during construction phase	Proposed DG sets- 1 x 750
	During Operation phase (Connected load):	Proposed DG sets- 1 x 750 KVA
	During Operation phase (Demand load):	7 MW for Sugar Unit, Distillery Unit, Boiler & Utilities
	Transformer:	Existing transformer of 500 KVA.
	DG set as Power back-up during operation phase:	Proposed DG sets- 2 x 900 KVA
	Fuel used:	HSD for Proposed DG sets (1 x 750 KVA) - 200 lit/h
	Details of high tension line passing through the plot if any:	Not Applicable

Energy saving by non-conventional method:

-

36.Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %

1	Recovery of Energy from condensate, Flue Gases	Will be detailed in EIA report
2	Variable Frequency Drives for fans & motors	Will be detailed in EIA report

37.Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Stack of Proposed co-gen unit boiler of 140 TPH	NA	Electrostatic Precipitator

Budgetary allocation (Capital cost and O&M cost):	**Capital cost:**	Details will be provided in EIA
	O & M cost:	Details will be provided in EIA

38.Environmental Management plan Budgetary Allocation

a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	Noise, Water & Soil Pollution control & Occupational health & safety	-	2 Lacs

b) Operation Phase (with Break-up):

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Electrostatic Precipitator will be provided to the stack	The boiler will be equipped with high efficiency three field Electro Static Precipitator, which will remove the suspended particles and ash particles from the flue gas.	70	02
2	ETP	Existing sugar ETP of 1000 CMD will accomodate the effluent from co-gen unit also	150	10
3	Rainwater Harvesting	-	20	02
4	Occupational Health & Safety	-	15	03
5	Laboratory Equipment, Monitoring & Environmental Audit	-	15	03
6	Green belt development	-	20	04
7	Fire fighting for co-gen unit	-	45	2.5
8	Proposed Boiler Stack of co-gen unit	-	100	-
9	Ash handling system	-	100	03

10	Environmental Monitoring	-	-	02

39.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not application

40.Any Other Information

No Information Available

	CRZ/ RRZ clearance obtain, if any:	Not applicable
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	Not applicable
	Category as per schedule of EIA Notification sheet	Category B, Sr. No. 1 (d)
	Court cases pending if any	Not applicable
	Other Relevant Informations	NA
	Have you previously submitted Application online on MOEF Website.	No
	Date of online submission	-

3. The proposal has been considered by SEIAA in its 174th meeting & decided to accord environmental clearance to the said project under the provisions of Environment Impact Assessment Notification, 2006 subject to implementation of the following terms and conditions:

Specific Conditions:

I	PP to upload agreement/ permisison obtianed from the competent Authority to draw water from Ghod canal.
II	PP to ensure that no waste either liquid or solid shall be disposed off outside the premises without adequate treatment.
III	PP to prepare and implement CER plan in consultation with the District Collector as per OM issue dby MoEF&CC dated 01.05.2018.
IV	PP to use new and renewable energy source for the illumination of street lights and office buildings.
V	PP shall obtain Permission for the land development from the competent planning authority (the District Collector/ Town Planning Department).
VI	PP to submit CER plan to District Collector and submit the acknowledgement to Member Secretary, SEIAA.
VII	PP to submit CER plan to District Collector and submit the acknowledgement to Member Secretary, SEIAA.
VIII	PP to ensure to comply with the conditions stipulated in the Office Memorandum issued by MoEF & CC dated 9th August, 2018.
IX	SEIAA decided to grant EC for: FSI:28031.38 m2, Non-FSI: 303768.62 m2 and Total BUA: 331800.00 m2 Approval no-KaVi/Jamin/BAP/SR/19/2019, Date-06.08.2019)

General Conditions:

I	(i)PP to achieve Zero Liquid Discharge ; PP shall ensure that there is no increase in the effluent load to CETP.
II	No additional land shall be used /acquired for any activity of the project without obtaining proper permission.
III	PP to take utmost precaution for the health and safety of the people working in the unit as also for protecting the environment.
IV	Proper Housekeeping programmers shall be implemented.
V	In the event of the failure of any pollution control system adopted by the unit, the unit shall be immediately put out of operation and shall not be restarted until the desired efficiency has been achieve.
VI	A stack of adequate height based on DG set capacity shall be provided for control and dispersion of pollutant from DG set. (If applicable).
VII	A detailed scheme for rainwater harvesting shall be prepared and implemented to recharge ground water.
VIII	Arrangement shall be made that effluent and storm water does not get mixed.
IX	Periodic monitoring of ground water shall be undertaken and results analyzed to ascertain any change in the quality of water. Results shall be regularly submitted to the Maharashtra Pollution Control Board.

X	Noise level shall be maintained as per standards. For people working in the high noise area, requisite personal protective equipment like earplugs etc. shall be provided.
XI	The overall noise levels in and around the plant are shall be kept well within the standards by providing noise control measures including acoustic hoods, silencers, enclosures, etc. on all sources of noise generation. The ambient noise levels shall confirm to the standards prescribed under Environment (Protection) Act, 1986 Rules, 1989.
XII	Green belt shall be developed & maintained around the plant periphery. Green Belt Development shall be carried out considering CPCB guidelines including selection of plant species and in consultation with the local DFO/ Agriculture Dept.
XIII	Adequate safety measures shall be provided to limit the risk zone within the plant boundary, in case of an accident. Leak detection devices shall also be installed at strategic places for early detection and warning.
XIV	Occupational health surveillance of the workers shall be done on a regular basis and record maintained as per Factories Act.
XV	(The company shall make the arrangement for protection of possible fire hazards during manufacturing process in material handling.
XVI	The project authorities must strictly comply with the rules and regulations with regard to handling and disposal of hazardous wastes in accordance with the Hazardous Waste (Management and Handling) Rules, 2003 (amended). Authorization from the MPCB shall be obtained for collections/treatment/storage/disposal of hazardous wastes.
XVII	Regular mock drills for the on-site emergency management plan shall be carried out. Implementation of changes / improvements required, if any, in the on-site management plan shall be ensured.
XVIII	A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.
XIX	Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise breaks-up. These cost shall be included as part of the project cost. The funds earmarked for the environment protection measures shall not be diverted for other purposes and year-wise expenditure should reported to the MPCB & this department
XX	The project management shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the marathi language of the local concerned within seven days of issue of this letter, informing that the project has been accorded environmental clearance and copies of clearance letter are available with the Maharashtra Pollution Control Board and may also be seen at Website at http://ec.maharashtra.gov.in
XXI	Project management should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the MPCB & this department, on 1st June & 1st December of each calendar year.
XXII	A copy of the clearance letter shall be sent by proponent to the concerned Municipal Corporation and the local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent.
XXIII	The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely; SPM, RSPM. SO2, NOx (ambient levels as well as stack emissions) or critical sectorai parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.
XXIV	The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.
XXV	The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.

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

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

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

7. Validity of Environment Clearance: The environmental clearance accorded shall be valid as per EIA Notification, 2006, and amendments by MoEF&CC Notification dated 29th April, 2015.

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

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

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

Shri. Anil Diggikar (Member Secretary SEIAA)

Copy to:

1. SECRETARY MOEF & CC

2. IA- DIVISION MOEF & CC

3. MEMBER SECRETARY MAHARASHTRA POLLUTION CONTROL BOARD MUMBAI

4. REGIONAL OFFICE MOEF & CC NAGPUR

5. MUNICIPAL COMMISSIONER PUNE

6. MUNICIPAL COMMISSIONER SATARA

7. REGIONAL OFFICE MPCB PUNE

8. REGIONAL OFFICE MIDC PUNE

9. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD

10. COLLECTOR OFFICE PUNE

11. COLLECTOR OFFICE SATARA

12. COLLECTOR OFFICE SOLAPUR

widow holding a life estate and has held that in view of the provisions of the Land Reforms Act she will be deemed to be a *Bhumidhar*. The learned counsel tried to distinguish the judgment by saying that in that case, the land had devolved on the widow from her husband directly and not on the basis of any compromise. According to us, the ratio of that judgment cannot be distinguished on this ground.

7. The High Court has rightly rejected the stand of the appellants that as Smt Phoola got the lands by way of maintenance it will be covered by Section 11 of the Act and after vesting she will be deemed to be the asami and not *Bhumidhar*. It appears Section 11 shall be applicable where the holder of sir or khudkasht lands allots such lands to a person in lieu of maintenance allowance. In the present case, Smt Phoola got the lands on the basis of a compromise entered into in the year 1932 and she was in possession thereof.

8. We are surprised as to how the Deputy Director while exercising the revisional power entered into all questions of fact and came to the conclusion on pure conjecture that the appellants before this Court shall be deemed to be in possession of the lands since 1932. This Court has repeatedly pointed out that howsoever wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as court of appeal so as to reappreciate the evidence on record for recording findings on questions of fact. According to us, the High Court should have set aside the order of the Deputy Director, on this ground alone and should have restored the order of the Consolidation Officer and the Settlement Officer (Consolidation). We are in agreement with the conclusions arrived at by the High Court. Accordingly, this appeal fails and is dismissed. No costs.

(1997) 2 Supreme Court Cases 267

(BEFORE J.S. VERMA AND B.N. KIRPAL, JJ.)

T.N. GODAVARMAN THIRUMULKPAD .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 202 of 1995† with No. 171 of 1996
decided on December 12, 1996

A. **Constitution of India — Arts. 32 & 21 — Ecology — Protection and conservation of forests — Interim directions issued by Supreme Court — All on-going activity within any forest in any State throughout the country, without prior permission of Central Govt., must stop forthwith — Running of saw mills including veneer or plywood mills and mining of any mineral, being non-forest purposes, not permissible without prior approval of Central Govt. and must stop forthwith — Felling of trees in Tirap and Changlang in State of Arunachal**

† Under Article 32 of the Constitution of India

Pradesh to be totally banned — Felling of trees in all other forests to remain suspended in accordance with working plan of State Govt., as approved by Central Govt. — Movement of cut trees and timber from any of the seven North-Eastern States to any other State to be completely banned — All the States must constitute Expert Committees and submit reports to the Supreme Court — Specific directions for States of J&K, U.P. and W.B. and T.N. also issued — Notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason — Ministry of Railways to file an affidavit giving full particulars including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood — These orders and directions to continue till further orders of the Court and will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal — Matter to be listed on 25-2-1997 for further hearing — Forest Conservation Act, 1980, S. 2

B. **Forest Conservation Act, 1980 — S. 2 — 'Forest' — Meaning — Words and phrases**

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. (Para 4)

Ambica Quarry Works v *State of Gujarat*, (1987) 1 SCC 213, *Rural Litigation and Entitlement Kendra* v *State of U P*, 1989 Supp (1) SCC 504; *Supreme Court Monitoring Committee* v *Mussoorie Dehradun Development Authority*, WP (C) No 749 of 1995, decided on 29-11-1996, *State of Bihar* v *Banshi Ram Modi*, (1985) 3 SCC 643, *relied on*

R-M/17353/C

Advocates who appeared in this case .

Ashok Desai, Attorney General, N N. Goswami, H.N. Salve, Rajeev Dhavan, Shanti Bhushan, A.S. Nambiar, T L V Iyer, A.K. Ganguli, P S. Poti, M S Nargolkar, Jayant Das, S.N. Choudhary, Avadh Behari Rohtagi, K. Amareshwari and D.P. Gupta, Senior Advocates (A.D.N Rao, P. Parameswaran, Ms Anil Katiyar, V Krishnamurthi, A. Mariarputham, Dayan Krishnan, Ms B. Sunita Rao, Ms N N. Saikia, Ms U. Hazarika, S.R. Hegde, P.H. Parekh, E.R. Kumar, Indu Verma, K.J. John, Mahendar Vyas, P K. Manohar, Arvind, V Balachandran, T V S.N. Chari, Nikhil Nayyar, G Prakash, Gopal Singh, S.M Jadhav, J.P Verghese, S.R. Setia, V. Balaji, A T M. Sampath, V G Pragasam, S K. Agnihotri, Raj Kumar Mehta, H S Munjral, K R. Nagaraja, K K Tyagi, B S. Chahar, Ashok Mathur, Ms H. Wahi, Ms S. Karanika, Ms Nandini Mukherjee, Gaurav Jain, Ms Abha Jain, Ms S Janani, Kailash Vasdev, Prem Malhotra, Shakeel Ahmed Syed, D N Mukherjee, D S

Mahra, B.B. Singh, A.K. Srivastava, T. Anil Kumar, A. Venkateshwara Rao, Aruneshwar Gupta, J.S Manhas, J.S. Attri, U.U. Lalit (Amicus curiae), Ms Purnima Bhat, Ms Meenakshi Sakhardanda, Altaf Nayak, R. Sasiprabhu, A.V. Palli, Zafar Shah, Atul Sharma, Ms Rekha Palli, Ms Kavita Wadia, S.K. Bhattacharya, S.K. Dhingra and Ms Ranu, Advocates, with them) for the appearing parties.

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

1. WP (C) No 749 of 1995, decided on 29-11-1996, *Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority* 270*b-c*
2. 1989 Supp (1) SCC 504, *Rural Litigation and Entitlement Kendra* v *State of U P* 270*b*
3. (1987) 1 SCC 213, *Ambica Quarry Works* v *State of Gujarat* 270*b*
4. (1985) 3 SCC 643, *State of Bihar* v *Banshi Ram Modi* 270*b-c*

ORDER

1. In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, the learned counsel appearing for the States and the parties/applicants and, in addition, the learned Amicus Curiae, Shri H.N. Salve, assisted by Sarvashri U.U. Lalit, Mahender Das and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the Court, we have formed the opinion that the matters require a further in-depth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel and, therefore, we defer the continuation of this hearing for some time to enable the learned counsel to further study these points.

2. However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the learned Attorney General and the other learned counsel on these aspects.

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

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or

otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works* v. *State of Gujarat*[1], *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[2] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority*[3]). The earlier decision of this Court in *State of Bihar* v. *Banshi Ram Modi*[4] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:

I. GENERAL

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve

1 (1987) 1 SCC 213
2 1989 Supp (1) SCC 504
3 WP (C) No 749 of 1995 decided on 29-11-1996
4 (1985) 3 SCC 643

bio-diversity. All saw mills, veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to:

(*i*) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

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

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

6. Each State Government should within two months, file a report regarding:

(*i*) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;

(*ii*) the licensed and actual capacity of these mills for stock and sawing;

(*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:

(*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.

8. The Expert Committee so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports.

II. FOR THE STATE OF JAMMU AND KASHMIR

1. There will be no felling of trees permitted in any "forest", public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu and Kashmir and in such plantations, felling will be strictly in accordance with law.

2. In "forests", the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu and Kashmir Wild Life Protection Act, 1978 or any other law banning such felling or removal of trees.

3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS officer posted in the State of Jammu and Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation (as Member Secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.

4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu and Kashmir Forest Conservation Act, 1990 and any other laws applying thereto. However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the Thein Dam.

5. All timber obtained, as aforesaid or otherwise, shall be utilised within the State, preferably to meet the timber and fuel wood requirements of the local people, the Government and other local institutions.

6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will —

(*a*) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will

include certification that the timber has come from State Forest Corporation sources; and

(*b*) be undertaken by either the Corporation itself, the Jammu and Kashmir Forest Department or the receiving agency.

7. The State of Jammu and Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.

8. No saw mills, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 kms from the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a "forest"; and which has not been converted from an earlier "forest". This ban will not apply to permits granted to the right-holders for their bona fide personal use in Himachal Pradesh.

2. In a "forest", the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.

3. For this purpose, the State Government is to constitute an Expert Committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.

4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

IV. FOR THE STATE OF TAMIL NADU

1. There will be a complete ban on felling of trees in all "forest areas". This will however not apply to:

(*a*) trees which have been planted and grown, and are not of spontaneous growth, and

(*b*) are in areas which were not forests earlier, but were cleared for any reason.

2. The State Government, within four weeks from today, is to constitute a committee for identifying all "forests".

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4. Insofar as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

(*a*) The felling of shade trees in these plantations will be —

(*i*) limited to trees which have been planted, and not those which have grown spontaneously;

(*ii*) limited to the species identified in the TANTEA Report;

(*iii*) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and

(*iv*) under the supervision of the statutory committee constituted by the State Government.

