BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE) AT CHENNAI

O.A. No. 7 of 2019

In the matter of:

J. Nageswara Rao

... Applicant

Versus

The State of Andra Pradesh and 4 others

... Respondents

WRITTEN SUBMISSIONS FILED ON BEHALF OF THE RESPONDENTS 6 TO 40 ALONG WITH JUDGMENTS

M/S. K.S.VISWANATHAN, T. HEMALATHA & S.RATHI
COUNSEL FOR 6 TO 40TH RESPONDENT

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INDEX

SL. NO.	Date	Particulars	Page Nos.
1.	27.07.2021	Written submissions filed on behalf of Respondents 6 to 40	1. 8
2.	--	Material on wet drilling method	9. 11
3.	---	Judgment of Kerala High Court in W.A. No. 2572 of 2019 dated 09.06.2020	12.23
4.	---	Order in Civil Appeal No. 6368 of 2019 dated 02.11.2020	24.25
5.	---	Tamil Nadu Pollution Control Board Vs Sterlite Industries (India) Ltd reported in (2019) 19 SCC 479 dated 18.02.2019	26.72
6.	---	2020 SCC online SC 572 dated 14.07.2020	73. 100

The documents include in the typed set are attested to be true copies.

Dated: 27 .07.2021

Place: Chennai

T. Hemalatha.

COUNSEL FOR 6th to 40th RESPPONDENT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE) AT CHENNAI

(1)

O.A. No. 7 of 2019

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CHRONOLOGICAL SEQUENCE

WRITTEN SUBMISSIONS FILED ON BEHALF OF THE RESPONDENTS 6 TO 40

The Respondents above named respectfully submit as follows:-

2019	Application filed praying for action against Respondent Writs.
27.03.2019	The Hon'ble Tribunal appointed a Joint Committee with directions to submit a report regarding the carrying capacity of the area, the Air Pollution measures and violation of conditions if any.
May 2019	Report filed by the Joint Committee
15.05.2019	The Joint Committee report accepted by the Tribunal and further directions given to the Committee to carry out a carry out a study on the carrying capacity of the area.

24.07.2019	Further report submitted by the Committee
29.07.2019	Directions issued to the Committee by the Tribunal to consider the question of assessing damage caused to the Environment and submit a report
Sep 2019	Inspection of quarries carried out by the committee
Oct 2019	Further report by the Committee before the Tribunal
13.12.2019	Pollution Control Board directed to submit a report regarding a consequential action taken in respect of levy of Environment compensation
18.01.2020	Pollution Control Board issues a notice levying Environment compensation
04.02.2020, 11.02.2020, 09.06.2020	Representation given by the quarry owners to grant opportunity to place all materials
15.02.2020`	Detailed representation made by the Guntur District Quarry and Stone Crushers Owners Welfare Association
18.08.2020	Stop Production order issued by the Pollution Control Board to all the quarries
20.08.2020	Pollution Control Board files a further report enclosing the details of action taken against the quarries including imposition of Environment Compensation
---	Joint Committee files a report in respect of the compliance of the quarries to the directions issued by the board.
---	Quarry owners approach Hon'ble High Court of Andhra Pradesh challenging Stop Production Orders on the

	ground of violation of principles of natural justice
25.01.2021, 28.01.2021 & 29.01.2021	Writ Petition disposed of by the Hon'ble High Court directing the Petitioners to approach the Hon'ble Tribunal. Interim orders also extended.
19.02.2021	Respondents 17 to 40 impleaded in the present case

Submissions:

1. The Respondents 6 to 40 have been carrying on quarrying and crushing operations on a small scale with valid consent orders and Environmental Clearance issued by the appropriate authorities.

2. **JOINT COMMITTEE REPORTS:-**

a) In the Joint Committee Report dated May 2019, it is stated that the industries are operating with approved mining plans, valid Environmental Clearances and CFO. This report has been accepted by the Tribunal by order dated 15.05.2019, after which directions were issued for taking up carrying capacity assessment study.

b) By the subsequent report submitted on 24.07.2019 the committee has noted almost all the conditions of consent as well as EC have been complied with except the issue regarding wet drilling.

c) The committee has noted the representation of the units that drills do not have provisions for wet jacketing and therefore required a modification of the conditions to an alternative method for controlling dust emission at the time of drilling by covering the

drilling bits with wet gunny bags to attenuate dust emissions during drilling process.

d) The Committee has also observed that out of 44 stone quarries 10 quarries are not in operation and the remaining 34 quarries are operating at 10 to 15% of the production capacity. In the report of the Committee dated October 2019 the committee has clearly stated that regarding carrying capacity it has been recommended to reduce the operation capacity by 30% of the concerned capacity during critical meteorological weather conditions.

e) It has been further stated by the committee that after detailed studies it has been found that the air quality in the quarry area including the habitations area are within the standards prescribed by the board and the damage to environment by air pollution is meagre.

f) The committee has rejected all claims regarding damage to physical structures due to vibration.

3. ENVIRONMENTAL COMPENSATION:-

g) The committee has fixed 26.10.2018, 09.07.2019 and 30.09.2019 as base dates of violation and has calculated the Environmental compensation. Based on the report and pursuant to the orders of the Tribunal dated 13.12.2019 the Pollution Control Board issued the notice dated 18.01.2020 directing the quarries to stop production.

5

h) The notice dated 18.01.2020 does not contain any reasons for making the demand and no opportunity was granted to the quarry owners before arriving at the quantum of compensation based on the joint committee report. In other words, the Board has not exercised their powers in accordance with law except making reference to the orders of the Tribunal and the report of the committee.

i) Even though a number of representations were sent to the authorities to follow the procedure established by law in accordance with the directions given in the order of the Tribunal dated 13.12.2019, the PCB proceeded to issue stop production orders on 18.08.2020.

j) The quarry owners were not parties before the Tribunal when the joint committee filed its report and they were not heard by the pollution control board before issuing the notice dated 18.01.2020 demanding Environmental compensation.

k) In the report submitted by the committee in July 2020 the committee has observed that all the mine owners have appraised the committee on the issue relating to the wet drilling and have also demonstrated the wet cloth covered drilling method. The committee has also expressed an opinion that a scientific assessment of the efficiency of the method is needed and if it is found sufficient it may save not only Air Pollution but also several kilo litres of water.

l) In all the reports submitted by the committee and the Board, the Air Pollution level has not exceeded the prescribed standards which shows that by duly covering the drilling bits with wet gunny bags is working efficiently to control dust emission.

4. ACTION TAKEN BY THE BOARD:-

m) The Board has not followed the procedure established by law in spite of the directions contained in the order of the Tribunal dated 13.12.2019.

n) The Board merely reproduced the orders of the Tribunal and referred to the committee report and issued the demand notice without independently making any assessment of the compensation payable.

o) The Board did not afford any opportunity whatsoever to the mine owners to appear and explain their stand before imposition of compensation.

p) The orders dated 18.01.2020 as well as 18.08.2020 have been issued in total violation of the principles of natural justice.

q) Even after the demand notice dated 18.01.2020 a number of representations were sent to the Board dated 04.02.2020, 11.02.2020 and 09.06.2020 apart from the common representation from the Association dated 15.02,2020. None of these representations were considered by the Board.

5. AUTHORITIES:-

r) In the case of Public Works Department GNCTD Vs Central Pollution Control Board W.P.(C) 2693 of 2020 decided by the Hon'ble High Court of Delhi on 11.03.2020, The Hon'ble Court came down heavily upon the CPCB in as much as the affected parties has not been granted a pre-decisional or a past-decisional hearing on the

levy of Environment compensation. The present case is squarely covered by the afore said judgment wherein the authorities were directed to pass a speaking order after granting an opportunity of hearing to the Petitioner therein.

s) In the case of Director of Road Development National Highways Authority of India Vs Aaam Aadmi Lok Manch (2020 SCC online SC 572) the Supreme Court has held that the authorities must independently exercise their powers passes reasoned orders even in cases where directions were issued by NGT.

t) In the case of Tamil Nadu Pollution Control Board Vs Sterlite Industries (I) Ltd reported in (2019) 19 SCC 479 the Hon'ble Supreme Court has held that the NGT does not have original jurisdiction in respect of orders that are appealable to the Appellate Authority.

u) In para 36 of the order the Hon'ble Supreme Court goes on to say where a right of appeal is not conferred upon NGT under Section 31-A of the Air Act the NGT would not have jurisdiction to decide the validity of directions issued under Section 31A of the Air Act under its original jurisdiction.

v) In the instant cast this Tribunal by order dated 13.12.2019 has made a mention of the notice issued under Section 33A of the Water Air Act and 31 A of the Air Act and take appropriate action in accordance with law including closure and imposing Environmental compensation. It is in pursuance of this order the demand notice dated 18.01.2020 has been issued. Applying the ratio in Sterlite case, the demand is appealable to the appellate authority or challengeable only under Article 226 or by way of a suit. Therefore,

the NGT does not have original jurisdiction to test the correctness of the order dated 18.01.2020 or 18.08.2020 issued by the PCB in the instant case.

5. UNITS RUNNING WITH FULL COMPLIANCE:-

w) The Respondents 6 to 40 have complied with all consent conditions and they are the model industrial units in the entire State of Andhra Pradesh who are operating with valid Environmental clearance. The industries are already battling with COVID situation and have suffered huge loss from March 2020 onwards. Any further directions regarding imposition of any compensation without proper adjudication by the authorities would completely go against the principles of proportionality and sustainable development. At the same time, the quarries and crushers would follow all the recommendations made by the committee in the interest of environment.

It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss O.A. No. 179 of 2016 and O.A. No. 7 of 2019 and thus render justice.

Dated at Chennai on this day of 27th July 2021

T. Hemalatha

M/S. K.S.VISWANATHAN, T. HEMALATHA & S.RATHI

COUNSEL FOR 6 TO 40TH RESPONDENT

AS PER THE E.C CONDITION :

Wet drilling method shall be adopted to control dust emissions.

AS PER CONSENT CONDITION:

Drills should be water- jacketed. Local exhaust ventilation system should be installed at dust generationpoints and the dust is led to a dust collection system

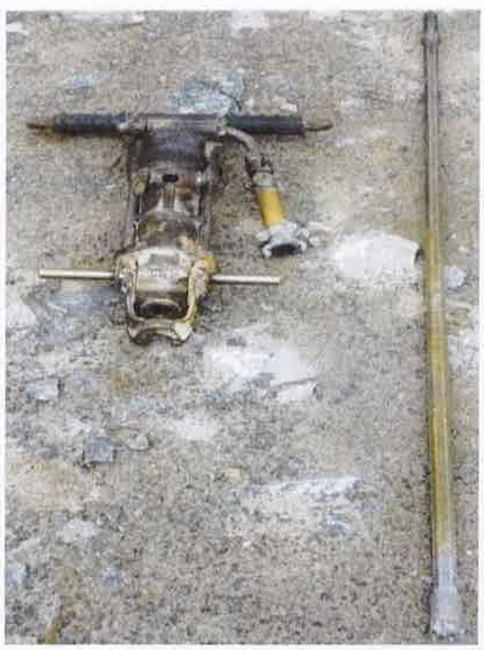
For the above conditions, we have already submitted a request for modification to APPCB and informed that there is no provision of water jacket for jack hammer which are using in minor minerals for drilling purpose. Mean while instead of wet drilling we are utilizing wet gunny bags for suppression of dust generated during the source of Drilling.