(*b*) Insofar as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of shade trees, and the further action for felling them will be as per that report. Meanwhile, Eucalyptus and Wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

(*c*) The State Government is directed to ascertain and identify those areas of the plantation which are a "forest" and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub-paras (*b*) and (*c*) above will not apply to such areas.

(*d*) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of "forests".

5. As far as the trees already cut, prior to the interim orders of this Court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled for Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one-time measure.

6. Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeals Nos. 367 to 375 of 1977

in CAs Nos. 1344-45 of 1976. After the order is made in those civil appeals on the IAs pending therein, if necessary, this aspect may be re-examined.

7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, Tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or any State Government or any court (including High Court) or Tribunal.

6. We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

7. We are informed that the Railway authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood.

8. IAs Nos. 7, 9, 10, 11, 12, 13 and 14 in Writ Petition (Civil) No. 202 of 1995 and IAs Nos. 1, 3, 4, 5, 6, 7, 8 and 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of, accordingly.

9. List the matter on 25-2-1997 as part-heard for further hearing.

(1997) 2 Supreme Court Cases 275

(BEFORE S.P. BHARUCHA AND S.C. SEN, JJ.)

STATE OF GUJARAT .. Appellant;

Versus

SUHRID GEIGY LTD. AND OTHERS .. Respondents.

Civil Appeals No. 1780 of 1980† with Nos. 3536-40 of 1982 and 7431 of 1983, decided on December 10, 1996

A. **Excise — Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — S. 2(h) — "Narcotic drug" or "narcotic" — Meaning of — Held, one which produces either drowsiness or sleep or stupefaction or insensibility and not necessarily all the four effects — Word "or", occurring between "stupefaction" and "insensibility" cannot be read as "and" — Plain meaning applied — Interpretation of statutes — Basic rules — Plain meaning — Interpretation of statutes — Subsidiary rules — Conjunctive or disjunctive — Words and phrases — "Or"**

† From the Judgment and Order dated 4/7-4-1980 of the Gujarat High Court in S C A No 912 of 1975

(2013) 4 Supreme Court Cases 575

(BEFORE A.K. PATNAIK AND H.L. GOKHALE, JJ.)

STERLITE INDUSTRIES (INDIA) LIMITED
AND OTHERS .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals Nos. 2776-83 of 2013†, decided on April 2, 2013

A. **Environment Protection and Pollution Control — Polluter pays principle — Closure of polluting plant or direction to pay compensation for loss suffered by citizenry due to harm caused to environment — Factors to be considered and balanced — Sustainable development — Considerations of — Remedial action to restore environmental damage caused by polluting plant concerned/improve environment — Possibility of, without closure of plant**

— Environmental impact assessment (EIA) for setting up copper smelter plant by appellant Company and environmental clearance by authorities being valid, rational and as per procedure — But plant while operating failing to maintain emission and effluent standards and operating without renewal permission and thereby causing air and water pollution which could have been averted — High Court therefore quashing environmental clearance and directing closure of plant — But when matter coming to Supreme Court, appellant removing 29 out of 30 pollution-causing deficiencies at plant pointed out by NEERI (National Environmental Engineering and Research Institute)

— Considering: (a) economic importance of plant and need of sustainable development in public interest, (b) that authorities could exercise their discretion under R. 5(1)(v), 1986 Rules at any later stage to shift the plant if they felt the need therefor without closing down plant, (c) well-settled principles and grounds for judicial review and intervention, (d) that pollution could be checked/remedied without the plant being closed down, and (e) paying capacity of plant to pay compensation — Held, the plant should not be closed down but instead appellant Company should pay compensation of Rs 100 crores to remedy environmental damage caused/ improve environment as directed — Therefore, High Court order directing closure of plant, set aside — Clarified that State Pollution Control Board (i.e. TNPCB) can issue directions to appellant Company including a direction for closure of the plant, for the protection of environment in accordance with law, if found necessary at any stage — Also clarified that award of Rs 100 crores as compensation would not bar any other claim by any person that may be available under law — Constitution of India — Arts. 21, 32, 47, 48-A, 226 and 136 — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3,

† Arising out of SLPs (C) Nos. 28116-23 of 2010. From the Judgment and Order dated 28-9-2010 of the High Court of Judicature of Madras in WPs Nos. 15501-502 of 1996, 5769 of 1997, 16861 of 1998, WMPs Nos. 8044-46 of 1999 and WP No. 15503 of 2006

16 and 18 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environment (Protection) Rules, 1986 — Rr. 5(1)(v) & (3) — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, R. 19

B. **Environment Protection and Pollution Control — Pollutants/ Polluting industry — Compensation on basis of polluter pays principle — Manner of determination of amount — Paying capacity of polluter — Reckoning of — Closure of plant, when not desirable**

C. **Environment Protection and Pollution Control — Polluter pays principle — Compensation awarded under, for causing harm to environment for a particular period, held, not to affect any claim for damages for the aforesaid period or any other period that may lie in a civil court or any other forum in accordance with law**

D. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Judicial review/Quashment of — Grounds and scope for judicial intervention — Principles summarised**

— Held, Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can only be quashed on well-recognised principles of judicial review i.e. only if there is any illegality, irrationality or procedural impropriety in granting such permission (which is not the case here) — However, if after setting up of plant, the plant begins/continues to pollute environment, fundamental right under Art. 21 of Constitution can always be invoked — But as remedies were available to remedy damage caused/improve environment without closing the plant, High Court should not have directed closure of plant (and as per latest record, plant had already removed 29 out of 30 pollution-causing deficiencies pointed out by NEERI) — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environmental clearance granted under — Grounds and scope of judicial intervention — Evidence Act, 1872 — S. 45 — Expert opinion — EIA (Environment Impact Assessment) — Grounds for judicial review

E. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Ground of procedural impropriety — When can be resorted to, to quash environmental clearance — Held, ground of procedural impropriety can be resorted to, to quash environmental clearance only when a mandatory requirement is violated — As requirements of comprehensive EIA and public hearing prior to grant of environmental clearance were not mandatory (as per prevalent notification), High Court could not have quashed environmental clearance on said grounds — Environment (Protection) Act, 1986, Ss. 3(1) & (2)**

F. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Grant of environmental clearance/NOC for setting up of plant/industry — If valid and proper in present case**

— (a) There being no public hearing on issue of environmental effects of setting up of plant at location where it was set up (which was opposed at

three other places in India), (b) EIA being conducted speedily by taking only data of one season, (c) authorities reducing requirement of green belt around plant from 250 m to 25 m, and (d) plant being located within 25 km of ecologically sensitive area (i.e. islands of Gulf of Munnar) as notified under S. 35(1), 1972 Act — Against this Supreme Court found that requirement of public hearing and comprehensive EIA were not mandatory as per prevalent notification (EIA Noti. dt. 27-1-1994), though later notification (i.e. EIA Noti. dt. 10-4-1997) requiring mandatory public hearing and comprehensive EIA — Rapid EIA being permissible under prevalent notification, whereunder EIA could be done by taking data of only one season — All procedures regarding rapid EIA were complied with as per prevalent notification — It could not be shown as to how by reducing green belt from 250 m to 25 m around the plant area any procedure was violated or there was any irrationality — Rather plant had installed air control utilities such that it satisfied ambient air quality standards prescribed by State Pollution Control Board (i.e. TNPCB) — Therefore, held, there was no illegality, irrationality, or procedural impropriety in granting environmental clearance to the project of appellant — Regarding location, no notification prohibiting setting up of industry in said area had been issued under R. 5(1)(v), 1986 Rules — Thus as and when Central Government issues a notification under R. 5(1)(v), 1986 Rules, prohibiting or restricting location of plant, steps may be taken by all concerned for shifting of the industry subject to content of notification and subject to legal challenge by industry concerned — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3, 16 and 18 — Wild Life (Protection) Act, 1972 — Ss. 35(1) & (4) — Notification under S. 35(4) not having been issued — Effect — Environment (Protection) Rules, 1986, Rr. 5(1)(v) & (3)

G. **Environment Protection and Pollution Control — Sustainable development — Polluting plant — Relief of setting aside order of closure — Said relief, when can be given even if there was suppression and misrepresentation of material facts by polluting plant (appellant) — EIA Noti. dt. 27-1-1994 — Para 2(c) and Expln. Note, Para 5 — EIA Noti. dt. 10-4-1997 — Constitution of India, Arts. 226, 32 and 136**

H. **Environment Protection and Pollution Control — Non-Governmental Organisations (NGOs) and Third Sector — Appreciation expressed by Supreme Court for work done by writ petitioners and intervenor for prosecuting these proceedings in genuine public interest**

Allowing the appeal in the terms below, the Supreme Court

Held :

The environmental clearance for setting up the plant of the appellant Company was granted to the appellants under Section 3(1) of the Environment (Protection) Act, 1986 (1986 Act). The prevalent Environmental Impact Assessment (EIA) notification issued under Section 3(2)(*v*), 1986 Act, and Rule 5(3) of the Environment (Protection) Rules, 1986, by the Central Government was EIA Notification dated 27-1-1994. The language of Para 2(*c*), EIA Notification dated 27-1-1994 did not lay down that a public hearing was a must for giving environmental clearance when the appellants' case was under

consideration. In the present case the environmental clearance was thus granted by MoEF on 16-1-1995 in accordance with the procedure laid down by the EIA Notification dated 27-1-1994 well before the issuance of the EIA Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. Therefore, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before the grant of the environmental clearances. (Paras 28 to 29, 2, 7 and 22)

Para 5 of the Explanatory Note, EIA Notification dated 27-1-1994 clarified that project proponents could furnish a rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and a comprehensive EIA report could be submitted later, if so asked for by the Impact Assessment Agency. Therefore, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994). The High Court has noticed some decisions of the Supreme Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review: for e.g. the High Court could interfere on the ground of illegality, irrationality, *Wednesbury* unreasonableness, or on the ground of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. In the absence of a mandatory requirement of public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety. No materials have been produced to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision or that the decision of MoEF to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.
(Paras 30 to 33, 8 and 18 to 21)

Lafarge Umiam Mining (P) Ltd. v. *Union of India*, (2011) 7 SCC 338, *followed*

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647; *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *M.C. Mehta* v. *Union of India*, (2009) 6 SCC 142; *East Coast Railway* v. *Mahadev Appa Rao*, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483; *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC); *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*, Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC); *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *cited*

It is for the authorities under the 1986 Act and Rules and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review. (Para 34)

Belize Alliance of Conservation Non-Governmental Organisations v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *relied on*

Bow Valley Naturalists Society v. *Canada (Minister of Canadian Heritage)*, (2001) 2 FC 461 (Can), *approved*

The TNPCB (State Pollution Control Board) while granting the consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 added the requirement that the location of the unit should be 25 km away from ecologically sensitive area without noting that the area for plant concerned was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the said area, and the plant has in fact been established there, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and based thereon directed closure of the plant. The Gulf of Munnar is an ecologically sensitive area [having been so notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986] and the Central Government may in exercise of its powers under Rule 5(1)(*v*), 1986 Rules, prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5, 1986 Rules, then appropriate steps may have to be taken by all concerned for shifting the industry depending upon the content of the order or notification and subject to the legal challenge by the industries. (Paras 37, 38, 6 to 6.3, 12 and 14 to 26)

NEERI (National Environmental Engineering and Research Institute) Report of 1998, *referred to*

Various conditions have been imposed on the plant/industry of the appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfies the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate dated 1-8-1994. If the TNPCB after considering the representation of the appellants has reduced the requirement of width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the TNPCB. (Paras 39.1, 9 and 13)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

It is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant

the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the grant of environmental clearance under the 1986 Act and Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry begins to/continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent. (Paras 40 and 18)

M.C. Mehta v. *Union of India*, (1987) 4 SCC 463, *relied on*

The High Court relied on the report of NEERI (National Environmental Engineering and Research Institute) of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste. The NEERI Report of 2005 did show that the emission and effluent discharged from the appellants' plant affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to remedy/improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. As per the joint inspection carried out by TNPCB and CPCB as per Supreme Court, directions, out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act remains to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order of the High Court directing closure of the plant of the appellants is liable to be set aside. (Paras 41 to 44, 10, 14 and 23)

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 769; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773, *relied on*

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 772; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254; *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

NEERI (National Environmental Engineering and Research Institute) Reports of 2005, 1998, 1999, 2003 and 2011; Joint Inspection Report of TNPCB and CPCB, September 2012, *referred to*

There is no doubt that there has been misrepresentation and suppression of material facts made in the SLP by the appellants, but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile and construction industries and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, it will not be a proper exercise of the discretion under Article 136 of the Constitution to refuse relief on the grounds of

misrepresentation and suppression of material facts in the SLP. (Paras 48, 11 and 15 to 17)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC); *Hari Narain* v. *Badri Das*, AIR 1963 SC 1558; *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*, (1991) 3 SCC 261; *Dalip Singh* v. *State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324; *Abhyudya Sanstha* v. *Union of India*, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, *referred to*

The NEERI Reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. On account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages. (Para 45)

Considering the magnitude, capacity and prosperity of the appellant Company, the appellant Company is directed to pay compensation of Rs 100 crores. The aforesaid amount will be deposited with the Collector of Thoothukudi District who will invest it in a fixed deposit. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. (Paras 47 and 50)

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *followed*

NEERI (National Environmental Engineering and Research Institute) reports of 1998, 1999, 2003 and 2005; Annual Report 2011 of the Sterlite Industries, at pp. 20 and 21, *referred to*

The efforts of writ petitioners before the High Court and the intervenor before the Supreme Court are appreciated for having taken up the cause of the environment both before the High Court and the Supreme Court and for having assisted the Supreme Court on all dates of hearing with utmost sincerity and hard work. Voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of the environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before the Supreme Court not only ventured but also put in their best for the cause of the general public. (Para 49)

Indian Council for Enviro-Legal Action v. *Union of India*, (1996) 3 SCC 212, *relied on*

The impugned common judgment of the High Court is, therefore, set aside and it is made clear that the present judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law. It is also made clear that the direction for payment of compensation of Rs 100 crores by the present judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law. (Paras 50 and 51)

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

Advocates who appeared in this case :

P.P. Malhotra, Additional Solicitor General, S. Guru Krishna Kumar, Additional Advocate General, C.A. Sundaram, C.U. Singh, Raj Panjwani and V. Prakash, Senior Advocates (Ms Rohini Musa, Zafar Inayat, Yogesh V. Kotemath, S. Raghunathan, Mahesh Agarwal, Rishi Agarwal, E.C. Agarwala, Ms Radhika Gautam, Abhinav Agrawal, Ms Rashmi Nandakumar, Rahul Chowdhury, Ms Anitha Shenoy, Ms Vimla Sinha, Yasser Rauf, B. Krishna Prasad, Subramonium Prasad, Ms Manju Jana, Shivaji M. Jadhav, Vijay Panjwani, G. Devedoss, M.S.M. Asaithambi, G. Ananthaselvam, M. Yogesh Kanna, R. Veeramani, A. Prasanna Venkat, S. Beno Bencigar, P. Somasundaram, Abhay Kumar, V.N. Subramaniam, V. Senthila Kumar, K. Krishna Kumar and M.A. Chinnasamy, Advocates) for the appearing parties and Vaiko alias V. Gopalsamy, Respondent-in-Person.

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

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16. (2001) 2 FC 461 (Can), *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)* 596*e-f*
17. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 590*c*
18. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action* v. *Union of India* 606*c*
19. (1991) 3 SCC 261, *G. Narayanaswamy Reddy* v. *Govt. of Karnataka* 589*g-h*
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22. AIR 1963 SC 1558, *Hari Narain* v. *Badri Das* 589*g*
23. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* 595*d-e*

The Judgment of the Court was delivered by

A.K. PATNAIK, J.— Leave granted.