We are bringing facts and difficulties for kind notice of honorable NGT court in detailed manner and requesting to make suggestions for modification of the EC consent condition.

DETAILED STRUCTURE:

As per the Mines Department Road metal quarries are treated as minor minerals, we are producing the mineral by using jack hammer drilling (i.e., small diameter holes i.e 32mm,). With the method of jack hammer drilling which is used in minor minerals, water jacket is not practicable.

JACK HAMMER WTH 32 MM DIA ROD COVERED WITH WET GUNNY BAG



The quarry hillocks located in both Survey No 's. 155/A1 & 111P of Chinapalakalur Village has nearly 60 leases , which are running on small scale.

For the purpose of wet drilling , there is no source of ground water up to 300 feet for bore due to the rock area. if have provisions in one or two places for bore wel supply of water through pipe line to 30 to 50 mts height from ground to top of the hill , is difficulty and impracticable, if it has arranged it will be disturbed by blasting.

construction of water storage tank for small leases at the top of the hill is highly expensive and inconsequential and also not having enough area for construction. .

The second condition is quantity of water utilization for dust suppression is 1.10 to 5.0 KLD .

Every day for concentration of liberation of dust through the source of drilling we required 500 litres of water for wet drilling purpose only

(Regularly we are drilling nearly 30 to 50 holes at 6 feet length, with jack hammer)

Generation of dust through source of drilling with jack hammer with small dia of holes is very less comparatively to the cloud dust generated on haul roads due to the plying of the trucks.

For the purpose of suppression of emission of dust on haul roads we are using tractor mounted water tanker for sprinkling purpose and requires of water averagely 3000 KL per trip and sprinkling water on haul roads can be done in two trips.

So nearly on an average 6000 litres of water is required per day only for suppression of dust on haul roads.

SUGGESTIONS:

Wet drilling method is not possible at the top of the hill quarry at a height of 50 mts. we are using jack hammer drill with 32mm dia for,6ft hole, in this method of drilling , generation of dust is in very less amount ,for its suppression we are practicing wet gunny bags technique by covering the mouth of the drill hole with thick wet gunny bags through out the drilling to suppress the emission of dust.

METHOD OF DRILLING WITH WET GUNNY BAG

For this wet gunny bags method, we requires 10 to 20 gunny bags and only 20 to 30 litres of water per day for the process of dust concentration..

And have a serious danger through this water jack drill is while working at the top of the bench of hill there is chances of slipping of workers from height which results in chance of fatal .

comparatively with water jacket, wet gunny bag is safest and best method with low maintaining cost and gives good results in suppression of dust with out wastage of huge water.

Kerala High Court
Thrissur Corporation vs Kerala State Pollution Control ... on 9 June, 2020

12

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 09TH DAY OF JUNE 2020 / 19TH JYAISHTA, 1942

WA.No.2572 OF 2019

(JUDGMENT IN WP(C) NO.30789/2019(W) DATED 26.11.2019 OF HIGH COURT OF KERALA)

APPELLANT/PETITIONER:

THRISSUR CORPORATION,
REP BY ITS SECRETARY, THRISSUR.

BY ADV. SRI.SANTHOSH P.PODUVAL

RESPONDENTS/RESPONDENTS:

1 KERALA STATE POLLUTION CONTROL BOARD,
PATTOM P.O., THIRUVANANTHAPURAM-695 004,
REP BY ITS MEMBER SECRETARY.

2 THE CHAIRMAN, KERALA STATE POLLUTION BOARD, PATTOM P.O.,
THIRUVANANTHAPURAM-695 004.

3 THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE,
THRISSUR-680 001.

4 DIRECTORATE OF URBAN AFFAIRS,
OFFICE OF THE DIRECTORATE OF URBAN AFFAIRS, SWARAJ BHAVAN,
1ST FLOOR, NANTHANCODE, THIRUVANANTHAPURAM-695 033.

5 EXECUTIVE DIRECTOR,
SUCHITHWA MISSION, LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAURAM-695 001

6 STATE OF KERALA,
REP BY CHIEF SECRETARY TO LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM-695 001.

R1-R3 BY SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL BOARD,
BY SR. GP SRI.ARAVINDA KUMAR BABU FOR R5 AND R6

12

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-02-2020, THE COURT ON 09-06-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 9th day of June, 2020 S.Manikumar, CJ.

Instant writ appeal is filed against judgment dated 26.11.2019 passed in W.P.(C) No.30789 of 2019, by which, writ court closed the writ petition without granting any relief sought for by Thrissur Corporation, represented by its Secretary, writ petitioner/appellant, but leaving liberty to the Corporation to approach National Green Tribunal appropriately, either by filing a statutory appeal or by impleading themselves in the original application or by doing both.

2. Short facts leading to the appeal are as under:

The Chairman, Kerala State Pollution Control Board, Thiruvananthapuram, (respondent No.2) has issued a direction under Section 5 of the Environment (Protection) Act, 1986 dated 21.10.2019 (Exhibit-P1) imposing compensation of Rs.4,56,60,000/- to Thrissur Corporation (appellant) for the period 22.11.2018 to 31.07.2019, for non- compliance of Rule 22 of the Solid Waste Management Rules, 2016. In Exhibit-P1, the 2nd respondent has referred to various orders passed by the National Green Tribunal, New Delhi, clarifying that apart from prosecution, statutory authorities under the Environmental (Protection) Act in exercise of their incidental powers shall collect prescribed scale of compensation from the polluters on the "polluter pay's principle". It was also noted that National Green Tribunal in the order dated 22.11.2018 in O.A. No.353 of 2016 has observed that statutory authorities are entitled to assess and recover damages by applying polluter pay's principle in exercise of incidental powers to protect environment.

3. Appellant has contended that the Environmental (Protection) Act, 1986 or Solid Waste Management Rules, 2006 do not provide assessing or imposing compensation upon local authorities for the delay in providing facilities and in carrying out the activities prescribed in the rules. Appellant has further contended that a clarification made by the National Green Tribunal shall not clothe the Pollution Control Board with any power which is not otherwise provided under the Act. Challenging the authority of Kerala State Pollution Control Board, i.e. 2nd respondent, to issue such a direction (Exhibit-P1) on the basis of certain clarifications made by the National Green Tribunal, instant writ petition has been filed seeking for issuance of a writ of certiorari or other appropriate writ order or direction, quashing Exhibit-P1 order dated 21.10.2019 issued by the Kerala State Pollution Control Board, respondent No.2.

4. After considering the rival contentions, writ court by the impugned judgment, closed the writ petition by observing thus:

14

"Resultantly, I close this Writ Petition without granting any of the reliefs sought for, but leaving liberty to the petitioner to approach the NGT appropriately, either by filing a statutory appeal or by impleading themselves in the Original Application or by doing both.

Needless to say, until such time as the statutory period for filing an appeal, as fixed under Section 16 of the NGT Act expires, the interim order granted by this Court will continue to be in operation; and consequentially, all further action being pursued by the Pollution Control Board, based on Ext.P1, shall stand interdicted, so as to enable the Corporation to approach the NGT without the threat of imminent action."

5. Being aggrieved, instant writ appeal has been filed contending that,- the judgment passed by the writ court refusing to entertain the writ petition relegating the petitioner to seek alternate remedy of appeal without considering the specific pleadings to the effect that such an appeal is not efficacious, is improper. According to the appellant, Exhibit P1 direction has been issued specifically in compliance with the direction issued by National Green Tribunal; that there is reference in Exhibit P1 direction to certain findings of the Tribunal, to the effect that statutory authorities under Environment (Protection) Act are empowered to impose compensation against the polluters. The writ petition is filed specifically challenging the authority of the Pollution Control Board to issue such a direction, on the basis of certain clarifications made by the National Green Tribunal.

6. In the writ petition, appellant has further contended that, a clarification made by the National Green Tribunal shall not clothe the Pollution Control Board with any power, which is not otherwise provided under the Act. The scale of compensation is arbitrarily fixed by the 1 st respondent and is seen to have been approved by the Tribunal. Hence, an appeal before the Appellate Authority cannot be said to be efficacious.

7. It is further contended that Thrissur Corporation was not a party to the proceedings before the National Green Tribunal, in which, an order has been passed endorsing the authority of Pollution Control Board to impose compensation. Direction has been issued by the 2 nd respondent mechanically, noting that the six months' period fixed by the National Green Tribunal have elapsed. The explanation of the appellant was not at all considered. Further, it was not considered whether the delay is due to the laches on the part of the appellant. The 1 st respondent itself had certain duties to be performed in the matter of issuing directions and suggestions to the local authorities, which were not done promptly. The State Policy itself was formulated after two years of the enactment of the rules. It is finally contended that the polluter pay's principle does not apply in the case of the appellant for the alleged delay in complying with the norms. At any rate, imposition of compensation for an act of pollution, being a tortious liability could not have been done by the 2nd respondent.

8. The Senior Environmental Engineer, Kerala State Pollution Control Board, Regional Office, Ernakulam has filed a counter affidavit on behalf of Kerala State Pollution Control Board, rep; by its Member Secretary and the Environental Engineer, Kerala State Pollution Control Board, Thrissur, respondents 1 and 3, contending that,- as per the Solid Waste Management Rules, 2016 (hereinafter

referred to as SWM Rules), the Municipal Corporation is legally bound to take all measures for the scientific disposal of the solid waste generates within its limits. As per Rule 22(1) of the SWM Rules, the Corporation shall identify suitable sites for setting up of solid wastes processing facilities by 08/04/2017, that is one year from the date of notification of the Rules.

9. It is further contended that the Board on numerous occasions issued directions to the appellant to comply with the directions issued in the light of the provisions contained the SWM Rules. However, the appellant failed to comply with those directions and the facilities now in place for the disposal of solid wastes are highly inadequate. National Green Tribunal, Principal Bench, New Delhi vide Exhibit-P2 order dated 22.11.2018 in O.A. Nos.353 of 2016 and 412 of 2017 has clarified that the statutory authorities shall collect compensation from the pollutors on "polluter pays" principle. Vide paragraph 13 of the above order, the National Green Tribunal has held as follows:

> "We may also clarify at this stage that apart from prosecution, the statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 must, in exercise of their incidental powers, prescribed scale of compensation to be collected from the polluters on the "Pollutor Pays' principle. Such scale which may be laid down at various levels, having regard to the local conditions or as per directions in the hierarchy of the authorities." The Tribunal further ordered that the copies of the order be sent by e-mail to the Hon'ble Apex and the' Regional Committees and also to the Central Pollution Control Board (hereinafter referred to as "CPCB") for being communicated to all the State Pollution Control Board or such other Authorities as may be considered necessary.

10. Therefore, it is further contended that in the light of the above clarification made by the National Green Tribunal, the Board is bound to prescribe the scale of compensation to be collected from the polluters on the "polluter pay's principle". In this case, the appellant is the authority fastened with the responsibility to dispose the solid wastes generated within its limits in a scientific manner as prescribed under the SWM Rules. The Board is competent to impose and prescribe compensation on the appellant in case of failure on their part in scientifically handling the solid waste generated within its limits.

11. It is further contended that as per Rule 22(7) of the SWM Rules, solid wastes processing facility has to be set up by bodies having 1 lakh population or more and as per Rule 22(9), common or standalone sanitary landfill is to be provided by 08.04.2019. As the time period was over and no considerable progress has been achieved by the local bodies, the NGT issued Exhibit-P5 order in O.A. No.606/2018, directing to notify atleast 3 major cities and 3 major towns in the State and at least 3 Panchayats in every district, which would comply with the provisions contained in SWM Rules, within 6 months from the date of the order. The above Original Application came up for consideration before the NGT pursuant to the transfer of proceedings in W.P.(C) No. 888/1996 pending before the Hon'ble Supreme Court, vide order dated 2.9.2014. The National Green Tribunal vide order dated 22.12.2016 held that,- "the directions contained in this judgment shall apply to the entire country. All the State Governments and Union Territories shall be obliged to implement and

enforce these directions without any alteration or reservation."

16

12. It is further contended that the appellant-Corporation was one among the three model cities identified as per G.O.(t) No.45/2019/ENVT dated 31/05/2019. Though the time granted was over, appellant failed to comply with the provisions contained in SWM Rules. The solid waste management measures taken were not adequate to cater the quantity of wastes generated in Thrissur Corporation. The Corporation also failed to identify land for solid waste treatment processing facility.

13. In the light of the directions issued by the National Green Tribunal, Exhibit-P3 notice under Section 5 of the Environment (Protection) Act, 1986 (hereinafter referred to as E.P. Act) was issued to the appellant, to show cause within 15 days why the Board shall not recover environmental compensation of Rs.456.6 lakhs from 22-11-2018 to 31-7- 2019 for the non-compliance of Rules 22 (1), 22(3), 22(5), 22(6), 22(7) and 22(11) of the SWM Rules, 2016. Above notice was issued based on the finding that solid waste management measures reported by the appellant- Corporation are inadequate to cater the quantity of waste expected in the Corporation. As per the Annual Report submitted by Thrissur Corporation, the total quantity of solid wastes generated is 177 tonne per day. The quantity of solid wastes processed (community level) is 37 TPD and quantity of solid wastes processed in household level is 60 TPD. Hence, it is clear that 80 TPD of wastes generated in Thrissur Corporation are not scientifically processed. This also establishes a fact that the appellant Corporation has miserably failed to identify the land for solid wastes processing facility and sanitary landfill. The reply submitted by Thrissur Corporation vide letter dated 27-8-2019 was far from satisfaction as they have not identified land for solid waste treatment facility, sanitary landfill and failed to implement door to door collection of solid wastes.

14. It is further contended that in the light of the above, the Board had taken steps for assessment of environmental compensation from the appellant-Corporation for the period from 22-11-2018, on which date the Order specifying the levying of Environmental Compensation by Hon'ble NGT came into force, to 31-7-2019 (days 252). The Board is following the environmental compensation regime for solid waste accepted by the NGT vide order dated 28/08/2019 in O.A. 593/2017. Thereafter, the Board has issued Ext.P1 under Section 5 of the E.P. Act and directed Thrissur Corporation to remit environmental compensation of Rs.456.6 lakhs from 22-11-2018 to 31-7-2019 for non-compliance of SWM Rules, within 15 days from the date of receipt of the direction. The Corporation replied to the direction vide letter dated 5-11-2019 and requested for a hearing on the subject. A hearing was held on 2-12-2019, in which the Secretary, Thrissur Corporation attended. However, no action plan was submitted specifying the activities and time limit for implementation of Solid Waste Management Rules, 2016.

15. It is further contended that Exhibit-P1 is an order issued under Section 5 of the Environment (Protection) Act. Section 5A of the said Act stipulates that any order passed under Section 5 is appealable before the National Green Tribunal. It was in that background, the learned single Judge has disposed of the writ petition, granting liberty to the appellant Corporation to approach the National Green Tribunal by filing an appeal against Exhibit-P1 order. Apart from that, the appellant was given liberty to implead in the pending Original Applications before the NGT. Without

exhausing the statutory remedies, the appellant has approached this Court, and for that reason alone, writ appeal is liable to be dismissed.

16. As stated above, Exhibit-P1 was issued strictly based on the directions and observations contained in Exhibits-P2 and P5 orders of the National Green Tribunal. The above orders cast a duty upon the Pollution Control Board to take appropriate steps for imposing environmental compensation and to realise the same from the polluters under polluters- pays-principle. Hence, the contention of the appellant has no relevance as the steps taken by the Board are in the light of the directions issued by the NGT. As regards the averments contained in the Appeal Memorandum to the effect that the Hon'bie NGT cannot confer any power under the statutory Authority, the Board herein; unless there is specific provision, it is contended that the action taken by the Board is as per the directions and observations of the Hon'bie NGT. It is to enable the appellant to canvass such a position before the NGT, the writ court granted liberty to the appellant for impleading in the pending Original Application. The appellant- Corporation is duty bound to-handle with the solid wastes generates within its limits in a scientific manner as per the SWM Rules, 2016. The failure on the part of the appellant- Corporation is a valid reason for imposing environmental compensation under "polluter pays" principle. For the afore- mentioned reasons, the Kerala State Pollution Pontrol Board, sought for dismissal of the writ appeal.

17. Heard learned counsel for the parties and perused the material available on record.

18. Exhibit-P1 impugned order, which is the direction issued under Section 5 of the Environment (Protection) Act, 1986 dated 21.10.2019 is extracted hereunder:

> "DIRECTION ISSUED UNDER SECTION 5 OF THE ENVIRONMENTAL PROTECTION ACT, 1986 Sub: Issue of notice for the noncompliance of the Solid Waste Management Rules, 2016 Ref: 1. The Hon'ble NGT order OA no. 606/2018 dated 6/01/2019 and 25/04/2019
>
> 2. Letter no. PCB/HO/SEE2/RMC- Meeting/2018 dated 09/10/2018, 22/10/2018 and 24/10/2018
>
> 3. This office notice of even no. PCB/HO/EE4/NGT/SWM DIRECTIONS TO LB/2019 dated 17/04/2019
>
> 4. This office notice of even no. PCB/HO/EE4/AG/2019 dated 09/05/2019
>
> 5. Letter no. PH4/5475/09 dated 24/06/2019
>
> 6. Letter no. PH4/5475/09 dated 31/05/2019
>
> 7. Annual Report send by email dated 02/07/2019
>
> 8. Email on 14/08/2019

9. This office notice of even no. PCB/HO/RULES/SWM - Thrissur/2018 dated 14/08/2019 18

10. Letter no. PH4/28606/16 dated 27/08/2019

11. Letter no. PCB/TSR/MSW/3/2002 dated 14/10/2019 WHEREAS the Central Govemment notied the Environmental (Protection) Act, 1986 for the protection and improvement of environment and for matters connected therewith;

WHEREAS as per Section 3, 6, and 25 of the Environment (Protection) Act, 1986, the Central Government re-notied the Solid Wastes Management Rules, 2016 (herein after referred as SWM Rules) vide notication S.O. 1357(E) dated 8-4-2016;

WHEREAS as per Rule 22(1) of the SWM Rules, suitable sites for setting up solid waste processing facilities are to be identied;

WHEREAS as per Rule 22(3) of the SWM Rules, suitable sites for setting up solid waste processing facility and sanitary landll facilities are to be procured;

WHEREAS as per Rule 22(5) of the SWM Rules, door to door collection of segregated waste and its transportation in covered vehicles to processing or disposing facility shall be ensured by 8-4-2018;

WHEREAS as per Rule 22 (7) of the SWM Rules, solid waste processing facilities for the complete quantity of waste generated from the local body @ 0.4 to 0.5 kg/person/day, shall be set up by 8-4-2018;

WHEREAS facilities with the technologies specied in CPHEEO manual and SWM Rules are to be in place for the effective treatment and disposal of the solid waste generated in the local body;

WHEREAS as per Rule, 22 (6) of the SWM Rules, separate storage, collection and transportation of construction and demolition waste shall be provided by 8-4-2018;

WHEREAS as per Rule 22(11) of the SWM Rules, bio- remediation or capping of old and abandoned dump site shall be ensured;

WHEREAS the following information was submitted by you vide the Annual Report read 7th above.

No. of Households	86604
No. of non-residential waste generated	15250
Quantity of Solid waste generated	177 TPD
Quantity of Solid waste collected	37b TPD

Quantitiy of Solid waste processed (Community level)	37 TPD

19

Quantitiy of Solid waste processed in Biogas plant-632 Household level Compost pits-20,118 = 60 TPD WHEREAS it is noted that you are not processing 80 TPD of waste generated;

WHEREAS it is noted that you have not identied the land for the solid waste processing facility and sanitary landll;

WHEREAS the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the order dated 22/11/2018 in O.A. No. 353/2016 claried that apart from prosecution, the statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, must, in exercise of their incidental powers, prescribed scale" of compensation to bewcpllected from the polluters on the "Polluter Pay's Principle". Such scale which may be laid down at various levels, having regard to the local condition or as per direction in the hierarchy of the authorities. ln various other application also, the Hon'ble NGT passed similar orders, for instance, in the order dated 20/11/2018 in O.A No. 117/2014, 499/2014 and 102/2014 the Hon'ble NGT noted as; "Needless to say that statutory authorities under the Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 are entitled to assess and recover damages as "Polluter Pay's Principle" in exercise of incidental powers to protect environment".

WHEREAS notice was issued to you as you have not complied with the above provision;

WHEREAS Environmental Engineer, District Office, reported that the solid waste management measures reported by you are inadequate to cater to the quantity of waste expected from Thrissur Corporation.