Facts

2. The relevant facts very briefly are that the appellant Company applied and obtained "no-objection certificate" on 1-8-1994 from the Tamil Nadu Pollution Control Board (for short "the TNPCB") for setting up a copper smelter plant (for short "the plant") in Melavittan Village, Tuticorin. On 16-1-1995, the Ministry of Environment and Forests, Government of India, granted environmental clearance to the setting up of the plant of the appellants at Tuticorin subject to certain conditions including those laid down by the TNPCB and the Government of Tamil Nadu. On 17-5-1995, the Government of Tamil Nadu granted clearance subject to certain conditions and requested the TNPCB to issue consent to the proposed plant of the appellants. Accordingly, on 22-5-1995, the TNPCB granted its consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short "the Air Act") and under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Water Act") to the appellants to establish the plant in the SIPCOT Industrial Complex, Melavittan Village, Tuticorin Taluk.

3. The environmental clearance granted by the Ministry of Environment and Forests, Government of India, and the consent orders under the Air Act and the Water Act granted by the TNPCB were challenged before the Madras High Court in WPs Nos. 15501-503 of 1996 by the National Trust for Clean Environment. While these writ petitions were pending, the appellants set up the plant and commenced production on 1-1-1997. Writ Petition No. 5769 of 1997 was then filed by V. Gopalsamy, General Secretary, MDMK Political Party, Thayagam, praying for, inter alia, a direction to the appellants to stop forthwith the operation of the plant. Writ Petition No. 16861 of 1998 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, the TNPCB and the Union of India to take suitable action against the appellant Company for its failure to take safety measures due to which there were pollution and industrial accidents in the plant.

4. A Division Bench of the High Court heard Writ Petitions Nos. 15501-503 of 1996, Writ Petition No. 5769 of 1997 and Writ Petition No. 16861 of 1998 and by the common judgment dated 28-9-2010[1], allowed and disposed of the writ petitions with the direction to the appellant Company to close down its plant at Tuticorin. By the common judgment, the High Court also declared that the employees of the appellant Company would be entitled to compensation under Section 25-FFF of the Industrial Disputes Act, 1947 and directed the District Collector, Tuticorin, to take all necessary and immediate steps for the re-employment of the workforce of the appellant Company in some other companies/factories/organisations so as to protect their livelihood

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field.

5. Aggrieved, the appellant has filed these appeals against the common judgment dated 28-9-2010[1] of the Division Bench of Madras High Court and on 1-10-2010, this Court passed an interim order[2] staying the impugned judgment of the High Court.

Contentions on behalf of the appellants

6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment[1] of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from the ecologically sensitive area and as per the report of NEERI (National Environmental Engineering and Research Institute) of 1998 submitted to the High Court, the plant is situated within 25 km from four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 km, 7 km and 15 km respectively from Tuticorin where the plant is located:

6.1. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of an industry in Tuticorin area. He submitted that the Government of Tamil Nadu, however, had issued a Notification dated 10-9-1986 notifying its intention under Section 35(1) of the Wild Life (Protection) Act, 1972 to declare the twenty-one islands of the Gulf of Munnar as a marine national park, but no notification has yet been issued by the Government of Tamil Nadu under Section 35(4) of the aforesaid Act declaring the twenty-one islands of the Gulf of Munnar as a national park.

6.2. He explained that prior to the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, some environmental guidelines had been issued by the Ministry of Environment and Forests, Department of Environment, Government of India, in August 1985 and one of the guidelines therein was that industries must be located at least 25 km away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its consent order dated 22-5-1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 km away from ecologically sensitive areas. He submitted that this stipulation was made in the consent order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecologically sensitive areas within 25 km of the industry, but in the consent

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), wherein it was directed:

"List on 18-10-2010. Interim stay of the impugned judgment of the High Court till then."

order issued on 14-10-1996 to operate the industry, this stipulation was removed and instead it was stipulated in Clause 20 that the unit shall re-use the entire quantity of treated effluent in the process and ensure that no treated effluent is discharged into inland surface water or on land or sewer or sea as proposed by the unit.

6.3. He submitted that in any case the consent for establishment issued under the Water Act by the TNPCB would show that the appellant Company was given the consent to establish its copper smelter project in SIPCOT Industrial Complex irrespective of the distance at which the SIPCOT Industrial Complex was located from any ecologically sensitive area and in the SIPCOT Industrial Complex, many other chemical industries are located and the High Court appears to have lost sight of this aspect of the consent given by the TNPCB to establish the plant.

7. Mr Sundaram submitted that the second ground given by the High Court for directing closure of the plant of the appellants was that this being a project exceeding Rs 50 crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant Company. He submitted that when the environmental clearance was granted to the appellant Company the Environmental Impact Assessment (for short "EIA") Notification dated 27-1-1994 was in force and this notification did not make public hearing mandatory and only stated that comments of the public may be solicited if so recommended by the Impact Assessment Agency within 30 days of the receipt of the proposal. He submitted that the High Court, therefore, was not correct in taking a view that a public hearing was mandatory during EIA before environmental clearance was given by the Ministry of Environment and Forests, Government of India. He clarified that by a subsequent Notification dated 10-4-1997, a public hearing was made compulsory but by the time this notification came into force environmental clearance had already been granted to the plant of the appellants on 16-1-1995.

8. Mr Sundaram submitted that the High Court also took the view in the impugned judgment[1] on the basis of the report of the NEERI of 1998 that there was undue haste on the part of the governmental authorities in granting permissions and consents to the appellant Company. He submitted that in an explanatory note to the EIA Notification dated 27-1-1994 the Central Government has clarified that rapid EIA could also be conducted for obtaining environment clearance for any new project/activity and therefore the State Government while granting no-objection certificate by its Letter dated 1-8-1994 asked the appellants to conduct rapid EIA based on one season data and the appellants carried out rapid EIA study based on the data collected by the M/s Tata Consultancy Service (TCS). He relied on the

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

affidavit dated 1-12-1998 filed on behalf of the Ministry of Environment and Forests, Government of India to submit that rapid EIA before granting clearance to the plant of the appellant was conducted in accordance with the guidelines.

9. Mr Sundaram submitted that the third ground on which the High Court directed closure of the plant of the appellants was that the TNPCB stipulated a condition in Clause 20 of the no-objection certificate that the appellants will develop a green belt of 250 metres width around the battery limit of the industry as contemplated under the environmental management plan but subsequently the appellant Company submitted a representation to TNPCB requesting TNPCB to reduce the requirement of green belt from 250 metres to the width of 10-15 metres as development of the green belt of 250 metres width requires a land of around 150 acres and TNPCB in its meeting held on 18-8-1994 relaxed this condition and stipulated that the appellant Company will develop a green belt of minimum width of 25 metres. He submitted that the land allocated by SIPCOT to the appellants was not sufficient to provide a green belt of 250 metres width around the plant and hence this was an impossible condition laid down in the no-objection certificate and for this reason the appellants approached the TNPCB to modify this condition and the TNPCB reduced the width of the green belt to 25 metres. He further submitted that generally, the TNPCB and the Ministry of Environment and Forests, Government of India, have been insisting on a green belt of 25% of the plant area and the appellants could not be asked to provide a green belt of more than 25% of the plant area.

10. Mr Sundaram submitted that the last ground, on which the High Court directed closure of the plant of the appellants is that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to the Indian drinking water standards. He referred to the reports of NEERI of 1998, 1999, 2003 and 2005 submitted to the High Court and the report of NEERI of 2011 and also the joint inspection report of TNPCB and CPCB of September 2012 submitted to this Court, to show that the finding of the High Court that the plant of the appellants had caused severe pollution in the area was not correct. He vehemently submitted that though there were no deficiencies in the plant of the appellants, the TNPCB in its affidavit has referred to its recommendations as if there were deficiencies. He submitted that the recommendations made by the TNPCB were only to provide the best of checks in the plant against environmental pollution with a view to ensure that the plant of the appellants becomes a model plant from the point of view of the environment, but that does not mean that the plant of the appellants had deficiencies which need to be corrected. He submitted that the reports of NEERI of 2005 and 2011 referred to accumulation of gypsum and phosphogypsum, which come out from the plant of the appellants as part of the slag but the opinion of CPCB in its letter dated 17-11-2003 to the TNPCB

is that such slag is non-hazardous and can be used in cement industries, for filling up lower level area and as building/road construction material, etc. and has no adverse environmental effects.

11. Mr Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment[1] for directing closure of the plant of the appellants are well-founded, it is a fit case in which this Court should set aside the impugned judgment[1] of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tonnes of copper which constitute 39% of the total of 5,14,000 metric tonnes of copper produced in India and that 50% of the copper produced by the plant of the appellants is consumed in the domestic market and the balance 50% is exported abroad. He also submitted that the plant provides direct and indirect employment to about 3000 people and yields a huge revenue to both the Central and State Governments. He submitted that closure of the plant of the appellants, therefore, would also not be in the public interest.

Contentions on behalf of the respondent-writ petitioner

12. Mr V. Gopalsamy, who was the writ petitioner in Writ Petition No. 5769 of 1997 before the High Court, appeared in person and supported the impugned judgment[1] of the High Court. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 as well as in its consent order dated 22-5-1995 under the Water Act clearly stipulated that the appellant Company shall ensure that the location of its unit should be 25 km away from the ecologically sensitive area and the Government of Tamil Nadu in their affidavit dated 27-10-2012 have stated that all the 21 islands including the four near Tuticorin in the Gulf of Munnar marine national park are ecologically sensitive areas. He submitted that NEERI in its report of 1998 has observed that four out of twenty-one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, are at distances of 6 km, 7 km and 15 km respectively from Tuticorin. He further submitted that merely because a condition has been subsequently imposed on the appellant Company by TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 km distance from the ecologically sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a marine national park and extending financial assistance for the development of its ecology. He submitted that the proposal for issuance of a declaration under Section 35(4) of the Wild Life (Protection) Act, 1972 is pending for concurrence of the Central Government and, therefore, the ecological balance in the area of Gulf of Munnar would be disturbed if the plant of the appellants continues at Tuticorin and the High Court was right in directing closure of the plant of the appellants located at Tuticorin.

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

13. Mr V. Gopalsamy submitted that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 metres width around their plant as stipulated in the no-objection certificate dated 1-8-1994 of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 metres width. He submitted that considering the grave adverse impact on the environment by the plant of the appellants, a 250 metres width of green belt was absolutely a must but the TNPCB very casually reduced the green belt from 250 metres width to 25 metres. He submitted that it will be seen from the joint report of the TNPCB and CPCB filed pursuant to the order dated 27-8-2012[3] of this Court that as a condition of the renewal of the consent order, the appellant Company has been asked to develop a green belt to an extent of 25% of the total area of 172.17 ha which works out to 43.04 ha and yet the TNPCB has found development of green belt of 26 ha as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 ha more for compliance with the condition for renewal of consent stipulated by the TNPCB.

14. Mr V. Gopalsamy submitted that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contains high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment. In this context, he also submitted that an American company, namely, the Asarco producing copper had to be closed down on account of such adverse environmental effects. He submitted that the claim of the appellants that their plant has no deficiencies and that it does not have any impact on the environment is not correct and different reports of the NEERI would show that the plant of the appellants is continuing to pollute the

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), wherein it was directed:

"1. Mr C.A. Sundaram, learned Senior Counsel states that pursuant to the order passed by this Court on 9-5-2012, the petitioner is taking effective steps to ensure strict compliance with the various conditions attached to the consent given by the Tamil Nadu Pollution Control Board. He further submits that the entire procedure for compliance with the conditions for consent will be completed by 31-8-2012.

2. The learned counsel appearing for the Tamil Nadu Pollution Control Board submits that, in fact, the Board was ready with an affidavit to be filed in Court today. However, in case the petitioner is able to achieve satisfactorily the required standards in the conditions imposed by the Tamil Nadu Pollution Control Board by 31-8-2012, the Board shall submit a detailed status report thereafter. The learned counsel appearing for the Central Pollution Control Board, in our opinion, has rightly made a submission that the Central Pollution Control Board shall also participate in the inspection to be carried out jointly by the Tamil Nadu Pollution Control Board and Central Pollution Control Board.

3. Let the inspection be completed by 14-9-2012. The joint report be submitted to the Court in a sealed cover. The Tamil Nadu Pollution Control Board is permitted to file any additional affidavit if deemed necessary by the said Board. However, advance copy of the same shall be given to the petitioner, the learned counsel for the Central Pollution Control Board as well as to the other respondents.

4. List the matter on 1-10-2012."

air and has also affected the groundwater of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant.

15. Mr Gopalsamy submitted that the appellants had initially proposed to establish the plant in Gujarat but this was opposed vehemently and the appellants decided to shift the establishment of the plant to Goa but because of opposition the plant could not be established in Goa. He submitted that the appellants thereafter intended to set up the plant at Ratnagiri in Maharashtra and invested Rs 200 crores in construction activities after obtaining environmental clearance but because of the opposition of the farmers of Ratnagiri, the Maharashtra Government had to revoke the licence granted to the appellants. He submitted that the appellants have been able to set up the plant at Tuticorin in Tamil Nadu by somehow obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, without a public hearing and the consents under the Water Act and the Air Act from the TNPCB and the High Court rightly allowed the writ petitions and directed closure of the plant of the appellants.

16. Mr V. Prakash, learned Senior Counsel appearing for the writ petitioner, National Trust for Clean Environment, in Writ Petitions Nos. 15501-503 of 1996 before the High Court, submitted that the appellants had made a false statement in the synopsis at p. (B) of the special leave petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint. He submitted that similarly in Ground IV at p. 45 of the special leave petitions the appellants have falsely stated that the High Court has erred in not appreciating that the appellants had got all the statutory approvals/consent orders from the authorities concerned as also the Central Government and the State Government. He submitted that the report of NEERI of 2011 would show that the appellants did not have valid consent during various periods including the period when it filed the special leave petitions. He submitted that the appellants did not also inform this Court that when they moved this Court on 1-10-2010 to stay the operation of the impugned order[1] of the High Court, the plant of the appellants had already stopped operation. He vehemently argued that due to misrepresentation of the material facts by the appellants in the special leave petitions as well as suppression of the material facts, this Court was persuaded to pass the stay order dated 1-10-2010[2]. He argued that on this ground alone this Court should refuse to grant relief to the appellants in exercise of its discretion under Article 136 of the Constitution.

17. Mr V. Prakash relied on the decisions of this Court in *Hari Narain* v. *Badri Das*[4], *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*[5] and

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

4 AIR 1963 SC 1558

5 (1991) 3 SCC 261

Dalip Singh v. *State of U.P.*[6] and *Abhyudya Sanstha* v. *Union of India*[7] for the proposition that this Court can refuse relief under Article 136 of the Constitution where the appellants have not approached this Court with clean hands and have made patently false statements in the special leave petition.

18. Mr Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by the National Trust for Clean Environment was that the Ministry of Environment and Forests, Government of India, and the TNPCB had not applied their mind to the nature of the industry as well as the pollution fallout of the industry of the appellants and the capacity of the unit of the appellants to handle the waste without causing adverse impact on the environment as well as on the people living in the vicinity of the plant. He submitted that this Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development in *Vellore Citizens' Welfare Forum* v. *Union of India*[8], *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*[9] and *M.C. Mehta* v. *Union of India*[10]. He submitted that these principles, therefore, have to be borne in mind by the authorities while granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts. He submitted that, in the present case, the appellants have relied on the rapid EIA done by Tata Consultancy Service, but this rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production the quantum and nature of pollutants, air, liquid and solid and handling of the waste.

19. Mr Prakash referred to the report of NEERI of 1998 submitted to the High Court to show that the inspection team of NEERI collected waste water samples from the plant of the appellants and an analysis of the waste water samples indicate that the treatment plant of the appellants was operating inefficiently as the levels of arsenic, selenium and lead in the treated effluent as also the effluent stored in the surge ponds were higher than the standards stipulated by the TNPCB. He also referred to the report of NEERI of February 1999 in which NEERI has stated that the treated effluent quality did not conform to the standards stipulated by the TNPCB.