WHEREAS the Board is constrained to assess the Environmental Compensation from 22/11/2018 to 31/07/2019 (Days=252) as follows:

City	Thrissur
Population (2011)	317526
Class	Class-I Town
Waste Generation (kg. per person per day) as per Annual Report	0.55
Waste Generation (TPD) as per Annual Report	177.00
Waste Disposal as per Rules (TPD) as per Annual Report	97.00

20

Waste Management Capacity Gap (TPD)	80.00
Calculated EC (capital cost component) in Lakhs. Rs.	192.00
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lakhs. Rs.)	Min.100 Max.1000
Final EC (capital cost component) in Lakhs Rs.	192.00
Calculated EC (O&M Component) in Lakhs. Rs./Day	1.60
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lakhs. Rs./Day)	Min.0.1 Max. 1.0
Final EC (O&M Component) in Lakhs Rs./Day	1.00
Calculated Environmental Externality (Lakhs Rs. Per Day)	0.00
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lakhs Rs. Per Day)	Min. 0.05 Max. 0.10
Final Environmental Externality (Lakhs Rs. Per Day)	0.05
Final Environmental Externality in Lakhs	12.6

WHEREAS an amount of Rs.456.6 Lakhs (Four Crore Fifty Six Lakh Sixty Thousand) is assessed as environmental compensation from 22/11/2018 to 31/07/2019 (Capital cost component (Rs.192 Lakhs) + O&M Component (Rs.252 Lakhs) + Environmental Externality (Rs.12,6 Lakhs));

WHEREAS notice was issued to you to comply with this office notice cited 9th above to show cause why the Environmental Compensation of Rs.456.6 Lakhs (Four Crore Fifty Six Lakh Sixty Thousand) shall not be recovered from you for the non compliance of Rule 22(1), 22(3), 22(5), 22(6), 22(7) and 22(11) of the SWM Rules, 2016:

WHEREAS as per order dated 25/04/2019 in O.A. No.606/2018, the time line for compliance of environmental statues will be elapsed on 24/10/2019;

WHEREAS in the said letter, while quantifying the waste generated, the quantity of non bio-degradable waste from market is not included in 1(b) in page 4;

WHEREAS you have vide reply no. PH4/28606/16 dated 27/08/2019 reported that the present dumpsite of Corporation is converted to stadium and steps are taken to identify the new space for solid waste processing plant as per Rule 22(1);

WHEREAS it is noted that you are converting the land acquired for waste management to stadium which is against Rule 22(1) and 22(3);

WHEREAS you have yet to comply with 22(5), 22(6) and 22(7) of the Solid Waste Management Rules, 2016;

WHEREAS NGT order dated 17/07/2019 in OA. No. 519/2019 directed to ensure allocation of funds for proeessing of legacy waste dumpsites and the remediation work is to be commenced from 01/11/2019 and preferably within 6 month to be completed;

WHEREAS you have yet to report the action taken for the compliance of above matter;

WHEREAS the Environmental Engineer, District Office, Thrissur, based on their inspection on 17/07/2019, reported that the procedure adopted for closure of the dump yard is not in compliance with the Rule 15(zj) and Schedule 1(j) of the SWM Rules, 2016; WHEREAS the reply submitted by you is not satisfactory;

WHEREAS the KSPCB District office,Thrissur has found that the Corporation has provided facilities to 14 T of biodegradable waste against the 99.12 T of biodegradable waste generated as mentioned in your reply under ref.11;

WHEREAS though you have claimed to have waste treatment facility for treating 63.87T at source and this is far from reality and the disposal method through piggery farm and agricultural activities cannot be taken in account,as the same is not authorized;

WHEREAS the KSPCB, District Office inspected 10 houses each from 31 wards and found that non-biodegradable waste is collected from 107 houses and biodegradable wastes from 10 houses from a total of 3 10 houses;

WHEREAS the Corporation has not reported the mode of treatment and disposal of non-biodegradable wastes;

WHEREAS the wastes generated in ats, educational institutions, industrial establishments are disposed in incinerator without having satisfactory air pollution control system and disposal measures for burnt residues;

WHEREAS the Corporation has not submitted a detailed plan for the treatment and disposal of remaining wastes;

WHEREAS though the instruction was given to Corporation authorities for doing bio mining as per statutory rules in Laloor dumping sites, you are continuing the construction activities for the stadium-inthe said area against the Board's directions and you are not complying with the Board's direction and has not given reply to the Board's direction on bio mining;

AND WHEREAS it is noted that you have not complined with the Solid Waste Management Rules, 2016:

22

NOW THEREFORE, in exercise of the powers vested under Section 5 of the Environment (Protection) Act, 1986, you are directed to remit the Environmental Compensation of Rs.456.6 Lakhs (Four Crore Fifty Six Lakh Sixty Thousand) from 22/11/2018 to 31/07/2019 against you for the non compliance of Rule 22(1), 22(3), 22(5), 22(6), 22(7) and 22(11) of the SWM Rules, 2016 within 15 days of receipt of this direction failing which further legal action shall be initiated against you.

Sd/-

CHAIRMAN To The Secretary, Thrissur Corporation"

19. Material on record discloses that the impugned order (Exhibit-P1) has been issued by the Chairman of Pollution Control Board, as extracted above. In fact, in the objection filed to the show cause notice, the Corporation has raised various contentions, including the authority of the Pollution Control Board to impose fine against them on the basis of "pollutor pay's principle". However, as per Exhibit-P1, Chairman of the Pollution Control Board has gone through the provisions of Environment (Protection) Act, 1986 and the rules made thereunder, for arriving at the conclusion that the authorities are vested with sufficient powers to impose environmental compensation.

20. The paramount contention advanced by the appellant Corporation before the writ court was that it was not provided an opportunity of being heard by the Pollution Control Board. Writ court after considering the rival contentions of the appellant, held that the Corporation has got an alternate remedy to file an appeal against the order of the Chairman, Pollution Control Board before the National Green Tribunal. However, on a perusal of Exhibit-P1, extracted above, it is evident that the said order was passed without providing an opportunity of hearing to the appellant. In fact, the amount of Rs.456.6 lakhs was imposed against the Corporation as environmental compensation, directed to be paid within 15 days from the date of receipt of the order. In our considered view, since the Corporation has filed serious objection to the show cause notice, issued by the Pollution Control Board, the Corporation ought to have been provided with such an opportunity to contest the proceedings before the Chairman.

21. It is almost an admitted fact that no opportunity of hearing was provided to the Corporation to contest the proceedings. Moreover, on a perusal of Exhibit-P1, it is evident that even though the provisions of the Act and rules were considered by the Chairman of the Pollution Control Board, no opportunity has been provided to the appellant Corporation to substantiate the case putforth by them in their objections. Therefore, we are of the considered view that Exhibit-P1 order of the Chairman suffers from the vice of arbitrariness, since it has been passed in violation of the principles of natural justice. It was only appropriate on the part of the Pollution Control Board to have provided an opportunity of hearing to the appellant. Having not done so, there is clear illegality and unfairness on the part of the Chairman of the Pollution Control Board.

In the light of above discussion, we set aside Exhibit-P1 order of the Chairman, Kerala State Pollution Control Board, dated 21.10.2019 and direct the Chairman to issue notice to the appellant

Corporation and finalise the proceedings, after providing the Corporation an opportunity of being heard. Writ appeal is accordingly, allowed.

SD/-

S.MANIKUMAR CHIEF JUSTICE SD/-

SHAJI P.CHALY JUDGE Krj /TRUE COPY// P.A TO CJ

Supreme Court - Daily Orders

M/S Shree Ganesh Stone Crusher vs The State Of Haryana on 2 November, 2020

24

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6368 OF 2019

M/S SHREE GANESH STONE CRUSHER & ORS. Appellant(s)

VERSUS

THE STATE OF HARYANA & ORS. Respondent(s)

WITH
CIVIL APPEAL NO. 7315 OF 2019
CIVIL APPEAL NO. 7614 OF 2019
CIVIL APPEAL NO. 7316 OF 2019
CIVIL APPEAL NO. 9228 OF 2019
CIVIL APPEAL NO. 9500 OF 2019
CIVIL APPEAL NO. 64 OF 2020

O R D E R

The National Green Tribunal in an interim order inter alia states that prosecution should be initiated and compensation proceedings for damaging the environment should also take place. Admittedly, none of these persons have been heard by the NGT. On this ground alone, we set aside the order and remand the matter to the NGT to dispose of the matter as soon as possible preferably within four weeks from today. It will be open to all the parties to argue all points before the NGT.

The civil appeals stand disposed of.

.., J. [ROHINTON FALI NARIMAN] .., J. Signature Not Verified [NAVIN SINHA] Digitally signed by Nidhi Ahuja Date: 2020.11.04 15:00:24 IST Reason:

.., J. [KRISHNA MURARI] New Delhi;

November 02, 2020.

ITEM NO.2 Court 3 (Video Conferencing) SECTION XVII S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No. 6368/2019 M/S SHREE GANESH STONE CRUSHER & ORS. Appellant(s) VERSUS THE STATE OF HARYANA & ORS. Respondent(s) (With IA No.118337/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.118333/2019-EX-PARTE STAY and IA No.118330/2019- PERMISSION TO FILE APPEALMM AND I.A.NO. 155078 OF 2019 APPLICATION FOR VACATING STAY) WITH C.A. No. 7315/2019 (XVII) (With IA No.135870/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.135869/2019-STAY APPLICATION and IA No.135868/2019-PERMISSION TO FILE APPEAL) C.A. No. 7614/2019 (XVII) (With IA No.141240/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.141237/2019-EX-PARTE STAY and IA

No.141236/2019- PERMISSION TO FILE APPEAL) C.A. No. 7316/2019 (XVII) (With IA No.137722/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.137720/2019-EX-PARTE STAY and IA No.137723/2019- EXEMPTION FROM FILING O.T. and IA No.137714/2019-PERMISSION TO FILE APPEAL) C.A. No. 9228/2019 (XVII) (With IA No.178462/2019-CONDONATION OF DELAY IN FILING and IA No.178466/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.178463/2019-EX-PARTE STAY and IA No.178465/2019- PERMISSION TO FILE PETITION (SLP/TP/WP/..)) C.A. No. 9500/2019 (XVII) (With IA No.185141/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.185142/2019-EX-PARTE STAY and IA No.185138/2019- PERMISSION TO FILE APPEAL and IA No.185139/2019-CONDONATION OF DELAY IN FILING APPEAL) C.A. No. 64/2020 (XVII) (With IA No.192340/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.192338/2019-EX-PARTE STAY and IA No.192337/2019- PERMISSION TO FILE APPEAL and IA No.192336/2019-CONDONATION OF DELAY IN FILING APPEAL) Date : 02-11-2020 These appeals were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN HON'BLE MR. JUSTICE NAVIN SINHA HON'BLE MR. JUSTICE KRISHNA MURARI For parties Mr. Tarun Gupta, AOR Mr. Sandeep Narain, Adv. Mr. H.N. Vashisht, Adv. M/s. S. Narain & Co., AOR Mr. Dhruv Mehta, Sr. Adv. Mr. Rajesh Kumar-I, AOR Mr. Anant Gautam, Adv. Mr. Nipun Sharma, Adv.

Mr. Satyendra Kumar, AOR Mr. Nidhesh Gupta, Sr. Adv. Ms. Pallavi Singh, Adv. Mr. Madhav Gupta, Adv. Mr. G. Balaji, AOR Mr. Devender Saini, Addl.A.G. Mr. Vishwa Pal Singh, AOR Mr. Anil Grover, Sr. Adv. Addl.A.G. Ms. Noopur Singhal, Adv. Mr. Rahul Khurana, Adv. Mr. Satish Kumar, Adv. Mr. Sanjay Kumar Visen, AOR Mr. Vikramjit Banerjee, ASG. Mr. Rajesh K. Singh, Adv. Ms. Suhasini Sen, Adv.

Mr. Arvind Kumar Sharma, AOR Mr. Prashant Bhushan, AOR UPON hearing the counsel the Court made the following O R D E R The civil appeals stand disposed of in terms of the signed order.

Pending applications stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER

(Signed order is placed on the file.)

2-Judge Bench
2019
Feb. 18

(2019) 19 Supreme Court Cases 479

(BEFORE ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.)

TAMIL NADU POLLUTION CONTROL BOARD .. Appellant;

Versus

STERLITE INDUSTRIES (INDIA) LIMITED AND OTHERS .. Respondents.