20. Mr Prakash further submitted that the counter-affidavit of the Union of India filed on 1-12-1998 before the High Court also does not disclose whether, apart from the rapid EIA of Tata Consultancy Services, there was

6 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324
7 (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241
8 (1996) 5 SCC 647
9 (2009) 9 SCC 737
10 (2009) 6 SCC 142

any independent evaluation of the rapid EIA by the environmental impact assessment authority, namely, the Ministry of Environment and Forests. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 has stipulated in Clause 18 that the appellants have to carry out rapid EIA (for one season other than monsoon) as per the EIA Notification dated 27-1-1994 issued by the Ministry of Environment and Forests, Government of India, and furnish a copy to the TNPCB and this clause itself would show that TNPCB had not applied its mind as to whether there was a sufficient rational analysis of the nature of the industry, nature of pollutants, quantum of fallout and the plan or method for handling the waste. He submitted that since there was no application of mind by either the Ministry of Environment and Forests, Government of India, before granting the environmental clearance or by the TNPCB before granting the consents under the Water Act and the Air Act, the environmental clearance and the consent orders are liable to be quashed.

21. In support of his submissions, Mr Prakash cited *East Coast Railway* v. *Mahadev Appa Rao*[11], for the proposition that for a valid order there has to be application of mind by the authority, and in the absence of such application of mind by the authority, the order is arbitrary and is liable to be quashed. He cited the decision of the Lords of the Judicial Committee of the Privy Council in *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12], WIR at para 69 in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision-maker to the effect of the activity on the environment and the consequences to the community.

22. Mr Prakash also relied on the judgment of the Supreme Court of Judicature of Jamaica in *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*[13] to argue that a public hearing was a must for grant of environmental clearance and submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the High Court has rightly directed closure of the plant of the appellants.

23. Finally, Mr Prakash submitted that the finding of the High Court that the plant of the appellants continues to pollute the environment has been substantiated by the inspection report which has been filed in this Court by NEERI as well as the TNPCB from time to time. In particular, he referred to the joint inspection report of the TNPCB and CPCB to show that the directions issued by the TNPCB to improve solid waste disposal has not been complied with. He submitted that one of the conditions of the consent order of the TNPCB was that no slag was to be stored in the premises of the plant but huge quantity of slag has been stored in the premises of the plant and the direction to dispose at least 50% more than the monthly generation quantities of both slag and gypsum has not been complied with. He vehemently argued

11 (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483
12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
13 Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC)

that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. He submitted that it is not correct as has been submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardise the environment. He argued that there was therefore no other option for the High Court but to direct closure of the plant of the appellants to ensure clean environment in the area.

Contentions on behalf of the authorities

24. Mr S. Guru Krishna Kumar, learned counsel appearing for the TNPCB as well as the State of Tamil Nadu, relying on the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 submitted that the Gulf of Munnar consisting of 21 islands in 4 groups was notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 as this group of islands consisted of territorial waters between them and the proposal to declare Gulf of Munnar as a marine national park under Section 35(4) of the said Act was sent by the Chief Wild Life Warden to the State Government for approval on 30-4-2003 but the declaration under Section 35(4) of the said Act has not been finally made. He further submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are therefore ecologically sensitive areas. He submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge. He also referred to the compliance affidavit of the TNPCB filed on 8-10-2012 to show that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained.

25. Mr Vijay Panjwani, learned counsel appearing for CPCB, made a reference to Sections 3, 16 and 18 of the Water Act which relate to the CPCB and submitted that it was not for the CPCB but for the TNPCB to issue no-objection certificate and consent in respect of the plant set up in the State of Tamil Nadu. He submitted that under Rule 19 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, however, improvement notices can be issued by the CPCB to any person to remedy the contravention of the Rules.

Contentions on behalf of the intervenor

26. Mr Raj Panjwani, learned counsel for the intervenor, submitted that a marine biosphere is an ecologically sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 km from ecologically sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment.

Findings of the Court

27. Writ Petition No. 15501 of 1996, Writ Petition No. 15503 of 1996 and Writ Petition No. 5769 of 1997 had been filed for quashing the environmental clearances dated 16-1-1995 and 17-5-1995 granted by the

Ministry of Environment and Forests, Government of India, to the appellants for setting up the plant at Tuticorin and by the impugned judgment[1], the High Court has not quashed the environmental clearance but has allowed the three writ petitions. Hence, the first question which we will have to decide is whether the High Court could have interfered with the environmental clearances granted by the Ministry of Environment and Forests, Government of India, and the Government of Tamil Nadu, Department of Environment?

28. The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986:

28.1. Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that:

> "**3.** ***Power of Central Government to take measures to protect and improve environment***.—(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution."

28.2. Sub-section (2) of Section 3 further provides that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters specified therein. One such matter specified in clause (*v*) of sub-section (2) is:

> "**3. (2)(*v*)** restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards."

28.3. Rule 5(3) of the Environment (Protection) Rules, 1986 accordingly empowers the Central Government to impose prohibitions or restrictions on the location of an industry or the carrying on processes and operations in an area, by notification in the Official Gazette. In exercise of these powers under Section 3(2)(*v*) of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986, the Central Government has issued a Notification dated 27-1-1994 imposing restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the said notification.

29. Para 2 of the Notification dated 27-1-1994 lays down the requirements and procedure for seeking environmental clearance of projects, and clause (*c*) of Para 2 provides that the Impact Assessment Agency could solicit comments of the public within thirty days of receipt of proposal, in public hearings, arranged for the purpose, after giving thirty days' notice of such hearings in at least two newspapers, and after completion of public hearing, where required, convey its decision. The language of this notification did not lay down that the public hearing was a must. The impact

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the environmental clearance on 16-1-1995. The Notification dated 27-1-1994, however, was amended by Notification dated 10-4-1997 and it was provided in clause (*c*) of Para 2 of the notification that the Impact Assessment Agency shall conduct a public hearing and the procedure for public hearing was detailed in Schedule IV to the notification by the amendment Notification dated 10-4-1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16-1-1995 in accordance with the procedure laid down by the Notification dated 27-1-1994 well before the Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. As there was no mandatory requirement in the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 that a public hearing has to be conducted before grant of environmental clearance, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before grant of the environmental clearances.

30. An explanatory note regarding the EIA Notification dated 27-1-1994 was also issued by the Central Government and Para 5 of the explanatory note clarified that project proponents could furnish rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and comprehensive EIA report may be submitted later, if so asked for by the Impact Assessment Agency and this was permitted where comprehensive EIA report would take at least one year for its preparation. In Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, the allegation of the writ petitioner that the Ministry of Environment and Forests have accorded environmental clearance without applying its mind and without making any analysis of the adverse impacts on the marine ecological system has been denied and it has been further stated that after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and the project was accorded approval on 16-1-1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 and as explained by the explanatory note issued by the Government of India permitted rapid EIA in certain circumstances, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant Company on the basis of inadequate rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State

Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994).

31. The High Court has noticed some decisions of this Court on sustainable development, precautionary and polluter pays principles and public trust doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well-recognised principles of judicial review as has been held by a three-Judge Bench of this Court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[14], SCC at p. 380. To quote *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely, on the grounds of illegality, irrationality, and procedural impropriety."

Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 or the notifications issued thereunder, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from *Wednesbury*† unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

32. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in *Environmental Law* edited by David Woolley, Q.C., John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given case is what the particular provision was designed to achieve."

As we have noticed, when the plant of the appellant Company was granted environmental clearance, the Notification dated 27-1-1994 did not provide for mandatory public hearing. The explanatory note issued by the Central Government on the Notification dated 27-1-1994 also made it clear that the

14 (2011) 7 SCC 338

† *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

33. Coming now to the ground of irrationality argued so vehemently by Mr V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petitions Nos. 15501-503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled-in questionnaire for industrial projects, NOC from the State Pollution Control Board and risk analysis, and that the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and only thereafter the project was accorded approval on 16-1-1995. No material has been placed before us to show that the decision of the Ministry of Environment and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

34. In *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12] cited by Mr Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden, JA with reference to the Canadian legislation in *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)*[15], FC at p. 494:

> "The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the Judges to decide what projects are to be authorised but, as long as they follow the statutory process, it is for the responsible authorities."

The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative

12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
15 (2001) 2 FC 461 (Can)

effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

35. The next question that we have to decide is whether the High Court was right in directing closure of the plant of the appellants on the ground that the plant of the appellants is located at Tuticorin within 25 km of four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli. The reason given by the High Court in coming to this conclusion is that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 km of Vanthivu, 7 km of Kasuwar and 15 km of Karaichalli and Villanguchalli and these four villages are part of the twenty-one islands in the Gulf of Munnar. Hence, the High Court directed closure of the plant because the appellant Company has violated the condition of the consent order dated 22-5-1995 issued by the TNPCB under the Water Act.

36. The consent order dated 22-5-1995 issued by the TNPCB under Section 25 of the Water Act states as follows:

> "Consent to establish or take steps to establish is hereby granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988) (hereinafter referred to as 'the Act') and the rules and orders made thereunder to
>
> The Chief Project Manager,
> M/s Sterlite Industries (India) Limited
> (Copper Smelter Project)
> SIPCOT Industrial Complex,
> Meelavittam Village, Tuticorin Taluk,
> V.O. Chidambaraner District
>
> (hereinafter referred to as 'the applicant') authorising him/her/them to establish or take steps to establish the industry in the site mentioned below:
>
> SIPCOT Industrial Complex,
> Meelavittam Village, Tuticorin Taluk,
> V.O. Chidambaraner District."

The aforesaid extract from the consent order dated 22-5-1995 of the TNPCB issued under the Water Act makes it clear that the appellant Company was given consent to establish its plant in the SIPCOT Industrial Complex, Meelavittam Village, Tuticorin Taluk. Along with the consent order under the Water Act, special conditions were annexed and Clause 20 of the special conditions reads as follows:

> "20. (*i*) 1 km away from the water resources specified in GOMs No. 213 E&P Deptt., dt. 30-3-1989.
>
> (*ii*) 25 km away from ecological/sensitive areas.
>
> (*iii*) 500 metres away from high tide line."

37. On the one hand, therefore, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 km of four of the twenty-one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 km away from ecologically sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and directed closure of the plant on this ground.

38. This is not to say that in case it becomes necessary for preservation of ecology of the aforesaid four islands which form part of the Gulf of Munnar, the plant of the appellants cannot be directed to be shifted in future. We find from the affidavit filed on behalf of the State of Tamil Nadu on 29-10-2012 that the Gulf of Munnar consisting of 21 islands including the aforesaid four islands have been notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986 and a declaration may also be made under Section 35(4) of the said Act declaring the Gulf of Munnar as a marine national park. We have, therefore, no doubt that the Gulf of Munnar is an ecologically sensitive area and the Central Government may in exercise of its powers under clause (*v*) of sub-rule (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar marine national park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

39. The next question with which we have to deal is whether the High Court could have directed the closure of the plant of the appellants on the ground that though originally the TNPCB stipulated a condition in the "no-objection certificate" that the appellant Company has to develop a green belt of 250 metres width around the battery limit of the plant, the appellants made representation to the TNPCB for reducing the width of the green belt and the TNPCB in its meeting held on 18-8-1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 metres:

39.1. We find on a reading of the no-objection certificate issued by the TNPCB that various conditions have been imposed on the industry of the

appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfy the ambient air quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the no-objection certificate. If the TNPCB after considering the representation of the appellants has reduced the width of the green belt from a minimum of 250 metres to a minimum of 25 metres around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the State Pollution Control Board.

39.2. The High Court in the impugned judgment[1] has not recorded any finding that there has been any breach of the mandatory provisions of the Air Act or the Rules thereunder by the TNPCB by reducing the green belt to 25 metres. Nor has the High Court recorded any finding that by reducing the width of the green belt around the battery limit of the industry of the appellants from 250 metres to 25 metres, it will not be possible to mitigate the effects of fugitive emissions from the plant. The High Court has merely held that the TNPCB should not have taken such a generous attitude and should not have in a casual way dealt with the issue permitting the appellant Company to reduce the green belt particularly when there have been ugly repercussions in the area on account of the incidents which took place on 5-7-1997 onwards. It was for the TNPCB to take the decision in that behalf and considering that the appellant's plant was within a pre-existing industrial estate, the appellant could not have been singled out to require such a huge green belt.

40. This takes us to the argument of Mr Prakash that had the Ministry of Environment and Forests, Government of India, applied its mind fully before granting the environment clearance and had the TNPCB applied its mind fully to the consents under the Air Act and the Water Act and considered all possible environmental repercussions that the plant proposed to be set up by the appellants would have, the environmental problems now created by the plant of the appellants would have been prevented. As we have already held, it is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well-recognised principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the environmental clearance is granted under the Environment (Protection) Act, 1986, and the Rules and the notifications

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

issued thereunder and after the consents granted under the Air Act and the Water Act, the industry continues to pollute the environment so as to affect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent as laid down by law for safe environment (see *M.C. Mehta* v. *Union of India*[16] in which this Court directed closure of tanneries polluting the waters of River Ganga).

41. We have, therefore, to examine whether there were materials before the High Court to show that the plant of the appellants did not maintain the standards of emission and effluent as laid down by the TNPCB and whether there were no remedial measures other than the closure of the industry of the appellants to protect the environment. We find on a reading of the impugned judgment[1] of the High Court that it has relied on the report of NEERI of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste.

42. We extract hereinbelow the relevant observations of NEERI in its report of 2005 relating to air, water and soil environment in the executive summary:

"*Air environment*

The emission factors of SO_2 from sulphuric acid plant — I (SAP-I) and sulphuric acid plant — II (SAP-II) were 0.55 kg/MT of H_2SO_4 manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H_2SO_4 manufactured.

The acid mist concentration of SAP-I was 85 mg/Nm_3, which exceeds the TNPCB limit of 50 mg/Nm_3. The acid mist concentration from SAP-II was 42 mg/Nm_3, which is well within the TNPCB limit. In view of the exceeding of TNPCB limit for acid mist, it is recommended that the performance of acid mist eliminators may be intermittently checked. It is further recommended to install a tail gas treatment plant to take care of occasional upsets.

Out of the seven DG sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm_3 (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm_3 for thermal power plants of 200 MW and higher capacity (165 mg/Nm_3) but higher than that stipulated for diesel engines/gen sets up to 800 kW capacity (0.3 gm/kWh). Therefore TNPCB may decide whether the present PM emissions from the DG sets of 6.3 MW capacity is within the limit or otherwise.

The fugitive emissions were monitored at four sites to assess the status of air quality with respect of SO_2, NO_2 and SPM. The results of

16 (1987) 4 SCC 463

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO_2 and NO_2, were below the respective
a NIOSH/OSHA standards for work place environment. The levels of SPM were also within the stipulated TNPCB standards for industrial areas.

Impact of stack and fugitive emissions on surrounding air quality was also assessed by monitoring SO_2, NO_2 and SPM levels at five monitoring locations. The levels of SPM, SO_2 and NO_2 at all the five sites were far below the TNPCB standards of 120 µg/Nm_3 for SO_2 as well
b as NO_2 and 500 µg/Nm_3 for SPM for industrial zone.

Water environment

Surface water samples were collected and analysed for physico-chemical, nutrient demand parameters. The physico-chemical characteristics and nutrient demand parameters i.e. with special reference to pH (7.9-8.0), TDS (120-160 mg/L), COD (11-18 mg/L) and levels of
c heavy metals viz. Cd, Cr, Cu, Pb, Fe, Mn, Zn and As in surface water, were found within the prescribed limits of drinking water standards (IS: 10500-1995).

Total eight groundwater samples were collected (seven from hand-pumps and one from dug well) to assess the groundwater quality in the study area. The analysis on physico-chemical characteristics of
d groundwater samples collected from various locations showed high mineral contents in terms of dissolved solids (395-3020mg/L), alkalinity (63-210 mg/L), total hardness (225-2434 mg/L), chloride (109-950 mg/L), sulphate (29-1124 mg/L) and sodium (57-677 mg/L) as compared to the drinking water standards (IS:10500-1995). Thus, it could be concluded that water in some of the wells investigated is unfit for
e drinking. The concentrations of nutrient demand parameters revealed that phosphate was in the range 0.1-0.3 mg/L while nitrate was in the range 1-7.5 mg/L at all sampling locations which is within the limits stipulated under drinking water standards (IS:10500-1995). The levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995),
f other heavy metal concentrations viz. iron, manganese, zinc and arsenic were found in the range 0.01-0.05 mg/L, ND-0.01 mg/L and ND-0.08 mg/L respectively which are within the drinking water standards (IS:10500-1995).