Civil Appeals Nos. 4763-64 of 2013† with Nos. 8773-74 and 9542-43 of 2013, 5782 of 2014, 23 of 2019‡, 1552-54 of 2019 and 1582 of 2019, decided on February 18, 2019

A. **Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Original orders of TNPCB made under S. 27 of the Water Act and S. 21 of the Air Act — Appeal against, before NGT — Non-exhaustion of remedy of first appeal before appellate authority under S. 28 of Water Act or under S. 31 of the Air Act — Appeal before NGT, on facts, held, not maintainable — Since no decision has been made by appellate authority under the Water Act or Air Act, any direct appeal to NGT against the original order of TNPCB is not maintainable — Thus NGT's order in said appeal is without statutory powers and therefore, without jurisdiction — An appeal is a creation of statute and an Appellate Tribunal has to act strictly within domain prescribed by statute — Leapfrog appeals to the NGT not prescribed by statute would necessarily be without jurisdiction**

— Orders of NGT set aside on ground of maintainability — Relief — Parties relegated to position that the six orders impugned before NGT are alive and operative — Respondents given liberty to file writ petition before High Court against said six orders — As respondent's plant had been shut down since 9-4-2018 and was involved in import/export of important product, respondents given liberty to approach High Court for expeditious disposal of their writ petition (Para 46)

— Water (Prevention and Control of Pollution) Act, 1974 — Ss. 27, 28 and 33-B — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 21, 31 and 31-B — National Green Tribunal Act, 2010, Ss. 16(a) and (f) (Paras 22 to 33 and 46)

B. **Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Original composite orders of TNPCB under S. 33-A of the Water Act and S. 31-A of the Air Act — Appeal against, before NGT — Directions under Water Act appealable to NGT but not those under Air Act — Composite appeal to NGT, held, not maintainable — Not possible to split aforesaid orders and say that so far as they affect water pollution, they**

† Arising from the Judgment and Order in *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886 (National Green Tribunal, Principal Bench at New Delhi, Appeal No. 57 of 2013, dt. 31-5-2013); *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68 (National Green Tribunal, Appeal No. 57 of 2013, dt. 8-8-2013)

‡ Arising from the Judgment and Order in *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239 (National Green Tribunal, Appeal No. 87 of 2018, dt. 15-12-2018)

27

are appealable and not appealable so far as they relate to air pollution — Plea based on S. 14 of the NGT Act not tenable as S. 14 only refers to original jurisdiction of NGT and not appellate jurisdiction

— Water (Prevention and Control of Pollution) Act, 1974 — Ss. 33-B and 33-A — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 31-B and 31-A — National Green Tribunal Act, 2010, Ss. 16(c) and 14 (Paras 36 and 46)

C. **Environment Law — National Green Tribunal — Appellate jurisdiction — Scope of — Order of State Government under S. 18 of the Water Act, not appealable to NGT either under Water Act or under NGT Act, held, cannot be judicially reviewed by NGT — NGT has no general powers of judicial review as those vested in High Court under Art. 226 of the Constitution — NGT is not a tribunal set up either under Art. 323-A or Art. 323-B of the Constitution**

— An appeal being a creature of statute, an order passed under S. 18 of the Water Act is either appealable or not — If it is not, general argument as to NGT being an expert body set up to deal with environmental matters can be of no help — Argument that order under S. 18 of the Water Act can be traced to S. 29 of the Water Act, not tenable — S. 18 of the Water Act order does not purport to be an order which either affirms or sets aside any order made under Ss. 25, 26 or 27 of the Water Act — Order under S. 18 of the Water Act is, thus, not a quasi-judicial order and cannot be traced to revisional powers under S. 29 of the Water Act — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 18, 29 and 25 to 27 — Courts, Tribunals and Judiciary — Courts, Tribunals and Special Courts — Tribunals — Jurisdiction and powers of a tribunal — Strictly circumscribed by statute creating the tribunal — Constitution of India, Arts. 323-A and 323-B and Art. 226 (Paras 40 to 46)

The respondent industry allegedly violated provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) as well as the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) for which the local residents complained of several health problems. Though the Tamil Nadu Pollution Control Board (TNPCB) had initially granted permission to commence production, the respondent industry allegedly did not comply with the conditions imposed. The TNPCB therefore, directed the closure of respondent industry and refused to renew the consent for its operation. During pendency of appeal before the appellate authority against the orders of the TNPCB, the Tribunal took up the matter and finally disposed them of by its orders. The appeal before the appellate authority became infructuous. The main issue in present case is as to maintainability of the orders passed by the National Green Tribunal [NGT] dated 31-5-2013, 8-8-2013 and 15-12-2018.

Disposing of the appeals, the Supreme Court

Held :

(I) ***Re: Order dated 9-4-2018***

The Order dated 9-4-2018 is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21

of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33-B(*a*) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(*a*) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31-B of the Air Act and Section 16(*f*) of the NGT Act. (Para 22)

An appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeals Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22-6-2018 before the NGT inter alia against the order of refusal of consent to operate dated 9-4-2018. The respondents submitted that the appeals could not be heard since the State Government had passed an order dated 28-5-2018 directing the TNPCB to close down the plant permanently. What is missed by the respondents is the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10-7-2018. The said appeals on 10-7-2018 were further adjourned, and it is only on 18-12-2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15-12-2018 in which it had set aside the order dated 9-4-2018. (Para 23)

An appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33-B(*a*) of the Water Act read with Section 16(*a*) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31-B of the Air Act read with Section 16(*f*) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33-B of the Water Act, read with Section 31-B of the Air Act, read with Sections 16(*a*) and (*f*) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 9-4-2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction. (Para 32)

Manohar Lal v. *Ugrasen*, (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524; *Kundur Rudrappa* v. *Mysore Revenue Appellate Tribunal*, (1975) 2 SCC 411; *Cellular Operators Assn. of India* v. *Union of India*, (2003) 3 SCC 186; *B. Himmatlal Agrawal* v. *Competition Commission of India*, (2018) 17 SCC 421; *Raja Soap Factory* v. *S.P. Shantharaj*, (1965) 2 SCR 800 : AIR 1965 SC 1449; *Northern Plastics Ltd.* v. *Hindustan Photo Films Mfg. Co. Ltd.*, (1997) 4 SCC 452; *Arcot Textile Mills Ltd.* v. *Regl. Provident Fund Commr.*, (2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358, *relied on*

29

Kundur Rudrappa v. *Mysore Revenue Appellate Tribunal*, 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281; *Cellular Operators Assn. of India* v. *Union of India*, 2002 SCC OnLine TDSAT 9, *held, reversed*

Ganga Bai v. *Vijay Kumar*, (1974) 2 SCC 393; *Gujarat Agro Industries Co. Ltd.* v. *Municipal Corpn. of the City of Ahmedabad*, (1999) 4 SCC 468 : 1994 SCC (L&S) 993; *State of Haryana* v. *Maruti Udyog Ltd.*, (2000) 7 SCC 348; *Super Cassettes Industries Ltd.* v. *State of U.P.*, (2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280; *Raj Kumar Shivhare* v. *Directorate of Enforcement*, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712; *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744; *Edukanti Kistamma* v. *S. Venkatareddy*, (2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244, *cited*

In the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. No such provisions, as are contained in the UK Acts, being present in any of the Acts of present case, such leapfrog appeals to the NGT would necessarily be without jurisdiction. (Paras 33 to 35)

S. Franses Ltd. v. *Cavendish Hotel (London) Ltd.*, (2018) 3 WLR 1952 : 2018 UKSC 62, *referred to*

(II) *Re: Orders passed under Section 33-A of the Water Act and Section 31-A of the Air Act*

It is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(*c*) of the Water Act read with Section 16(*c*) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. The argument that these orders being substantially relatable to the Water Act is not tenable. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject-matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. In the present case, all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and

30

are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. It is argued, with particular reference to the Explanation to Section 31-A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. (Para 36)

Garikapati Veeraya v. *N. Subbiah Choudhry*, 1957 SCR 488 : AIR 1957 SC 540, *relied on*

Kanhiya Lal Omar v. *R.K. Trivedi*, (1985) 4 SCC 628; *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27; *Galada Power & Telecommunication Ltd.* v. *United India Insurance Co. Ltd.*, (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765; *Allokam Peddabbayya* v. *Allahabad Bank*, (2017) 8 SCC 272 : (2017) 4 SCC (Civ) 62, *distinguished*

Paritosh Bhupeshkumar Sheth v. *Maharashtra State Board of Secondary and Higher Secondary Education*, 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587, *held, reversed*

P. Ramanatha Aiyar's Law Lexicon and *Black's Law Dictionary*, *referred to*

(III) *Re: Order passed under Section 18 of the Water Act*

So far as the order dated 28-5-2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, it was argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that this argument is correct, such order can only be set aside in a suit by a civil court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being non est. It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead. Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. It was then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected. (Para 40)

Smith v. *East Elloe Rural District Council*, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL); *State of Punjab* v. *Gurdev Singh*, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082; *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443;

Pune Municipal Corpn. v. *State of Maharashtra*, (2007) 5 SCC 211; *Krishnadevi Malchand Kamathia* v. *Bombay Environmental Action Group*, (2011) 3 SCC 363; *Port of Kandla* v. *Hargovind Jasraj*, (2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1, *relied on*

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. Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985. (Para 41)

L. Chandra Kumar v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *distinguished*

Union of India v. *Madras Bar Assn.*, (2010) 11 SCC 1; *State of Gujarat* v. *Gujarat Revenue Tribunal Bar Assn.*, (2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56, *cited*

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. There is a distinction between a superior court of record and courts of limited jurisdiction. The State Government's 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. The NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India. (Para 43)

BSNL v. *TRAI*, (2014) 3 SCC 222, *followed*

Powers, Privileges and Immunities of State Legislatures, In re, (1965) 1 SCR 413 : AIR 1965 SC 745, *relied on*

Wilfred J. v. *Ministry of Environment & Forests'*, 2014 SCC OnLine NGT 6860, *partly overruled*

Halsbury's Laws of England, Vol. 9, p. 349, *referred to*

If as submitted, the order submitted by the State Government is a direction to the TNPCB and not to the respondent, there would have been no necessity to file an appeal before the NGT against such order. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before the Court. An appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help. (Para 44)

32

Equally, so far as the order dated 8-8-2013 is concerned, the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. The NGT is only conferred with appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction. (Para 45)

In conclusion, the court is cognizant of the fact that the respondent's plant has been shut down since 9-4-2018. Since the impugned judgments of the NGT is set aside on the ground of maintainability, the order dated 22-1-2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15-12-2018, and the order dated 29-3-2013, dealt with by the final judgment dated 8-8-2013, are alive and operative. Thus, it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 9-4-2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to 9-4-2018 order of the TNPCB. The appeals are disposed of accordingly. (Para 46)

Sterlite Industries (India) Ltd. v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886; *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68; *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239, *reversed*

National Trust for Clean Environment v. *Union of India*, 2010 SCC OnLine Mad 6495; *Vedanta Ltd.* v. *Inspector General of Police*, 2018 SCC OnLine Mad 10223; *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3334; *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1238; *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3335; *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3337, *referred to*

SS-D/62520/S

Advocates who appeared in this case :

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34

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44. 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL), *Smith* v. *East Elloe Rural District Council* 519*b*

The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— The present appeals arise out of orders that have been passed by the National Green Tribunal ["NGT"] dated 31-5-2013[1], 8-8-2013[2] and 15-12-2018[3]. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

2. The respondent, Sterlite Industries (India) Ltd./Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 1-8-1994, the respondent received a No-Objection Certificate ["NOC"] from the Tamil Nadu Pollution Control Board ["TNPCB"] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change ["MoEF"] followed on 16-1-1995. On 17-5-1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 ["the Air Act"] and the Water (Prevention and Control of Pollution) Act, 1974 ["the Water Act"] on 22-5-1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14-10-1996 by the TNPCB. Production commenced on 1-1-1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petitions Nos. 15501-503 of 1996, 5769 of 1997 and 16961 of 1998. On 20-5-1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid

1 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886
2 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68
3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239

35

and hydrofluorosilicic acid. On 21-9-2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19-4-2005, the TNPCB issued consent to operate, subject to fulfilment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28-9-2010[4], allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23-3-2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea, etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24-3-2013 and directed closure of the unit under Section 31-A of the Air Act on 29-3-2013. This order was stayed by the NGT on 31-5-2013[1], allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeals Nos. 4763-64 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 8-8-2013[2], the NGT set aside the TNPCB order dated 29-3-2013, against which, Civil Appeals Nos. 8773-74 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act/the National Green Tribunal Act, 2010 ["the NGT Act"]. This ground of maintainability was decided against the appellants by the impugned order dated 8-8-2013[2].

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13-4-2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14-3-2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 6-9-2017, an inspection report by the TNPCB was made, and an order passed on 7-9-2017, granting renewal of consent to operate only till 31-3-2018 subject to various conditions. Meanwhile, a protest had been organised in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No. 7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This writ petition was disposed of by an order dated 4-4-2018[5] with a direction to consider the respondent's application. On 9-4-2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down

4 *National Trust for Clean Environment* v. *Union of India*, 2010 SCC OnLine Mad 6495
1 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 1886
2 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68
5 *Vedanta Ltd.* v. *Inspector General of Police*, 2018 SCC OnLine Mad 10223

36

under the Air Act and the Water Act. On 12-4-2018, the respondent filed Appeals Nos. 36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 6-6-2018, the following order was passed:

> "*Applications Nos. 28 & 29 of 2018, Applications Nos. 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018*:
>
> Heard.
>
> In view of the government order passed by the Government of Tamil Nadu in GOMs No. 72, Environment & Forests (EC-3) Department dated: 28-5-2018, directing the Tamil Nadu Pollution Control Board to close the plant permanently, we feel it is not appropriate to hear the appeals and decide the issue at this juncture.
>
> Hence the appeals and applications are adjourned to 10-7-2018."

On 10-7-2018, the matter was further adjourned as follows:

> "*Applications Nos. 28 & 29 of 2018, Applications Nos. 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018*:
>
> In view of the remarks made in the adjudication proceedings on 6-6-2018 and as the position is same now, the appeals and applications are adjourned to 21-8-2018."

5. Finally, on 18-12-2018 i.e. three days after the impugned order was passed by the NGT on 15-12-2018[3], an order passed by the appellate authority was as follows:

> "*Applications Nos. 28, 29, 30 & 31 of 2018 and Appeals Nos. 36 & 37 of 2018*:
>
> Ms Janani, counsel for the appellant and Mr V. Vasanthakumar, counsel for the respondent Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.
>
> Counsel for the appellant seeks permission to withdraw the appeals. She has also filed a memo to that effect.
>
> In view of the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on 15-12-2018 in *Vedanta Ltd.* v. *State of T.N.*[3] setting aside the impugned order dated 9-4-2018 which is subject-matter of these appeals pending before this appellate authority, the appeals have become infructuous and hence they are closed."

6. On 12-4-2018, an order was passed by the TNPCB under Section 33-A of the Water Act and Section 31-A of the Air Act directing that the respondent's unit shall not resume production without obtaining prior approval/ renewal or consent from the TNPCB. This was followed by two orders, both dated 23-5-2018, again issued under the same sections, this time to close down the respondent's unit and disconnect power supply to it. Finally, on 28-5-2018,

3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239

an order was issued by the Government of Tamil Nadu under Section 18(1)(*b*) of the Water Act stating:

> "It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s Vedanta Ltd., Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9-4-2018. Subsequently, on 23-5-2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24-5-2018.
>
> 2. Under Article 48-A of the Constitution,
>
> '**48-A.** ***Protection and improvement of environment and safeguarding of forests and wildlife.***—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.'
>
> 3. Under Section 18(1)(*b*) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently."

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

8. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18-6-2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 9-7-2018.

9. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17-8-2018[6], directed the NGT to render its final findings, both on maintainability as well as on merits. On 20-8-2018[7], the NGT constituted a Committee to go into the material produced by the parties to the civil appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board ["CPCB"] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10-9-2018[8], by stating: (*Vedanta Ltd. case*[8], SCC OnLine SC paras 1-2)

> "*1.* By our order dated 17-8-2018[6], we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

6 *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3334
7 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1238
8 *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3335

38

2. Since our order is not referred to in the order dated 20-8-2018[7] passed by the NGT, we need only to state that once the Committee's report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated 17-8-2018[6]."

A review petition that was filed against this order was dismissed[9].

10. The Committee constituted by the NGT then inspected the site on various dates in September/October 2018, and heard all parties concerned as well as interveners. It then came out with a detailed Enquiry Report dated 20-11-2018, in which it concluded as follows:

"On the basis of the site visit, public hearing and after hearing the appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the interveners and, upon consideration of the issues raised, the Committee is of the opinion:

1. The impugned orders cannot be sustained as it is against the principles of natural justice. No notice or opportunity of hearing was given to the appellant.

2. The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.

3. Other issues raised also do not justify the closure of the factory even if the appellant was found to be violating the conditions/norms/directions.

4. In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the Committee is of the opinion that the following directions may be issued:

(*a*) As per Condition 44 of the Consent Order dated 19-4-2005, the appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCB.

(*b*) The sampling of the above should be taken in the presence of an official from TNPCB.

(*c*) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCB comprising a representative of the District Collector, an official of TNPCB, NGOs and academicians as per Condition 43 of Consent Order dated 19-4-2005.

(*d*) Both the reports should be sent by TNPCB to CPCB for analysis. Recommendations made by CPCB should be followed.

7 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1238
6 *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3334
9 *State of T.N.* v. *Vedanta Ltd.*, 2018 SCC OnLine SC 3337

39

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

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

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

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

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

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

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

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

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

40

(*n*) Direction (*iii*) on "Source Apportionment Study" and Direction (*ix*) on "conducting a study on health hazards" passed by the NGT in its judgment dated 8-8-2013 in *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*[2] should be carried out by the Tamil Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.

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

(*p*) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organisation approved by the TNPCB as per Condition 15 of the Consent Order dated 19-4-2005.

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

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

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

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

(*u*) The transportation of copper ore concentrate from the port to the factory premises should be done in a closed conveyance or through a pipe conveyor system.

(*v*) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of ambient air quality/stack emissions/fugitive emissions/ground water quality/surface water quality/soil quality/slag analysis through third party and report shall be furnished to the regulatory agencies concerned.

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

2 2013 SCC OnLine NGT 68

41

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

(*y*) CPCB recommendations as contained in the order of NGT, dated 20-8-2018[7] to be complied with."

Both the respondent as well as the appellants made their detailed comments on the Committee's report. The NGT then heard final arguments and dictated the impugned order on 15-12-2018[3], in which it substantially accepted the Committee's recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15-12-2018[3] is without jurisdiction.

11. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22-1-2019, by which the respondent's application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

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

13. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, the Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 9-4-2018 was concerned, an appeal was pending before the appellate authority, as a result of which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12-4-2018, 23-5-2018 and 28-5-2018, made under Section 33-A of the Water Act and Section 31-A of the Air Act, were composite orders issued. As orders under Section 31-A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28-5-2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a civil court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some

7 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1238
3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239

42

of our judgments as well as statutes and judgments of the English courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme of the Water Act, the Air Act, and the NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticise the order passed by the NGT dated 8-8-2013[2] on maintainability. According to him, no doctrine of necessity could be imported if an Appellate Tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second Appellate Tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

14. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 9-4-2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33-A and 31-A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33-A of the Water Act, and even if there is no appeal provided under Section 31-A of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31-A of the Air Act is undoubtedly equivalent to an order made under Section 31 of the Air Act, and therefore, would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as

2 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68

the attack made upon the order dated 28-5-2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is non est and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in *L. Chandra Kumar* v. *Union of India*[10] ["*L. Chandra Kumar*"], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed under Section 18 of the Water Act.

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

16. The relevant sections of the Water Act are as follows:

> "**18.** ***Powers to give directions.***—(1) In the performance of its functions under this Act—
>
> (*a*) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and
>
> (*b*) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:
>
> Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.
>
> * * *
>
> **25.** ***Restrictions on new outlets and new discharges.***—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

10 (1997) 3 SCC 261 : 1997 SCC (L&S) 577

44

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

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

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

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

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

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

(4) The State Board may—

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

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

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

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

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

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

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

45

discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

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

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

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

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

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

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

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

as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

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

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

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

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

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

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

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

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

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

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

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

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

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

47

or propriety of any such order and may pass such order in relation thereto as it may think fit:

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

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

* * *

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

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

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

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

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

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

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

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

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

17. The relevant sections of the Air Act are as follows:

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

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

48

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49

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

Provided further that—

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

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

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

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

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

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

* * *

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

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

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

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

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

31-A. ***Power to give directions.***—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue

50

any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

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

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

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

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

18. The relevant sections of the NGT Act are as follows:

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

* * *

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

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

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

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

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

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

* * *

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:

61

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

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

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

(*b*) for restitution of property damaged;

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

as the Tribunal may think fit.

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

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

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

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

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

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

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

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

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

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

52

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

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

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

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

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

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

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

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

* * *

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

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

53

* * *

33. ***Act to have overriding effect.***—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

19. It is important now to advert to both the orders dated 8-8-2013[2] and 15-12-2018[3], insofar as they deal with the maintainability of the appeals before them.

20. By the judgment of the NGT dated 8-8-2013[2], the NGT disposed of the plea on maintainability as follows: [*Sterlite Industries (India) Ltd. case*[2], SCC OnLine NGT paras 62-64]

"*62.* Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant Company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant Company, particularly keeping in view the emergent situation created by issuance of the order dated 29-3-2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant Company had been directed to be shut down and the appellant Company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine of necessity, the appellant Company has also placed its reliance on Section 31-B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31-B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31-B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant Company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal* v. *Ugrasen*[11] where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct

2 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68
3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239
11 (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524

54

the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in *Manohar Lal*[11].

63. We are unable to contribute ourselves to the contention raised that a direction passed under Section 31-A of the Air Act is not covered under the expression "order" used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. "Direction" itself means an order; an instruction how to proceed, like the Judge's direction to the jury, while "order" is defined as a command, direction or instruction. This is how *Black's Law Dictionary*, 9th Edn., refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.