To assess the impact on groundwater quality due to secured and fill sites and other waste disposal facilities, five samples were collected from monitoring wells (shallow bore wells located around the waste disposal
g sites). The physico-chemical characteristics of well water around secured landfill site and gypsum pond showed mineral contents higher than the levels stipulated in IS: 10500-1995 in terms of dissolved solids (400-3245 mg/L), alkalinity (57-137 mg/L), hardness (290-1280 mg/L), chloride (46-1390 mg/L), sulphate (177-649 mg/L) and sodium (9-271 mg/L). The results of nutrient demand parameters showed phosphate in
h the range 0.1-0.5 mg/L while nitrate was in the range 0.8-11.7 mg/L at all sampling locations, which are within the levels stipulated in IS:10500-

1995, whereas level of arsenic was found in the range of ND-0.08 mg/L as against the stipulated limit of 0.05 mg/L under drinking water standards (IS:10500-1995). The levels of cadmium, chromium, copper and lead were also found to exceed the drinking water standards in some of the wells.

The hourly composite wastewater samples were collected at six locations. During the sample collection, flow monitoring was also carried out at the inlet and final outlet of the effluent treatment plant (ETP). The concentrations of total dissolved solid (TDS) and sulphate exceed the limit stipulated by the TNPCB for treated effluent. All the other parameters are within the consent conditions prescribed by TNPCB. The treated effluent is being recycled back in the process to achieve zero discharge.

Soil environment

Soil samples were also analysed for level of heavy metals. The soil samples at the plant site showed presence of As (132.5 to 163.0 mg/kg), Cu (8.6 to 163.5 mg/kg), Mn (283 to 521.0 mg/kg) and Fe (929.6 to 1764.6 mg/kg). Though there is no prescribed limit for heavy metal contents in soil, the occurrence of these heavy metals in the soil may be attributed to fugitive emission, solid waste dumps, etc."

It will be clear from the extracts from the Executive Summary of NEERI in its report of 2005, that while some of the emissions from the plant of the appellants were within the limits stipulated by the TNPCB, some of the emissions did not conform to the standards stipulated by TNPCB. It will also be clear from the extracts from the executive summary relating to water environment that the surface water samples were found to be within the prescribed limits of drinking water (IS:10500-1995) whereas groundwater samples showed high mineral contents in terms of dissolved solids as compared to the drinking water standards, but concentrations of nutrient demand parameters revealed that the phosphate and nitrate contents were within the limits stipulated under drinking water standards and levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards, whereas the heavy metal concentrations, namely, iron, manganese, zinc and arsenic were within the drinking water standards. Soil samples also revealed heavy metals. Regarding the solid waste out of slag in the plant site, the CPCB has taken a view in its communication dated 17-11-2003 to TNPCB that the slag is non-hazardous. Thus, the NEERI report of 2005 did show that the emission and effluent discharged affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants.

43. In fact, this Court passed orders on 25-2-2011[17] directing a joint inspection by NEERI (National Environmental Engineering Research Institute) with the officials of the Central Pollution Control Board (for short

17 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 769

"the CPCB") as well as the TNPCB. Accordingly, an inspection was carried out during 6-4-2011 to 8-4-2011 and 19-4-2011 to 22-4-2011 and a report was submitted by NEERI to this Court. On 18-7-2011, this Court directed[18] the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25-8-2011, this Court directed[19] TNPCB to file a synopsis specifying the deficiencies with reference to the NEERI report and suggest control measures that should be taken by the appellants so that this Court can consider the direction to be issued for remedial measures which can be monitored by the TNPCB. Accordingly, the TNPCB filed an affidavit dated 30-8-2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11-10-2011, this Court directed[20] the TNPCB to issue directions, in exercise of its powers under the Air Act and the Water Act to the appellants to carry out the measures and remove the deficiencies indicated in the chart. Pursuant to the order dated 11-10-2011[20], the TNPCB issued directions to the appellants and on 17-1-2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27-8-2012, this Court directed[3] that a joint inspection be carried out by TNPCB and CPCB and completed by 14-9-2012 and a joint report be submitted to this Court.

44. The conclusion in the joint inspection report of CPCB and TNPCB is extracted hereinbelow:

> "Out of the 30 directions issued by the Tamil Nadu Pollution Control Board, the industry has complied with 29 directions. The remaining Direction 1(3) under the Air Act on installation of bag filter to converter is at the final stage of erection, which will require further 15 working days to fully comply as per the industry's revised schedule."

From the aforesaid conclusion of the joint inspection report, it is clear that out of the 30 directions issued by the TNPCB, the appellant Company has complied with 29 directions and only one more direction under the Air Act was to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order[1] of the High Court directing closure of the plant of the appellants is liable to be set aside.

45. We may now consider the contention on behalf of the intervenors that the appellants were liable to pay compensation for the damage caused by the plant to the environment. The NEERI reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. As pointed out by

18 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 772

19 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773

20 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC)

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

Mr V. Gopalsamy and Mr Prakash, on account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. This is evident from the following extracts from the NEERI Report of 2011:

"Further, renewal of the consent to operate was issued vide the following proceedings numbers and validity period:

TNPCB proceeding	*Validity up to*
No. T7/TNPCB/F.22276/RL/TTN/W/2007 dated 7-5-2007 No. T7/TNPCB/F.22276/RL/TTN/A/2006 dated 7-5-2007	30-9-2007
No. T7/TNPCB/F.22276/URL/TTN/W/2008 dated 19-1-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2008 dated 19-1-2009	31-3-2009
No. T7/TNPCB/F.22276/URL/TTN/W/2009 dated 14-8-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2009 dated 14-8-2009	31-12-2009

Thereafter, the TNPCB did not renew the consents due to non-compliance with the following conditions:

Under the Water Act, 1974

(*i*) The unit shall take expedite action to achieve the time-bound target for disposal of slag, submitted to the Board, including BIS clearance before arriving at disposal to cement industries, marine impact study before arriving at disposal for landfill in abandoned quarries.

(*ii*) The unit shall take expedite action to dispose the entire stock of the solid waste of gypsum.

Under the Air Act, 1981

(*i*) The unit shall improve the fugitive control measure to ensure that no secondary fugitive emission is discharged at any stage, including at the points of material handling and vehicle movement area."

For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant Company obviously is liable to compensate by paying damages.

46. In *M.C. Mehta* v. *Union of India*[21], a Constitution Bench of this Court held: (SCC pp. 420-21, para 31)

"*31.* … The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is

21 (1987) 1 SCC 395 : 1987 SCC (L&S) 37

engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.

47. In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled "Financial Performance":

> "PBDIT for the financial year 2010-2011 was Rs 1043 crores, 40% higher than PBDIT of Rs 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation."

Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company. The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a fixed deposit with a nationalised bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.

48. We now come to the submission of Mr Prakash that we should not grant relief to the appellants because of the misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from this Court on 1-10-2010[2]. There is no doubt that there has been misrepresentation and suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to the Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin Port. For these considerations of public interest, we do not think it will be a proper exercise of our discretion under Article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition.

49. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervenor before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In *Indian Council for Enviro-Legal Action* v. *Union of India*[22], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before this Court not only ventured but also put in their best for the cause of the general public.

50. In the result, the appeals are allowed and the impugned common judgment[1] of the High Court is set aside. The appellants, however, are directed to deposit within three months from today a compensation of Rs 100 crores with the Collector of Thoothukudi District, which will be kept in a fixed deposit in a nationalised bank for a minimum of five years, renewable as and when it expires, and the interest therefrom will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilise the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, Government of Tamil Nadu. By this judgment, we have only set aside the directions of the High Court in the impugned common judgment[1] and we make it clear that this judgment will not stand in the way of the TNPCB issuing directions to the appellant Company, including a direction for closure of the plant, for the protection of environment in accordance with law.

51. We also make it clear that the award of damages of Rs 100 crores by this judgment against the appellant Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law.

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22 (1996) 3 SCC 212

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

Corrected vide Order dated 06.02.2019

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

ORIGINAL APPLICATION NO. 368 OF 2018

IN THE MATTER OF:

1. **Mr. Nilkanth Rajaram Raskar**
   Age- 70 years, Occ- Agriculturist,
   R/at Post Mali Nagar, 413/08,
   Taluka- Malshiras,
   District – Solapur, Maharashtra **.....Applicant**

Versus

1. **M/s Saswad Mali Sugar Factory Ltd.**
   Through its Managing Director,
   Mali Nagar, Akluj,
   Taluka – Malshiras,
   District- Solapur, Maharashtra

2. **Vilas Damodar Inamke**
   (Whole Time Director)
   Age- 58 years, Occ- Director,
   R/at- Post – Gat No. 2, Mali Nagar,
   Taluka – Malshrias
   District- Solanpur, Maharashtra

3. **The Maharashtra Pollution Control Board**
   Through its Sub-Regional Office,
   Sat Rasta, Opposite Government Milk Diary,
   Solapur, Maharashtra

4. **The Maharashtra Pollution Control Board**
   Through its Member Secretary,
   Kalpatru Point, 2nd – 4th Floor,
   Opposite Cine Planet, Near Sion Circle,
   Sion (East), Mumbai - 400022 **.....Respondents**

COUNSEL FOR APPLICANT:

Mr. Nitin Lonkar & Ms. Sonali Suryawanshi, Advs

COUNSEL FOR RESPONDENTS:

Mr. Mukesh Verma, Adv. for Maharashtra Pollution Control Board

Mr. Salim A. Inamdar, Adv. for Respondent No. 1 & 2

Mr. Raj kumar, Adv. for CPCB

JUDGEMENT

PRESENT:
Hon'bleMr. Justice Raghuvendra S. Rathore(Judicial Member)
Hon'ble Dr.Satyawan Singh Garbyal (Expert Member)

Reserved on: 24th January, 2019
Pronounced on: 31st January, 2019

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

In this Application, the applicant has alleged that the Respondent Distillery unit has been producing in excess of the permitted quantity granted as per consent to operate dated 16.02.2018. The appellant has also alleged that the Respondent No. 1 has operated Distillery Unit (Molasses Base) in violation of the consent to operate granted under Section 26 of Water (Prevention and Control of Pollution) Act, 1974 and Under Section 24 of the Air (Prevention of Control of Pollution) Act, 1981. Since validity of earlier consent was up to 31.08.2016, the Respondent No. 1 had applied on 13/07/2016 for renewal of consent to operate under the Water Act, 1974 and Air Act, 1981. Application for grant of consent to operate was placed before the Consent Appraisal Committee, in its

meeting held on 30.10.2017 wherein it was decided to issue Show Cause Notice for refusal of consent as the Respondent No. 1 had failed to install the pollution control device Multiple Effective Evaporator (MEE) before 31.10.2016. The Show Cause Notice along with reply submitted by Respondent No. 1 was then placed before the Consent Appraisal Committee meeting held on 17.04.2017 and it was decided to issue final refusal of consent to operate to Respondent No. 1 industry for operating plant without consent and for not providing MEE. Accordingly the Maharashtra Pollution Control Board issued refusal of consent on 19.05.2017.

2. Subsequently Respondent No. 1 made an application for renewal of consent for 30 KLPD Distillery Unit (Molasses Base) which was placed before the Consent Appraisal Committee in the meeting held on 12.12.2017 wherein it was decided to grant renewal of consent to operate for 30 KLPD Molasses Based Distillery Unit subject to extend existing bank guarantee of Rs. 5 Lakh towards operation and maintenance of pollution control system. Accordingly, the Maharashtra Pollution Control Board granted renewal of consent to operate on 16.02.2018 for manufacture of Rectified Spirit 900 KL/M, Ethanol – 846 KL/M, Fuel oil – 15 KL/M and Impure Spirit 90 ML/M subject to certain terms and conditions which is valid up to 31.08.2018. Renewal of consent is placed as Annexure A-I at Page 17.

3. Since the validity of earlier consent expired on 31.08.2016 and renewal of consent was granted only on 16.02.2018, therefore, the unit did not have any consent during the period from 01.09.2016 to 15.02.2018.

4. Therefore, as the industry was operating without consent and not operating MEE the Maharashtra Pollution Control Board had issued direction of closure to the Respondent Industry on 27.04.2018. Subsequently on consideration of reply dated 16.07.2018 the Maharashtra Pollution Control

Board on 30.07.2018 withdrew closure order and directed the Respondent Industry to submit a bank guarantee of Rs. 10 Lakh and the existing bank guarantee of Rs. 5 Lakh for operation and maintenance of Pollution Control Systems was forfeited.

5. It is evident from the documents placed on record that the unit has been in operation even after consent had expired on 31.08.2016 as the Report of the State Excise Inspector, which is on record, shows that the unit was in operation during the year 2016-17 and also in November, 2017, December, 2017 and January, 2018 when unit did not have any valid consent from the Maharashtra Pollution Control Board. The report of the Excise Department clearly shows that there is no correlation between products consented for manufacture and the types of product mentioned in the report. For instances, consent is sought to be granted for production of Rectified Spirit, Ethanol, Fuel Oil and Impure Spirit whereas the report of the Excise Department is about manufacture of Denatured Absolute Alcohol for which there is no consent and therefore, the report itself is quite misleading. Form F-1 for Denatured Absolute Alcohol, signed by Inspector State Excise which has been filed by the Managing Director of the Respondent No. 1 Industry shows that in the month of January, 2018, the quantity of Denatured Absolute Alcohol manufactured was 64,000 Ltr. And in February, 2018 the quantity manufactured was 2,68,000 Ltr. and during the corresponding period in 2016-17 Denatured Absolute Alcohol manufactured in December was 40,000 Ltr., in January 1,74,000 Ltr. and in February 3,80,000 Ltr.

6. The Conduct of the State Pollution Control Board is also questionable. On the one hand PCB issued Show Cause Notice and refusal of consent order on 19.05.2017 as the industry had failed to install MEE and Pollution Control System and on the other hand the Board renewed the consent on 16.02.2018

retrospectively for the period from 01.09.2016 to 31.08.2018 covering even those period when pollution control device such as MEE was not only not operating but not installed as well. In other words, PCB abetted in Pollution causing activity of the industry. PCB, therefore, could not have renewed the consent retrospectively. At the most consent could have been renewed with effect from 16.02.2018 in accordance with law.

7. We are, therefore, of the considered opinion that the industry had operated between 01.09.2016 and 15.02.2018 in violation of Water Act, 1974 and Air Act, 1981 without consent to operate granted by the Pollution Control Board. In such view of the matter, we direct the industry to pay environmental compensation of Rs. 10 crore to be deposited with the Central Pollution Control Board within a period of 15 days from the date of this order. If the amount is not deposited within 15 days, the consent to operate would be deemed to have been revoked and industry will shut its operation. With these directions, this OA No. 368/2018 is disposed of, with no order as to cost.

.....
Justice Raghuvendra S. Rathore
(Judicial Member)

.....
Satyawan Singh Garbyal
(Expert Member)

Dated: 31st January, 2019
New Delhi

(2018) 18 Supreme Court Cases 257

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

Civil Appeals No. 10854 of 2016 with Nos. 10901 of 2016 and 5157-58 of 2018†, decided on August 10, 2018

A. **Environment Law — Environmental Clearance/NoC/Environment Impact Assessment (EIA) — Specific Clearances — Development Projects — Environment Impact Assessment (EIA) Notification, 2006 — Construction in violation of the environmental clearance (EC), as in the present case, in violation of the clearance granted under Noti. dt. 4-4-2011 — Establishment and Effect of — "Built-up area" under Notis. dt. 4-4-2011 and 14-9-2006 — Concept of floor space index (FSI)/floor area ratio (FAR) — Non-relevance of, for computation of "built-up area" for which EC is granted**

— Imposition of damages of Rs 100 crores or 10% of project cost, whichever was higher, for violation of environmental clearance in addition to Rs 5 crore damages imposed by NGT, instead of directing demolition — Detailed coercive directions issued to ensure deposit of these damages within six months

— Held, the concept of FSI or non-FSI may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC and both will have an equally deleterious effect on the environment — When EC is granted for a particular construction it includes both FSI and non-FSI areas — Held, the built-up area under the Noti. dt. 14-9-2006 means all constructed area which is not open to the sky and the built-up area under the Noti. dt. 4-4-2011 means all covered area including basement and service areas

— EC dt. 4-4-2008 was granted to the project proponent for construction of built-up area 57,658.42 sq m, whereas the total construction raised by it was 1,00,002.25 sq m — Rejecting the contention of project proponent that while calculating the built-up area the constructions mentioned in Rr. 15.4.1.1(a), (b) and (c), 17.7.3 and 15.4.2 of the Pune Municipal Corporation Development Control Rules, 1982 were to be excluded, held, the construction raised by the project proponent was in violation of the environmental clearance granted to it — However, considering that the project proponent had already taken money and a large number of flats and shops had already been

† Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213 [National Green Tribunal, (Western Zone) Pune Bench, Application No. 184 of 2015 (WZ), dt. 27-9-2016] and *Tanaji Balasaheb Gambhire* v. *Union of India* [National Green Tribunal, (Western Zone) Pune Bench, Review Application No. 35 of 2016, dt. 8-1-2018]

occupied and persons belonging to the middle class had invested their life's earnings, demolition not ordered/directed — However, inter alia, damages of Rs 100 crores or 10% of the project cost, whichever was higher, in addition to Rs 5 crores as levied by NGT, imposed on the project proponent — Words and Phrases — "Built-up area" — Pune Municipal Corporation Development Control Rules, 1982, Rr. 15.4.1.1(a), (b) & (c), 17.7.3 and 15.4.2 (Paras 14, 17, 53, 58.2, 66.1, 66.2 and 66.9)

B. **Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Review petition — Who can hear and where — Held, the powers of review which NGT exercises are akin to those of a civil court — In terms of Or. 47 R. 5 CPC, a review petition should normally be heard by the same Bench which passed the original order**

— Further, this normal rule should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter — Further, under sub-rule (2) of R. 22 of 2011 Rules the matter should ordinarily be heard at the same place of sitting where it was originally decided, however, this is not a mandatory direction — National Green Tribunal (Practices and Procedure) Rules, 2011 — Rr. 22(2) and 22(3) — Civil Procedure Code, 1908 — Or. 47 R. 5 — Practice and Procedure — Review (Paras 36, 38 and 40)

C. **Environment Law — National Green Tribunal Act, 2010 — S. 19(4)(f) — Exercise of power of review — Impermissibility of, when appeal already pending**

— Statutory appeal was pending in the Supreme Court against the original order when the respondent's review application, inter alia, praying for demolition of the illegal structures and enhancement of compensation, was taken up for hearing by NGT — In the present case, held, project proponent/appellant had not only challenged original order of NGT on the ground that he had not violated EC but also on the ground that the damages awarded were highly excessive — Therefore, the Bench hearing the review application erred in holding that review application was maintainable — Civil Procedure Code, 1908 — Or. 47 R. 1(2) — Practice and Procedure — Review (Paras 7, 45 and 47)

D. **Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer — Damages for carrying out construction in violation of environmental clearance (EC) — Quantification of — Carbon footprint as basis**

— Rejecting the contention that damages should be assessed on the basis of "carbon footprint", held, the courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles — However, in a case where expert evidence is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, court may rely upon

such data — Evidence Act, 1872 — S. 45 — Words and Phrases — "Carbon footprint" (Paras 59 to 63)

E. **Environment Law — Environment (Protection) Rules, 1986 — Rr. 3 to 5 — EIA Notifications issued under — Cannot be varied/abrogated by officials of MoEF — Environment (Protection) Act, 1986, S. 4**

F. **Public Accountability, Vigilance and Prevention of Corruption — Corruption/Abuse of Power — Environmental Clearance/NoC — Improper grant of — Fine imposed upon the PMC and direction given by NGT to PMC to take appropriate action against the erring officials, and directions to enquire into conduct of other officials concerned, also upheld**

The project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m.

The project proponent applied for environmental clearance (EC) for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. EC was granted to the project proponent on 4-4-2008.

The original applicant filed an application before the National Green Tribunal ("NGT", for short) claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws.

The case of the project proponent was that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area, or is a non-FSI area, is not a part of the "built-up area". The project proponent contended that while calculating the built-up area, the constructions mentioned in Rules 15.4.1.1(*a*), (*b*) and (*c*) and Rule 17.7.3 of the Pune Municipal Corporation Development Control Rules, 1982 ("DCR", for short), in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. It was contended that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008. The stand of the Union of India and the original applicant was that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006.

The issues involved in this appeal were:

1. Whether the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance.

2. Whether NGT could have entertained a review application/reviewed its order dated 27-9-2016, when an appeal against the same was already pending before the Supreme Court?

Held :

Under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area. (Para 16)

Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. (Para 17)

Notification dated 4-4-2011

It is not at all necessary to decide whether the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests is clarificatory or is in substitution of the original notification of 2006. There is no ambiguity with regard to the definition of "built-up area" even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. (Para 19)

Clarification dated 7-7-2017

The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. Since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by the office memorandum dated 7-7-2017 issued by the Joint Director, Ministry of Environment, Forests and Climate Change. (Para 22)

Common Cause v. *Union of India*, (2017) 9 SCC 499, *relied on*

Environmental clearance (EC) for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017

SEIAA has laid down general conditions for pre-construction phase and the first condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. (Para 27)

In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to grant EC by treating the project as falling under Category B-2. Furthermore, the EC

dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. (Para 28)

Allegations made by the original applicant against various officials

The law is well settled that no person can be condemned unheard. It would, therefore, not be fair to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. (Para 30)

However, as far as their official capacity is concerned, NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and therefore, directions given by NGT in its order dated 27-9-2016 in this regard, upheld. (Para 31)

Prima facie, the Principal Secretary, Environment Department, Government of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. His actions need to be looked into and, therefore, direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned, upheld. (Paras 32 and 66.8)

Challenge to the order dt. 8-1-2018 passed in Tanaji Balasaheb Gambhire, 2018 SCC OnLine NGT 302

Section 19(4)(*f*) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT. (Para 34)

A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. (Para 38)

Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of the Supreme Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. (Para 39)

According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. (Para 40)

Northern India Caterers (India) Ltd. v. *Lt. Governor of Delhi*, (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *referred to*

In terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. (Para 43)

Malthesh Gudda Pooja v. *State of Karnataka*, (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *relied on*

Malthesh Gudda Pooja v. *State of Karnataka*, 2009 SCC OnLine Kar 919; *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918, *referred to*

As far as the facts of this case are concerned, the original applicant could have raised all issues which he raised in the review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in the Supreme Court as he has done now. In this context, once the Supreme Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application. (Para 45)

The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before the Supreme Court. (Para 47)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4217; *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954, *referred to*

On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter. (Para 51)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4201; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212; *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214, *referred to*

Is demolition the only answer?

Now there are 807 flats and 117 shops which are either constructed or under construction. Keeping in view the interest of these third parties who were not parties before NGT, in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. (Para 53)

The project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse. (Para 54)

The project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. (Para 64)

The base year has been fixed as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws. (Paras 64 and 66.9)

The project proponent is granted six months' time to deposit the amount of damages imposed above in the Registry of the Supreme Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to the project proponent to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of the Court. (Para 66.13)

Whether the original applicant is entitled to special damages?

This litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted. (Para 57)

Tanaji Balasaheb Gambhire v. *Union of India*, 2016 SCC OnLine NGT 4213, *partly reversed*

Tanaji Balasaheb Gambhire v. *Union of India*, 2018 SCC OnLine NGT 302, *reversed*

Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Ranjit Kumar, R.P. Bhatt, Kavin Gulati and Jayant Bhushan, Senior Advocates (Venkita Subramoniam T.R., Rahat Bansal, Braj K. Mishra, Vijay Kumar, Rohit Gupta, Ms Aparna Jha, Ms Kriti Sondhi, Shriram P. Pingle, Ms Rashmi Dhongde, Nitin Lonkar, Ms Sonali Suryavanshi, Nilesh Bhandari, Ashok Jain, Gurmeet Singh Makker, Divya Prakash Pande, Salvador Santosh Rebello, Niraj Kumar, Rahul Garg, Ridhi Kackkar, Ranjesh Kr. Sinha, Gaurav Rawal, Mukesh Verma, Pawan Kr. Shukla, Ms Vasudha Zutshi, Yash Pal Dhingra, Kunal Cheema, Nishant Ramakantrao Katneshwarkar, Ninad Laud, Kush Chaturvedi, Ms Anshula Grover, Anjuman Tripathy, Somay Kapoor, Ms Priyashree Sharma, Parth Singh Chaudhary and Aman Verma, Advocates) for the appearing parties.

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

1. 2018 SCC OnLine NGT 302, *Tanaji Balasaheb Gambhire* v. *Union of India* **(reversed)** 266*e-f*, 266*h*, 267*a*, 276*f*, 277*g-h*, 283*e-f*, 286*b-c*, 287*g-h*
2. (2017) 9 SCC 499, *Common Cause* v. *Union of India* 273*g*
3. 2017 SCC OnLine NGT 1954, *Tanaji Gambhire* v. *Union of India* 281*d*, 281*d-e*
4. 2016 SCC OnLine NGT 4219, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
5. 2016 SCC OnLine NGT 4217, *Tanaji Balasaheb Gambhire* v. *Union of India* 281*c*
6. 2016 SCC OnLine NGT 4215, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*b*
7. 2016 SCC OnLine NGT 4214, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*, 283*d-e*
8. 2016 SCC OnLine NGT 4213, *Tanaji Balasaheb Gambhire* v. *Union of India* **(partly reversed)** 265*e-f*, 266*e*, 266*e-f*, 267*a*, 275*a-b*, 275*c*, 275*f-g*, 276*a*, 283*c*, 284*d*, 287*g*, 288*a*, 288*b-c*
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13. 2016 SCC OnLine NGT 4208, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d*, 282*f-g*
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17. 2016 SCC OnLine NGT 4204, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
18. 2016 SCC OnLine NGT 4203, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b-c*
19. 2016 SCC OnLine NGT 4202, *Tanaji Balasaheb Gambhire* v. *Union of India* 283*c*
20. 2016 SCC OnLine NGT 4201, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*b*

21. 2016 SCC OnLine NGT 1330, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*e*, 282*e-f*
22. 2015 SCC OnLine NGT 838, *Tanaji Balasaheb Gambhire* v. *Union of India* 282*d-e*
23. (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a*
24. 2009 SCC OnLine Kar 919, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*a-b*
25. 2009 SCC OnLine Kar 918, *Malthesh Gudda Pooja* v. *State of Karnataka* 279*b-c*
26. (1980) 2 SCC 167 : 1980 SCC (Tax) 222, *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi* 278*g-h*

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.— Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No. 10854 of 2016 is allowed.

2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as "the original applicant") before the National Green Tribunal ("NGT", for short) being Application No. 184 of 2015.

3. The original applicant filed an application before NGT claiming that the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the environmental clearance ("EC", for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against SEIAA; and lastly, it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. NGT vide its order dated 27-9-2016[1] allowed the application in the following terms: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

> "*54.* For the aforesaid reasons, the applicant succeeds in his legal pursuit to challenge the non-compliance of EC conditions by Respondent 9 and obtain certain directions. Hence the Application is allowed and we issue following directions:
>
> 1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent 9-PP by the officer of PMC, we impose fine of Rs 5 lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs 5 lakhs shall be paid within one month.

3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of FSI and BUA in terms of which order dated 31-5-2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31-5-2016.

4. PMC, DoE and SEIAA are directed to pay cost of Rs 1 lakh each to the applicant within 4 weeks."

4. Aggrieved by the aforesaid order of NGT, the project proponent filed Civil Appeal No. 10854 of 2016. Pune Municipal Corporation ("PMC", for short) also challenged the said order insofar as it adversely affects PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before NGT. This application was partly allowed on 8-1-2018[2] and Direction 1 in the original order dated 27-9-2016[1] was modified and substituted as under: (*Tanaji Balasaheb case*[1], SCC OnLine NGT para 54)

"*54.* …'1. Respondent 9-PP shall pay environmental compensation cost of Rs 100 crores or 5% (five per cent) of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs 5 crores for contravening mandatory provision of several environment laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.' "

6. Thereafter, the project proponent filed IA No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 8-1-2018[2], which we have allowed.

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7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27-9-2016[1] as well as the order dated 8-1-2018[2] passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs 500 crores.

The factual matrix

8. The facts briefly stated are that the project proponent purchased 79,100 sq m or 7.91 ha of land comprised in six Survey Nos. 35, 36, 37, 38, 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq m. From the documents placed on record, it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 m, 30 m and 18 m bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas, etc. The remaining area is referred to as the "balance plot area" which in this case works out to 46,993.79 sq m. Out of this "balance plot area" 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving "net plot area" of 41,455.21 sq m. Prima facie these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the "net plot area". We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

9. On 12-3-2007, the project proponent applied for sanction of layout and building proposal plan on an area of 15,141.70 sq m, originally depicted as Plot No. 3 and the sanctioned FSI was 15,313.16 sq m. Thereafter, on 5-9-2007, revised layout plan was submitted for an area measuring 28,233.23 sq m and the sanctioned FSI was 39,526.54 sq m. The project proponent applied for EC for the project and in the proposal dated 27-6-2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built-up area was indicated as 57,658.42 sq m. The EC was granted to the project proponent on 4-4-2008. Paras 2 and 3 of the communication granting EC read as under:

> "2. The project proponent is proposing for construction of group housing project at Sl. Nos. 35 to 40, Village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs 10,737.14 lakhs. The project involves construction of 12 buildings with stilt, basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq m. Total built-up area as indicated is 57,658.42 sq m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from

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the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and horticulture purpose. The solid waste generated from the buildings will be 1500 kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

3. EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under Category 8(*a*) of the EIA Notification, 2006 subject to the strict compliance with the specific and general conditions mentioned below:"

10. EC was granted, subject to certain conditions. We may refer to certain relevant conditions which read as under:

"*Part A—Specific conditions*

I. Construction phase

* * *

v. Permission to draw and use groundwater for construction work shall be obtained from competent authority prior to construction/operation of the project.

* * *

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

Concept of "built-up area" under the Notification dated 14-9-2006

11. It is not disputed that EC was granted for built-up area of 57,658.42 sq m. The main dispute is with regard to the interpretation of the term "built-up area". The case of the project proponent is that the term "built-up area" is synonymous with "floor space index" or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the "built-up area". On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forests and Climate Change is that the built-up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws.

12. The learned Senior Counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 ("DCR", for short). Under DCR, no building can be constructed without grant of building permission/commencement certificate by Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein layout plans, building plans, etc. have to be submitted. The main emphasis was on Rule 2.13 of DCR, which defines "built-up area" as follows:

"**2.13.** ***Built-up area***.—Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule 15.4.2."

Rule 2.39 defines "floor area ratio" as follows:

"**2.39.** ***Floor area ratio (FAR)***.—The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot.

$$\text{FAR} = \frac{\text{Total converted area on all floors}}{\text{Plot area}}$$

Note.—The term FAR is synonymous with floor space index (FSI)."

13. Strong reliance is placed on Rule 15.4.2, which reads as under:

"**15.4.2.** In addition to Rules 15.4.1.1(*a*), (*b*) and (*c*) and 17.7.3, the following shall not be included in covered area or FAR and built-up area calculations:

(*a*) A basement or cellar space under a building constructed on stilts and used as parking space, and air conditioning plant rooms used as accessory to the principal use;

(*b*) Electric cabin or substation, watchman's booth of maximum size of 1.6 sq m with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(*c*) Projection as specifically exempted under these Rules;

(*d*) Staircase room and/or lift rooms above the topmost storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these Rules;

Note.—The shaft provided for lift shall be taken for covered area calculations only on one floor up to the minimum required as per these Rules;

(*e*) One room admeasuring 2 m × 3 m on the ground floor of cooperative housing societies or apartment owners/cooperative societies buildings and other multi-storeyed buildings as office-cum-letter box room;

(*f*) Rockery, well and well structures, plant, nursery, water pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

(*g*) (*Deleted*);

(*h*) Sanitary block subject to provision of Rule 15.4.1(*a*) and built-up area not more than 4 sq m."