64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three-member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short "the NGT Act") even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

21. Insofar as the judgment dated 15-12-2018[3] is concerned, the NGT, on maintainability, held as follows: (*Vedanta Ltd. case*[3], SCC OnLine NGT paras 44-46 & 48-49)

"*44*. It is undisputed that this Tribunal is an appellate authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12-4-2018, 23-5-2018 and 28-5-2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the appellate authority by this Tribunal. As already noted, the appellate authority has declined to proceed with the matter. The grounds in the impugned orders dated 9-4-2018, 12-4-2018, 23-5-2018 and 28-5-2018 are

11 *Manohar Lal* v. *Ugrasen*, (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524
3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239

55

identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the appellate authority is also appealable before this Tribunal under Section 16(*f*) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

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

46. The judgments relied upon by the respondents are distinguishable. Unlike *Edukanti Kistamma* v. *S. Venkatareddy*[12], this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

* * *

48. The order of the Government of Tamil Nadu issued under Section 18(1)(*b*) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

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

(I) ***Re: Order dated 9-4-2018***

22. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33-B(*a*) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(*a*) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air

12 (2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244

Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31-B of the Air Act and Section 16(*f*) of the NGT Act.

23. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeals Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22-6-2018 before the NGT inter alia against the order of refusal of consent to operate dated 9-4-2018. Shri Sundaram, however, argued before us that the order dated 6-6-2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28-5-2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the appeals could not be decided *at this juncture* and were hence adjourned to 10-7-2018. The said appeals on 10-7-2018 were further adjourned, and it is only on 18-12-2018 that they were finally withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15-12-2018[3] in which it had set aside the order dated 9-4-2018.

24. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 9-4-2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negatived as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 9-4-2018.

25. At this point, it is important to advert to a few judgments of this Court. In *Kundur Rudrappa* v. *Mysore Revenue Appellate Tribunal*[13], this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated: (SCC pp. 413-14, paras 4-5)

> "*4*. The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(*a*) which is material for the purpose of this appeal:
>
> '**64.** ***Appeals***.—(1) Any person—

3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239
13 (1975) 2 SCC 411

57

(*a*) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

* * *

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.'

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. Appeal is a creature of the statute. There is no dispute that Section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. *There is no appeal provided for under Section 64 against an order issuing a permit in pursuance of the order granting the permit.* Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under Section 64 of the Act and both the Tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing[14] the writ application of the appellant which ought to have been allowed." (emphasis supplied)

26. Similarly, in a concurring judgment of Sinha, J., in *Cellular Operators Assn. of India* v. *Union of India*[15], the learned Judge observed: (SCC p. 211, para 27)

"27. TDSAT was required to exercise its jurisdiction[16] in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under sub-section (1) thereof. *The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is,*

14 *Kundur Rudrappa* v. *Mysore Revenue Appellate Tribunal*, 1973 SCC OnLine Kar 47 : ILR 1973 Mys 281

15 (2003) 3 SCC 186

16 *Cellular Operators Assn. of India* v. *Union of India*, 2002 SCC OnLine TDSAT 9

58

therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law." (emphasis supplied)

27. In *B. Himmatlal Agrawal* v. *Competition Commission of India*[17], this Court, while dealing with Section 53-B of the Competition Act, 2002 held: (SCC p. 424, para 10)

"*10.* The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Sub-section (3) of Section 53-B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. *The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision.* This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself." (emphasis supplied)

28. In *Raja Soap Factory* v. *S.P. Shantharaj*[18], the plaintiffs instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held: (SCR p. 802 : AIR p. 1450, paras 5-6)

17 (2018) 17 SCC 421
18 (1965) 2 SCR 800 : AIR 1965 SC 1449

59

"*5*. The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction; it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of Trade and Merchandise Marks Act 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute or under its constitution with that jurisdiction was incompetent to entertain a passing off action.

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

29. In *Northern Plastics Ltd.* v. *Hindustan Photo Films Mfg. Co. Ltd.*[19], Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held: (SCC pp. 464-65 & 468, paras 10 & 12)

"*10*. ... The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. ... So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection. ...

* * *

12. ... But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication

19 (1997) 4 SCC 452

60

order of the Collector of Customs by way of appeals or revisions as per the aforesaid relevant statutory provisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT under Section 129-A(1) was clearly incompetent. It may be added that the Union of India could have used the mode set out in Section 129-D, but it did not do so."

30. In *Manohar Lal* v. *Ugrasen*[11], one of the questions involved, under sub-para 2(*a*) of the judgment, was as follows: (SCC p. 562, para 2)

"2. In these appeals, three substantial questions of law for consideration of this Court are involved. They are, namely:

(*a*) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?"

After reviewing a number of cases, this Court then concluded: (*Manohar Lal case*[11], SCC p. 567, para 23)

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

31. In *Arcot Textile Mills Ltd.* v. *Regl. Provident Fund Commr.*[20], appeals lay to the Tribunal constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, under Section 7-I of the Act. Whereas appeals lay against orders passed under Section 7-A of the Act, which provided for determination of monies due from employers, no appeal lay against orders made under Section 7-Q of the said Act, which spoke of interest payable by the employer. This Court held: (SCC p. 10, para 20)

"*20*. On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be

11 (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524
20 (2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358

61

construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai* v. *Vijay Kumar*[21], *Gujarat Agro Industries Co. Ltd.* v. *Municipal Corpn. of the City of Ahmedabad*[22], *State of Haryana* v. *Maruti Udyog Ltd.*[23], *Super Cassettes Industries Ltd.* v. *State of U.P.*[24], *Raj Kumar Shivhare* v. *Directorate of Enforcement*[25], *Competition Commission of India* v. *SAIL*[26].)"

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

32. From the above authorities, it is clear that an appeal is a creature of statute and an Appellate Tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33-B(*a*) of the Water Act read with Section 16(*a*) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31-B of the Air Act read with Section 16(*f*) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33-B of the Water Act, read with Section 31-B of the Air Act, read with Sections 16(*a*) and (*f*) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 9-4-2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

21 (1974) 2 SCC 393
22 (1999) 4 SCC 468 : 1994 SCC (L&S) 993
23 (2000) 7 SCC 348
24 (2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280
25 (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712
26 (2010) 10 SCC 744

62

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

> "**12.** ***Grant of certificate by trial Judge.***—(1) Where on the application of any of the parties to any proceedings to which this section applies the Judge is satisfied—
>
> (*a*) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in sub-section (3-A) ("the alternative conditions") are satisfied in relation to those proceedings, and
>
> (*b*) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...
>
> (*c*) * * *
>
> the Judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.
>
> (2) This section applies to any civil proceedings in the High Court which are either—
>
> (*a*) proceedings before a Single Judge of the High Court (including a person acting as such a Judge under Section 3 of the Judicature Act, 1925), or
>
> (*b*) * * *
>
> (*c*) proceedings before a Divisional Court.
>
> (3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the Judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—
>
> (*a*) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the Judge in the proceedings, or
>
> (*b*) is one in respect of which the Judge is bound by a decision of the court of appeal or of the Supreme Court in previous proceedings, and was fully considered in the judgments given by the court of appeal or the Supreme Court (as the case may be) in those previous proceedings."

34. To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the UK are referred to as "leapfrog appeals" [see *S. Franses Ltd.* v. *Cavendish Hotel (London) Ltd.*[27], para 7].

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

27 (2018) 3 WLR 1952 : 2018 UKSC 62

(II) ***Re: Orders passed under Section 33-A of the Water Act and Section 31-A of the Air Act***

36. We have referred to the orders dated 12-4-2018, 23-5-2018, and 28-5-2018 passed by the TNPCB under Sections 33-A and 31-A of the Water Act and the Air Act respectively. At this juncture, it is important to state that Section 33-B of the Water Act and Section 31-B of the Air Act were both enacted on 18-10-2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33-B(*c*) of the Water Act read with Section 16(*c*) of the NGT Act make it clear that directions issued under Section 33-A of the Water Act are appealable to the NGT, directions issued under Section 31-A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31-A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made *both* under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject-matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31-A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" under Section 31-A of the Air Act is nothing but an "order", and would, therefore, be appealable as such under Section 31-B of the Air Act read with Section 16(*f*) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31-A in Section 31-B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31-A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, inter alia, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to

64

the Explanation to Section 31-A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33-A of the Water Act contains an identical explanation to that contained in Section 31-A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to *P. Ramanatha Aiyar's Law Lexicon* and *Black's Law Dictionary*, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited *Kanhiya Lal Omar* v. *R.K. Trivedi*[28], and relied upon para 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a "direction" may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

37. Shri Sundaram then cited *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupeshkumar Sheth*[29]. In this judgment, the High Court had struck down[30] Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no re-evaluation of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time-consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see para 27]. It is in this context that this Court held: (SCC p. 57, para 29)

> "*29.* ... It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice."

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

38. Shri Sundaram then relied upon this Court's judgments in *Galada Power & Telecommunication Ltd.* v. *United India Insurance Co. Ltd.*[31] and

28 (1985) 4 SCC 628
29 (1984) 4 SCC 27
30 *Paritosh Bhupeshkumar Sheth* v. *Maharashtra State Board of Secondary and Higher Secondary Education*, 1980 SCC OnLine Bom 148 : 1981 Mah LJ 587
31 (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765

Allokam Peddabbayya v. *Allahabad Bank*[32] for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

39. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In *Garikapati Veeraya* v. *N. Subbiah Choudhry*[33], this Court held: (SCR pp. 514-15 : AIR p. 553, para 23)

> "*23*. From the decisions cited above, the following principles clearly emerge:
>
> (*i*) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
>
> (*ii*) The right of appeal is not a mere matter of procedure but is a substantive right.
>
> (*iii*) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
>
> (*iv*) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
>
> (*v*) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

This argument must, therefore, be rejected.

(III) *Re: Order passed under Section 18 of the Water Act*

40. So far as the order dated 28-5-2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to

32 (2017) 8 SCC 272 : (2017) 4 SCC (Civ) 62
33 1957 SCR 488 : AIR 1957 SC 540

the sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a civil court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being non est. It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead, as has been held in *Smith* v. *East Elloe Rural District Council*[34], All ER p. 871, which has been followed by this Court in *State of Punjab* v. *Gurdev Singh*[35], SCC p. 6; *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.*[36], SCC p. 455; *Pune Municipal Corpn.* v. *State of Maharashtra*[37], SCC p. 225; *Krishnadevi Malchand Kamathia* v. *Bombay Environmental Action Group*[38], SCC p. 369 and *Port of Kandla* v. *Hargovind Jasraj*[39], SCC p. 193. Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected.

41. Shri Sundaram then argued that this Court in *L. Chandra Kumar*[10] made it clear that tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such tribunals are themselves set up. For this, he relied strongly upon paras 90 and 93 of the judgment in *L. Chandra Kumar*[10]. It is important to notice that *L. Chandra Kumar*[10] pertained to a tribunal that was set up under Article 323-A of the Constitution of India. Under Article 323-A(2)(*d*), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323-A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

34 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL)
35 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082
36 (1997) 3 SCC 443
37 (2007) 5 SCC 211
38 (2011) 3 SCC 363
39 (2013) 3 SCC 182 : (2013) 2 SCC (Civ) 1
10 *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

67

"**14.** ***Jurisdiction, powers and authority of the Central Administrative Tribunal.***—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

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

(*b*) all service matters concerning—

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

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

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

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

(*c*) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (*ii*) or sub-clause (*iii*) of clause (*b*), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

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

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

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

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other

68

authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

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

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

* * *

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

(*a*) the Supreme Court; or

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

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

Article 323-B of the Constitution of India also provides for tribunals for certain other matters which are specified by clause (2) thereof. 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. Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

42. It is in the context of Article 323-A and the Administrative Tribunals Act, 1985 that this Court in *L. Chandra Kumar*[10] has observed in para 93 as follows: (SCC pp. 308-09)

"*93.* Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes

10 *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

69

for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

43. In *BSNL* v. *TRAI*[40] ["*BSNL*"], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in *L. Chandra Kumar*[10], this Court held: (*BSNL case*[40], SCC pp. 293, 297 & 303-04, paras 108, 114 & 123-24)

"*108.* Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word "orders", sub-sections (3) and (4) thereof used the word "decision". In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(*a*). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(*b*) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (*b*) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as

40 (2014) 3 SCC 222
10 *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

70

considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(*b*).