14. The contention of the learned Senior Counsel appearing for the project proponent is that while calculating the built-up area the constructions mentioned in Rules 15.4.1.1(*a*), (*b*) and (*c*) and Rule 17.7.3 in addition to the

areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built-up area is calculated in accordance with DCR then the project proponent has till date not constructed the built-up area of 57,658.42 sq m, which it was permitted to construct under the EC granted to it on 4-4-2008.

15. On the other hand, the stand of the Union of India and the original applicant is that built-up area means all area which is covered regardless of the area being FSI or non-FSI in terms of the EIA Notification of 2006. The building/construction projects are covered by Item 8 of the schedule to the EIA Notification dated 14-9-2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being "Category A" and "Category B". "Category A" projects require clearance by the Central Government in the Ministry of Environment, Forests and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form "Category B" of the schedule including modernisation and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of "Category B" into B-1 and B-2. B-1 projects require Environmental Impact Assessment (EIA) Report to be prepared and scoping to be done whereas B-2 projects do not require any Environmental Impact Assessment Report. Item 8 of the schedule, with which we are concerned, reads as follows:

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

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

17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006.

Notification of 4-4-2011

18. Our attention has been drawn to the Notification dated 4-4-2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(*a*) have been replaced and substituted as under:

> "The built-up area for the purpose of this Notification is defined as 'the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects'."

This notification clearly defines "built-up area" as all constructed area including basement and service areas without any exception.

19. The learned Senior Counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of "built-up area" even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built-up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasise that this definition also is in consonance with the concept of grant of EC for construction as explained

above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

Clarification dated 7-7-2017

20. Strong reliance has been placed by the project proponent on the office memorandum dated 7-7-2017 issued by Dr Ashish Kumar, Joint Director, Ministry of Environment, Forests and Climate Change. The said office memorandum reads as follows:

F. No. 22-35/2017-IA.III
Government of India
Ministry of Environment, Forests and Climate Change
(Impact Assessment Division)
******

Indira Paryavaran Bhawan
Jor Bag Road, Aliganj,
New Delhi - 110 003
Dated 7-7-2017

OFFICE MEMORANDUM

Sub.: Clarification on the date of applicability of Notification No. S.O.(E) 695 dated 4-4-2011 issued by MoEF & CC defining "built-up area" of the project.

The Ministry is in receipt of a reference dated 3-4-2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on the abovementioned subject. CREDAI has requested that the definition of built-up area (BUA) given vide Notification No. S.O. 695(E) dated 4-4-2011 should have prospective effect.

2. The matter has been examined in the Ministry. BUA defined in Notification No. S.O. 1533 (E) dated 14-9-2006 mentions at Item 8(*a*) Columns 4 and 5 "built-up area for covered construction, in the case of facilities open to sky, it will be the activity area".

3. The Ministry has further defined BUA vide its Notification No. S.O. 695 (E) dated 4-4-2011 which reads as, "the built-up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project".

4. The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built-up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of competent authority.

sd/-
(Dr Ashish Kumar)
Joint Director Ph: 011-24695474
Email: ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

21. It is urged on the basis of the aforesaid memorandum that prior to the Notification dated 4-4-2011, the built-up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant, it has been urged that this memorandum is meaningless and that it has been issued when the matter was pending before NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

22. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The Notification dated 14-9-2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued, the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The Notification dated 14-9-2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 4-4-2011 to which we have adverted above. These two decisions of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette, the statutory Notification dated 14-9-2006 and its subsequent clarification dated 4-4-2011 could not have been virtually set aside by this office memorandum.

23. We are also of the view that the so-called office memorandum is not at all clarificatory in nature. As held by us above, the notification of 2006 with regard to "built-up area" was absolutely clear and needed no clarification. We fail to understand how the concept of built-up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 7-7-2017.

24. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forests and Climate Change, which virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in *Common Cause* v. *Union of India*[3]. We expect the officials of the Ministry of Environment, Forests and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

3 (2017) 9 SCC 499

25. In view of the above, we are clearly of the view that the EC granted to the project proponent on 4-4-2008 was for constructing a total built-up area of 57,658.42 sq m and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

Environmental clearance dated 20-11-2017

26. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20-11-2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows:

> "(1) This environmental clearance (EC) is issued for total built-up area of 1,47,219.45 m^2 as approved by local planning authority. It is noted that the total proposed construction area is 1,47,219.45 m^2 which includes the area of previous EC (dated 4-4-2008) 57,658.42 m^2 and the proposed expansion area of 89,561.03 sq m. However, the above area of 1,47,219.45 sq m is notional as the non-FSI area component of the previous EC is not included in 1,47,219.45 m^2. After considering the non-FSI area of the previous EC, the total built-up area becomes 1,81,230.94 m^2. SEIAA has also taken note of the clarification issued by MoEF and CC vide office memorandum dated 7-7-2017, stating the definition of built-up area will be assessed as per the building bye-laws or DCR of the local authorities in the States."

27. The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 4-4-2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq m, and non-FSI area measuring 46,088.47 sq m. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq m. In Plot No. 2, the construction raised on an FSI area is 630.55 sq m and on the non-FSI area is 4,858.57 sq m and, therefore, the total construction already raised in Plot No. 2 is 5489.12 sq m. The total construction raised by the project proponent is 1,00,002.25 sq m against the built-up area of 57,658.42 sq m mentioned in the EC of 4-4-2008. This could not have been ignored by SEIAA.

28. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq m and if the area of the proposed construction is added then the project will fall in B-1 category and, therefore, SEIAA had no authority to

grant EC by treating the project as falling under Category B-2. Furthermore, the EC dated 20-11-2017 is also illegal as the same has been granted on the presumption of the order dated 31-5-2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31-5-2016 was quashed and set aside by NGT in its order dated 27-9-2016[1]. We may note that the official who passed the order on 31-5-2016 was the same official, who held the office of Member-Secretary of SEIAA, which granted environmental clearance on 20-11-2017. Therefore, the EC dated 20-11-2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

29. NGT in its order dated 27-9-2016[1], has found that there was suppression of facts by the officers of PMC. NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on PMC, Department of Environment and SEIAA. This has been challenged before us by PMC.

30. The original applicant, both in his original application filed before NGT and in appeal filed before us as well as in other proceedings, has made serious allegations against individual officers of PMC as well as SEIAA and specially the Principal Secretary, Environment Department, Government of Maharashtra. However, for reasons best known to the original applicant, none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

31. However, as far as their official capacity is concerned, we are of the view that NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way to help the project proponent and we, therefore, uphold the directions given by NGT in its order dated 27-9-2016[1] in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 7-7-2017 was issued. This clearly indicates that some officials of PMC were espousing the case of the project proponent at the cost of the environment.

32. We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Government of Maharashtra

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has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27-9-2016[1], NGT held as follows: (*Tanaji Balaseheb case*[1], SCC OnLine NGT para 42)

> "42. From the extracted portion of the order dated 31-5-2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but FSI consumed i.e. 48,617.14 sq m which is within the EC limit as against the actual construction activity which has exceeded over 1,00,000 sq m BUA. Hence, we set aside that order/communication dated 31-5-2016."

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before NGT. Despite that, while granting fresh EC on 20-11-2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31-5-2016 and the matter has been considered afresh. When the letter dated 31-5-2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10-3-2015 to 13-3-2015 and the 87th meeting of SEIAA held on 10-8-2015 to 12-8-2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers concerned. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to NGT within 3 months which will thereafter pass appropriate directions in the matter.

Challenge to the order dated 8-1-2018 passed in Tanaji Balasaheb Gambhire v. Union of India[2]

33. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

34. Section 19(4)(*f*) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in civil courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with NGT is akin to the power vested with the civil court. As such, the principles which govern the exercise of review jurisdiction before a civil court will apply with equal force to NGT.

35. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by

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the Tribunal sitting at any other place. Sub-rule (3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

36. Since the powers of review which NGT exercises are akin to those of a civil court, it would be pertinent to refer to the relevant portions of Order 47 of the Civil Procedure Code, 1908, which read as follows:

> "**1.** ***Application for review of judgment.***—(1) Any person considering himself aggrieved—
>
> (*a*) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
>
> (*b*) by a decree or order from which no appeal is allowed, or
>
> (*c*) by a decision on a reference from a Court of Small Causes,
>
> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.
>
> * * *
>
> **5.** ***Application for review in court consisting of two or more Judges.***— Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the court shall hear the same."

37. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr Nagin Nanda. It has been urged that Dr Justice Jawad Rahim continues to be a Judicial Member of NGT and, in fact, was sitting in the Western Bench at Pune on 8-1-2018 when the impugned judgment[2] in review was pronounced by NGT.

38. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review

2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the Judges who originally heard the matter who can decide whether such point was urged or not. In the present case, the review application was based mainly on the contention that the affidavit dated 18-5-2016 was not taken into consideration by the Bench.

39. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including NGT which is presided over by a judicial member who may be a retired Judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

40. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule (2) of Rule 22 will come into operation. According to sub-rule (2), the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule (2) itself contemplates that the matter shall "ordinarily" be heard at the same place. In tribunals like NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary, the arguments in such cases can be heard by videoconferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

41. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"[4]. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another

4 *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi*, (1980) 2 SCC 167, p. 173, para 14 : 1980 SCC (Tax) 222

Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

42. We may refer to the judgment of this Court in *Malthesh Gudda Pooja* v. *State of Karnataka*[5]. In that case, a writ appeal was disposed[6] of by a Division Bench comprising of Hon'ble V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon'ble K. Sreedhar Rao and Ravi Malimath, JJ. An objection was raised that the review petition should be heard by the same Judges who had originally heard the matter but this objection was overruled and the review petition was allowed[7] and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon'ble D.V. Shailendra Kumar and N. Ananda, JJ. This Bench held that the order of review passed was a nullity since the Judges who had heard the review should not have heard the same especially when the Judges of the original Bench were available. The matter came to this Court and this Court after referring to Order 47 Rule 5 CPC and Rule 5 of the High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows: (SCC pp. 341-42, paras 18-20)

> "*18.* Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

5 (2011) 15 SCC 330 : (2014) 2 SCC (Civ) 473
6 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 919
7 *Malthesh Gudda Pooja* v. *State of Karnataka*, 2009 SCC OnLine Kar 918

19. Benjamin Cardozo's celebrated statement in *The Nature of Judicial Process* (pp. 12-13) is relevant in this context:

> 'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions … In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.'

20. Necessarily, therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

43. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order 47 Rule 5 CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are:

43.1. The Judges who heard the matter originally have applied their mind and would know best the facts and legal position;

43.2. They will be in the best position to appreciate the matter in issue when a review is filed;

43.3. If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

43.4. Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

44. We may again re-emphasise that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

45. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order 47 Rule 1(2) CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned, we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter-affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, NGT should not have proceeded to hear the review application.

46. We may add that on 21-12-2016[8], the review application itself was listed before the Bench of Dr Justice Jawad Rahim and Dr Ajay A. Deshpande, which adjourned the matter to 25-1-2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25-7-2017[9], the said Bench considered this objection raised by the project proponent in terms of Order 47 Rule 1 CPC and the Bench held as follows: (*Tanaji Gambhire case*[9], SCC OnLine NGT)

> "Having perused the record, we find that the appellant is seeking quashing of the order of compensation in totality and the review applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the applicant and appellant in the said appeal. Exception to sub-clause (2) of Order 47 Rule 1 of the Code of Civil Procedure, therefore, does not come to the help of Respondent 9. We are, therefore, of the considered opinion that the review application is maintainable. Plea of non-maintainability of the review application is rejected."

47. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are, therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

48. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement

8 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4217
9 *Tanaji Gambhire* v. *Union of India*, 2017 SCC OnLine NGT 1954

of damages to be imposed on the basis of "carbon footprint" relying on the affidavit dated 18-5-2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18-5-2016.

49. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23-2-2016. We have perused the order dated 23-2-2016[10] and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23-2-2016, the matter was listed on numerous occasions i.e. 16-3-2016[11], 5-4-2016[12], 18-4-2016[13], 22-4-2016[14], 2-5-2016[15] and 5-5-2016[16] before NGT. In none of the orders there is any reference to carbon footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

50. The affidavit in question is dated 18-5-2016 and it is alleged that it was filed on 18-5-2016. The matter was listed for hearing on 19-5-2016[17] on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an MA No. 389 of 2016 before the Principal Bench stating that an interim order dated 23-12-2015[18] had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 2-5-2016[19] directing that the matter be listed before the Bench presided over by Dr Justice Jawad Rahim. On 19-5-2016, the original applicant sought time stating that he had filed review application against the order dated 2-5-2016[19] before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr Justice Jawad Rahim on that day and was further adjourned to 23-5-2016. There is no reference to carbon footprint in the order dated 19-5-2016[17]. On 23-5-2016[20], the matter was heard by the Bench presided over by Dr Justice Jawad Rahim and the orders reserved.

10 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4201
11 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4204
12 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4205
13 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4206
14 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4219
15 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4203
16 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4207
17 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4208
18 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2015 SCC OnLine NGT 838
19 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 1330
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209

In this order also there is no reference to the affidavit with regard to carbon footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20-7-2016 praying that in the meantime he had obtained permission of the Environment Department and SEIAA to which we have adverted hereinabove.

51. The original applicant sought time to file counter-affidavit. The matter was adjourned[21] to 28-7-2016 for rehearing deleting the same from reserved list since there were subsequent developments. On 28-7-2016[22], the matter was got adjourned to 2-8-2016 on which date[23] some execution application for implementation of the interim orders was taken up and direction was issued to PMC. The matter was again taken up on 8-8-2016[24], 19-8-2016[25] and 24-8-2016[26] when the hearing was closed and judgment was pronounced through videoconferencing on 27-9-2016[1]. In none of these orders any mention was made for carbon footprint or to the affidavit on the basis of which the review application was filed. On 23-5-2016, the project proponent filed reply to the affidavit dated 18-5-2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18-5-2016 and the copy of the same was handed over to them on 20-5-2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23-5-2016[20] or on 24-8-2016[26] on which dates the original application was reserved for orders.

52. We are of the considered view that the review application should have been heard by a Bench headed by Dr Justice Jawad Rahim who was admittedly available and in fact continues to be a member of NGT. Therefore, we are constrained to set aside the order passed in *Tanaji Balasaheb Gambhire* v. *Union of India*[2] dated 8-1-2018.

Is demolition the only answer?

53. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. The learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss.

21 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4215
22 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4210
23 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4211
24 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4202
25 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4212
26 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4214
1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
20 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4209
2 2018 SCC OnLine NGT 302

As pointed out above, now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loath to legalise illegal constructions but in the present case we have no option but to do so.

54. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the clubhouse. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest @ 9% p.a. to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of NGT dated 27-9-2016[1] that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and clubhouse.

Whether the original applicant is entitled to special damages?

55. On behalf of the original applicant various issues were raised before us which had not been raised before NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of cultural centre. This averment is not correct as pointed out by the Senior Counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal.

56. On the other hand, it was contended by the learned Senior Counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any groundwater, however, it has utilised the groundwater and violated the condition of the EC. Reliance

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

is placed on certain photographs showing water being pumped. On the other hand, on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

57. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21-10-2011 about deficiency in service. This notice was replied to on 17-11-2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22-2-2012. This complaint was decided on 20-11-2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Disputes Redressal Commission both by the project proponent and original applicant in February 2015. It appears that thereafter there were complaints and counter-complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 2-12-2015 and it was only thereafter on 7-12-2015 an application was filed in NGT by the original applicant. We are highlighting these facts only to emphasise the fact that this litigation is obviously not a public interest litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

Quantification of damages

58. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of NGT. While assessing the damages we may note certain facts:

58.1. The EC was granted on 4-4-2008 but construction commenced after issuance of consent to establish dated 20-6-2009 and the EC would be valid for a period of 5 years from the date of such consent i.e. up to 19-6-2014;

58.2. The EC dated 4-4-2008 was granted for construction of built-up area of 57,658.42 sq m, whereas admittedly, as of now the constructed built-up area is 1,00,002.25 sq m. Therefore, there is clear-cut violation of the terms of the EC;

58.3. Any construction raised after 19-6-2014 is without any EC especially since we have held that EC granted on 20-11-2017 is invalid.

Carbon footprint

59. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of "carbon footprint". In the

absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

60. In the original application filed by the original applicant before NGT, there is no reference to carbon footprint. Even when evidence was initially led, no reference was made to the same. The concept of carbon footprint was introduced by the original applicant only in his affidavit dated 18-5-2016. In fact, according to the project proponent, this affidavit was not even filed on 18-5-2016. It appears to us that there is no order of NGT specifically permitting the original applicant to file such an affidavit. The submission of the original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in *Tanaji Balasaheb Gambhire* v. *Union of India*[2] dated 8-1-2018.

61. The courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well-established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of carbon footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

62. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18-5-2016 filed before NGT are based on assumptions some of which we have not found to be correct, namely — (*1*) use of groundwater; (*2*) reduction of cultural centre space; (*3*) construction of basements, etc.

63. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of carbon footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of carbon footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats

2 2018 SCC OnLine NGT 302

and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

65. Normally, this Court is not inclined to grant ex post facto EC. However, in the peculiar facts of this case, we direct that once the project proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

Findings and directions

66. We summarise our findings and directions as follows:

66.1. That built-up area under the notification of 14-9-2006 means all constructed area which is not open to the sky.

66.2. Built-up area under the Notification of 4-4-2011 means all covered area including basement and service areas.

66.3. The communication dated 7-7-2017 is totally illegal and accordingly quashed.

66.4. The original application cannot be treated as a public interest litigation.

66.5. We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties.

66.6. That the order dated 27-9-2016[1] of NGT is upheld except insofar as Direction 1 is concerned.

66.7. The order in review application passed by NGT on 8-1-2018[2] is held to be totally illegal and is accordingly set aside.

1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213
2 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2018 SCC OnLine NGT 302

66.8. We uphold the original order dated 27-9-2016[1] holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 4-4-2008. We uphold the fine imposed upon PMC and the direction given to PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27-9-2016 and will submit his report to NGT within three months from today.

66.9. We impose damages of Rs 100 crores or 10% of the project cost, whichever is higher, on the project proponent and in addition thereto, project proponent will pay Rs 5 crores as levied by NGT in its order dated 27-9-2016[1].

66.10. Project proponent shall not be permitted to raise construction of two buildings having 454 tenements.

66.11. We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including clubhouse.

66.12. The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted ex post facto environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper.

66.13. The project proponent is granted six months' time to deposit the amount of damages imposed in terms of Direction 66.9 supra in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

66.14. The matter be listed on 22-10-2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

67. All the appeals are disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.

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1 *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213

2021 SCC OnLine SC 897

In the Supreme Court of India

(BEFORE A.M. KHANWILKAR, HRISHIKESH ROY AND C.T. RAVIKUMAR, JJ.)

Civil Appeal Nos. 12122-12123 of 2018

Municipal Corporation of Greater Mumbai ... Appellant(s);

Versus

Ankita Sinha and Others ... Respondent(s).

With

Civil Appeal No. 86/2019

Civil Appeal No. 5902/2019

Civil Appeal No. 6273 of 2021

(Arising out of SLP(C) No. 6732/2021)

Civil Appeal No. 6274 of 2021

(Arising out of SLP(C) No. 5930/2021)

Civil Appeal No. 6275 of 2021

(Arising out of SLP(C) No. 6733/2021)

Civil Appeal No. 6276 of 2021

(Arising out of SLP(C) No. 16448 of 2021)

Diary No. 11655/2021

Civil Appeal No. 6277-6278 of 2021

(Arising out of SLP(C) No. 16449-16450 of 2021)

Diary No. 13789/2021

Civil Appeal No. 6279 of 2021

(Arising out of SLP(C) No. 16451 of 2021)

Diary No. 13811/2021

Civil Appeal No. 6280-6281 of 2021

(Arising out of SLP(C) No. 16452-16453 of 2021)

Diary No. 13890/2021

Civil Appeal No. 2897/2021

Civil Appeal No. 6282 of 2021

(Arising out of SLP(C) No. 11426 of 2021)

Civil Appeal No. 6283 of 2021

(Arising out of SLP(C) No. 11427 of 2021)

Civil Appeal No. 6262 of 2021

Diary No. 16948 of 2021

Civil Appeal No. 6284 of 2021

(Arising out of SLP(C) No. 11798 of 2021)

Civil Appeal No. 6285 of 2021

(Arising out of SLP(C) No. 12669 of 2021)

Civil Appeal No. 6286 of 2021

(Arising out of SLP(C) No. 16454 of 2021)

Diary No. 19534/2021

Civil Appeal Nos. 12122-12123 of 2018, Civil Appeal No. 86/2019, Civil Appeal No. 5902/2019, Civil Appeal No. 6273 of 2021 (Arising out of SLP(C) No.

6732/2021), Civil Appeal No. 6274 of 2021 (Arising out of SLP(C) No. 5930/2021), Civil Appeal No. 6275 of 2021 (Arising out of SLP(C) No. 6733/2021), Civil Appeal No. 6276 of 2021 (Arising out of SLP(C) No. 16448 of 2021), Diary No. 11655/2021, Civil Appeal No. 6277-6278 of 2021 (Arising out of SLP(C) No. 16449-16450 of 2021), Diary No. 13789/2021, Civil Appeal No. 6279 of 2021 (Arising out of SLP(C) No. 16451 of 2021), Diary No. 13811/2021, Civil Appeal No. 6280-6281 of 2021 (Arising out of SLP(C) No. 16452-16453 of 2021), Diary No. 13890/2021, Civil Appeal No. 2897/2021, Civil Appeal No. 6282 of 2021 (Arising out of SLP(C) No. 11426 of 2021), Civil Appeal No. 6283 of 2021 (Arising out of SLP(C) No. 11427 of 2021), Civil Appeal No. 6262 of 2021, Diary No. 16948 of 2021, Civil Appeal No. 6284 of 2021 (Arising out of SLP(C) No. 11798 of 2021), Civil Appeal No. 6285 of 2021 (Arising out of SLP(C) No. 12669 of 2021), Civil Appeal No. 6286 of 2021 (Arising out of SLP(C) No. 16454 of 2021) and Diary No. 19534/2021

Decided on October 7, 2021

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.:—

"Estragon : Let's go.
Vladimir : We can't.
Estragon : Why not?
Vladimir : We're waiting for Godot."[1]

2. Leave granted in the Special Leave Petitions.

3. The consideration to be made in these matters is whether the National Green Tribunal (for short "the NGT") has the power to exercise *Suo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

4. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled "*Garbage Gangs of Deonar : The Kingpins and Their Multi-Crore Trade*" in the online news portal, *The Quint.* The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

5. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that '*damage to the environment and public health is self-evident*' and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

6. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

7. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita

Sharma, Mr. S. Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

8. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No. 86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No. 71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

9. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

10. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted both counsel argue for keeping away the *suo motu* power from the NGT.

11. Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered* v. *Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was required to confine itself to within the statutory parameters. Thus, Section 19(25)

conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

12. Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore* v. *Union of India*[3], opined on behalf of a Division Bench that,

> "67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

13. The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak* v. *Achyut Kashinath*[4], observed as under:—

> "34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised."

14. The second limb of contention is that the Act is applicable to '*disputes*' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> 20. ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, [(2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report : (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
>
> '"*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.'"

15. The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial system but not for any other ameliorative, restorative or preventative functions.

16. Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226

and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

> "41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act.....
>
> 43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, [(1965) 1 SCR 413 : AIR 1965 SC 745], made in the following words : (SCR p. 499 : AIR p. 789, para 138)
>
> > "*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.
> >
> > 'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349]'."
>
> For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, [(2014) 3 SCC 222], we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, [2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

17. The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

18. In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which

shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

19. The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:—

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.
>
> These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.
>
> It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."

20. The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

21. The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in *L. Chandra Kumar* v. *Union*

of India, [(1997) 3 SCC 261.

No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

22. Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

23. This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

24. The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2, 3, 4, 5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow:—

"2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a

specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

25. A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

26. Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to "*achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure*". An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

27. The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

28. The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

29. The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION

30. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging societal concerns and these have prompted us to opt

for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes*, authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds : a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."

31. The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

32. The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which "*shall suppress the mischief and advance the remedy*" as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co.* v. *State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

33. Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

> 'A purposive construction of an enactment is one which gives effect to the legislative purpose by—
>
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
>
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.'

34. Justice Frankfurter of US Supreme Court in '*Some Reflections on the Reading of Statutes*', has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> 'The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as 'the proliferation of purpose'."[9]

35. Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo's phraseology in *Panama Refining Co.* v. *Ryan*, and the same is taken as a lodestar in our quest,

> "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view"[10].

36. The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew

procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT

37. Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) "*as the Tribunal may think fit*". Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) "*any person aggrieved including any representative body/organization*" and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

38. While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

39. The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

40. By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to

the environmental principles and even hauling up authorities for inaction, when need be.

41. Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

42. Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

43. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

44. As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See *Vellore Citizens' Welfare Forum* v. *UOI*[12]; *M.C. Mehta* v. *UOI*[13] etc.]

45. The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

46. For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

47. The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive

jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

48. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "*dispute*", but the formulation of *decisions*.

49. With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan* v. *Union of India*[14], highlighted the NGT's role in the context, in the following words:—

"40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

50. In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF SUO MOTU POWER BY NGT

51. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

52. Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd.* v. *Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

"40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

53. As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

54. Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

"46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction."

55. Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* v. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of '*Merits Review*' and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

"503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

56. Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

57. The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board* v. *Prof. M. V. Nayudu (Retd.)*[17] where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

"The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

58. The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT VIS-A-VIS OTHER TRIBUNALS

59. While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

60. The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok Bhushan in *State of Meghalaya* v. *All Dimasa Students Union*[18], fittingly observed thus:—

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *CIT* [*L. Hirday Narain* v. *CIT*, [(1970) 2 SCC 355], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14 : (SCC p. 359)
>
> > "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private— of a citizen."

61. Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

62. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

63. The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur* v. *State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

"14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

64. In *DG NHAI* v. *Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:—

"38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

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76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued."

65. In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

66. The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

67. The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multidimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

68. Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo motu* cognizance of matters, for effective discharge of its mandate.

69. The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

> "14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose : Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

70. The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

71. In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

72. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

73. It may also be relevant to bear in mind that while dealing with contested cases,

the NGT is required to pass "*award*" and "*order*" and the statute repeatedly uses the word "*decision*". Therefore, it is appropriate to correlate the word "*decision*" to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

74. The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab* v. *Shamlal Murari*[22] has so correctly prioritized the substantive rights and observed succinctly,

> "8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

75. While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *the Rio Declaration* which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

76. Tracing the origin of the *Precautionary Principle*, Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage:—

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

77. The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

78. As earlier seen, S.20 of the NGT Act which includes the term "*decision"*, in addition to "*order*" and "*award*", also require the Tribunal to apply the '*Precautionary Principle*' and the statutory mandate being relevant is extracted:—

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."

79. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other '*decisions*' or '*orders*' to governmental authorities or polluters, when they fail to "*to anticipate,*

prevent and attack the causes of environmental degradation"[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

80. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, '*The Nature of the Judicial Process*', stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

81. The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

82. The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

83. Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law*, wrote the following evocative passage on the concept of environmental justice,

> "Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity", which is understood to mean the fair distribution of environmental risks and protection from environmental harms."[26]

84. There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> "Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm. Further, those who benefit cause harm to the places where people "live, work, play, and go to school",

whereas the people who reside there do little or nothing to harm their community."[27]

85. When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An "*equal footing*" conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

86. The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[28]

87. In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the '*Blindfold of Lady Justice*', which symbolizes "*the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class.*"[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

88. Proceeding with the above understating, we can comfortably place the NGT within the rubric of the larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India*, have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

89. By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar* v. *State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

90. Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the '*Absolute Liability Principle*'[34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. ...The right was recognized as part of the right to life in 1991. ... The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

91. It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

92. Justice T.S. Doabia in *Environmental & Pollution Laws in India*, has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned."[38]

93. Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic, welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

94. Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority* v. *Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools - conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges - of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the

preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

95. It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,

"With reference to the judicial enforcement of environmental law - which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order - the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade."[40]

96. The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

97. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

98. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum*, and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

99. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

100. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle*, or the '*Great Law of the Iroquois*' (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

101. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

102. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum

created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the "*global impacts of climate change will fall disproportionately on minority and low-income communities*".[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

103. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

104. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

105. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

106. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

107. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

108. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

109. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being

heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

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[1] *Beckett, S.* (1954). Waiting for Godot : Tragicomedy in 2 Acts.

[2] (2013) 15 SCC 341

[3] (2008) 1 SCC 125

[4] (2011) 9 SCC 541

[5] (2018) 11 SCC 734

[6] (2019) 19 SCC 479

[7] Chapter II, 186th Law Commission Report.

[8] (1955) 2 SCR 603; AIR 1955 SC 661

[9] 47 Columbia Law Review 527

[10] 293 US 388 (1935) (dissenting)

[11] *Sarah Mathew* v. *Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*, (2008) 3 SCC 279.

[12] (1996) 5 SCC 647

[13] (1997) 2 SCC 353

[14] (2012) 8 SCC 326

[15] (2019) 18 SCC 494

[16] 2021 SCC OnLine SC 7.

[17] (1999) 2 SCC 718

[18] (2019) 8 SCC 177

[19] GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India : The Rise and Fall? Asian Journal of Law and Society, 7(1), 85-126.

[20] (1999) 2 SCC 131

[21] 2020 SCC OnLine SC 572

[22] (1976) 1 SCC 719

[23] Scott La Franchi, Surveying the Precautionary Principle's Ongoing Global Development : *The Evolution of an Emergent Environmental Management Tool*, [32 B.C. Envtl. Aff. L. Rev. 679 (2005)

[24] *Vellore Citizens* (supra), *S. Jagannathan* v. *Union of India*, (1997) 2 SCC 87, *Karnataka Industrial Areas Development Board* v. *C Kenchappa*, (2006) 6 SCC 371.

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[26] Schiffer, L. J., & Dowling, T. J. (1997). Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27(2), 327-342.

[27] Jeff Todd, *A "Sense of Equity" in Environmental Justice Litigation*, [44 HARV. ENVTL. L. REV. 169, 193 (2020).

[28] Supra Note 26.

[29] Ibid

[30] *Rural Litigation And Entitlement Kendra* v. *State Of U. P.*, AIR 1985 SC 652, *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613, *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577

[31] See M.A.A. Baig, Environmental Law And Justice(1996). Domenico Amirante, Environmental Courts In Comparative Perspective : Preliminary Reflections On The National Green Tribunal Of India (2012). M.K. Ramesh, Environmental Justice : Courts And Beyond, Indian Jo. Of Envtl. L. 20(2002).

[32] Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.

[33] (1991) 1 SCC 74.

[34] *M.C. Mehta* v. *Union of India*, [(1987) 1 SCC 395.

[35] Rajamani, Lavanya. 2007. Public Interest Environmental Litigation in India : Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability. Journal of Environmental Law

[36] Supra, Note 19.

[37] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176, *Indian Council for Environmental-Legal Action* v. *Union of India*, (1996) 3 SCC 212, *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718, *A.P. Pollution Control Board II* v. *M.V. Nayudu*, (2001) 2 SCC 62.

[38] Justice T.S. Doabia, Environmental & Pollution Laws in India, 3rd Ed., Vol 2 (2017).

[39] (2021) 4 SCC 309

[40] Domenico Amirante, Environmental Courts in Comparative Perspective : Preliminary Reflections on the National Green Tribunal of India, 29 Pace Envtl. L. Rev. 441 (2012)

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