* * *

114. ... From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word "directions" used in Section 29 of the TRAI Act was interpreted to include orders and regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words "direction", "decision" or "order" used in Section 14(*b*) would include regulations framed under Section 36, which are in the nature of subordinate legislation.

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123. In *Union of India* v. *Madras Bar Assn.*[41] and *State of Gujarat* v. *Gujarat Revenue Tribunal Bar Assn.*[42], this Court applied the principles laid down in *L. Chandra Kumar case*[10] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

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

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re*[43], made in the following words: (SCR p. 499 : AIR p. 789, para 138)

41 (2010) 11 SCC 1
42 (2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56
10 *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577
43 (1965) 1 SCR 413 : AIR 1965 SC 745

> "*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[44]'. "

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*[40], 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*[45] 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.

44. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

44 *Halsbury's Laws of England*, Vol. 9, p. 349
40 *BSNL* v. *TRAI*, (2014) 3 SCC 222
45 2014 SCC OnLine NGT 6860

72

45. Equally, so far as the order dated 8-8-2013[2] is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us supra, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

46. In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 9-4-2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22-1-2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15-12-2018[3] and the order dated 29-3-2013, dealt with by the final judgment dated 8-8-2013[2], are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 9-4-2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to the 9-4-2018 order of the TNPCB. The appeals are disposed of accordingly.

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2 *Sterlite Industries (India) Ltd.* v. *T.N. Pollution Control Board*, 2013 SCC OnLine NGT 68
3 *Vedanta Ltd.* v. *State of T.N.*, 2018 SCC OnLine NGT 1239

73

2020 SCC OnLine SC 572

In the Supreme Court of India

(BEFORE R.F. NARIMAN, S. RAVINDRA BHAT AND V. RAMASUBRAMANIAN, JJ.)

Civil Appeal No. 6932 of 2015

Director General (Road Development) National Highways Authority of India ... Appellant(s);

Versus

Aam Aadmi Lokmanch and Others ... Respondents.

With

C.A. No. 5971 of 2019

C.A. No. 4379 of 2018

C.A. No. 2741 of 2020

(Arising out of Diary No. 19018 of 2018)

C.A. No. 6862 of 2018

C.A. No. 2742 of 2020

(Arising out of SLP (C) No. 28178 of 2018)

C.A. No. 11803 of 2018

C.A. No. 2743 of 2020

(Arising out of SLP (C) No. 1706 of 2019)

C.A. No. 2744 of 2020

(Arising out of Diary No. 1632 of 2019)

Civil Appeal No. 6932 of 2015, C.A. No. 5971 of 2019, C.A. No. 4379 of 2018, C.A. No. 2741 of 2020 (Arising out of Diary No. 19018 of 2018), C.A. No. 6862 of 2018, C.A. No. 2742 of 2020 (Arising out of SLP (C) No. 28178 of 2018), C.A. No. 11803 of 2018, C.A. No. 2743 of 2020 (Arising out of SLP (C) No. 1706 of 2019) and C.A. No. 2744 of 2020 (Arising out of Diary No. 1632 of 2019)

Decided on July 14, 2020

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.:— Leave granted in SLP (C) Nos. 28178/2018, 1706/2019, Diary No. 19018 of 2018 and 1632 of 2019. With consent of counsel for the parties, they were tagged with the companion civil appeals and heard finally.

2. On 06 June, 2013, when Ms. Vishakha Wadekar, was driving her car with her young daughter, Sanskruti Wadekar she had no inkling that danger lurked round the corner of the highway; over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the respondent in the appeal, the Aam Aadmi Lokmanch, hereafter "Lokmanch") are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negatived the challenge to those regulations in the writ petitions presented before it.

3. The facts in brief are that the National Highways Authority of India (hereafter "NHAI") had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd., a unit/undertaking of Reliance Infrastructure Ltd. (which is arrayed as the ninth respondent; PS Toll Road (Pvt.) Ltd. hereafter referred to as "the concessionaire") on 10.03.2010 for the maintenance and operation of the Pune-Satara section of National Highway No. 4, to an extent of 140 kms. The scope of the agreement included construction of the project (i.e. the highway stretch)

as well as its operation and maintenance for a period of 24 years. The agreement included stipulations mandating safety to the highway users (clause 18.1.1). The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways (clause 18.1.2), the expenditure for which was to be borne by the concessionaire (clause 18.1.3). An elaborate highway monitoring mechanism was also contemplated by the agreement (clause 19.1) through which by the seventh of each month, an independent engineer was to furnish a report after due inspection (of the operation and maintenance arrangements), containing defects or deficiencies (clauses 19.2). Additionally, the independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards (clause 19.3). Other stipulations included, *inter alia*, requirements that the concessionaire had to carry out remedial measures (Clause 19.4.1) within a period of 15 days after receipt of the report of the independent engineer. The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages in terms of Clause 17.8.[1] Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including "*unusual occurrences on the Project Highway*" such as death or injury to any person (clause 19.6), any obstruction, or "*flooding of Project Highway*".

4. In the meanwhile, the fifth respondent (who has filed CA 5971/2019 against the NGT's order, hereafter referred to as "Rathod") on 03.01.2011 applied to the Government of Maharashtra for a license to extract minor minerals. This license was sought in respect of land bearing survey number 112A to look more to an extent of 5 acres and 93 cents. The license was granted by the appropriate authority of the government. By clause 1 of the terms of this license, the period of the license was two months; clause 5 stated that for extraction and minor minerals digging, work could not exceed more than 20 feet down side of the land surface.

5. Apparently soon after the license was taken over, certain demands were made regarding construction of a connecting road to the village. The materials on record by way of letters written to the local panchayat are to the effect that as a result of construction of the highway and due to the passage of time the existing road had been washed away. Consequently, the 2 km stretch from the left side of the new tunnel going up to the village was virtually non-existent. The panchayat requested that the road should be strengthened and widened.

6. On 31.01.2011, the local authorities of the State government issued a show cause notice to Rathod alleging that debris were stored illegally on the site. It was alleged that this was contrary to Section 48 of the Maharashtra Land Revenue Code, 1966 (hereafter "land revenue code"). Again, on 16.06.2011, the local panchayat issued a notice (which is on the record) stating that as a result of mineral extraction, the natural flow of rainwater was being obstructed. The notice also added that two heavy machines in non-performing condition were lying idle on the land and two JCB machines were also stationed there. Rathore evidently received these notices; this is attested by his replies to the Tehsildar and other local authorities. After obtaining a report from the local officials, the Tehsildar, Bhor issued an order directing payment of Rs. 1,271,200 by Rathod for violation of the land revenue code on account of illegal extraction and use of minor minerals.

7. This activity of excavation and piling of debris, did not go unnoticed on the part of NHAI; it wrote to the Collector of Pune, pointing out that:

> "*...large scale and indiscriminate excavation in the upper side hills of New Katraj Tunnel at both ends is in progress. Due to this excavation, drainage system above and near tunnel has been affected. This may lead to seepage of water inside tunnel roof thereby collapse of walls and ceiling of tunnel resulting in collapse of tunnel and may lead to major mishap. The collapse in tunnel will block the entire traffic of NH4 from Mumbai/Pune to Bangalore and vice versa leading to chaotic situation.*"

8. The letter also mentioned specifically that Rathod had been notified; it sought action from the state government.

9. In the early hours of the morning of 6th June, 2013, due to the monsoon, there was

heavy rainfall at Mauje Shindewadi Tehsil, Bhor and the surrounding areas. Water flowing through the hills at Mauje Shindewadi entered the road near the octroi post of the Pune Municipal Corporation, at Mauje Shindewadi Tehsil Bhor, District Pune, on NH-4, with great force. This created an obstacle in the form of a large sheet of water. Under these conditions, when the Alto car driven by Vishakha Wadekar and her daughter Sanskruti, was obstructed, they alighted to wade across to safety; however, the water gushed with great intensity and swept them away, resulting in their death. The resulting magisterial inquiry under Section 176, Code of Criminal Procedure resulted in a report dated 04.10.2013. The Sub-Divisional Magistrate who inquired into the incident appointed an expert, whose report was considered; he also visited the site and held several hearings. During the hearings, pursuant to notices issued to various parties, the statements of Rathod, the local police authorities, eyewitnesses (Abhay Arvind Ranade, Vineet Vasant George and relatives of the deceased), the Project Director (General Manager) of NHAI, the team leader of the independent engineering firm associated with checking quality of maintenance of the highway, etc. were recorded.

10. Soon after the incident, the Lokmanch, through its president, filed an application under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by Rathod. Besides, general relief by way of directions to other respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

11. The material produced before the NGT by the State of Maharashtra in the form of an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred. According to the affidavit, there were 62 cases, and in many cases "hill-cutting" was resorted to by developers. The state had apparently imposed fines and penalties for these illegal activities.

12. The NGT, in its impugned order, commenting on the role of Rathod, held as follows, while justifying the imposition of liability upon that respondent:

> *"It appears from the record that land Survey No. 112, is owned by the Respondent Nos. 5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos. 5 and 6 made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials."*

13. Thereafter, the NGT based on its reasoning that the regulation of some activities, especially involving anything affecting hills has to be strictly regulated, directed as follows:

> *"12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:*
>
> *Hill - noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.*
>
> *The wordbook has given meaning of expression 'Hill' as follows:*
>
> *231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than 305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.*

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos. 5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHAI (Respondent No. 9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill top. However, a Notice dated 25th April, 2011, was issued to the Respondent No. 5 and copy of the same was marked to the Tehsildar, Bhor before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No. 9 (NHAI) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHAI to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHAI to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No. 9, appears to have kept silence for about two (2) years, inspite of knowledge that the work of hill cutting was going on. In our opinion, NHAI (Respondent No. 9) perhaps was likely to be impliedly benefited due to the illegal act of hill cutting due to availability of murum, stones and soil for the work for its project. The contractor of NHAI was, therefore, interested in keeping the fingers crossed.

15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5, 6 and with or due to act of omission of the Respondent No. 9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos. 5, 6 and 9 shall pay amount of Rs. 50 Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos. 5, 6 and 9 shall jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased Mrs. Vishakha Vadekar, and her daughter if identity of legal representatives is proved before the Collector. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal

representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos. 5, 6 and 9 shall also deposit amount of Rs. 10 Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos. 1, 2, 3, 4, 7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder."

14. Rathod, the NHAI and three other appellants (Patel India Pvt. Ltd., Fern Constructions (India) Ltd. and D.B. Realty Ltd.) have preferred appeals against the impugned order of the NGT; their grievance is from the general directions issued in the impugned order, implicating buildings near hills.

15. In the second set of matters, i.e. the appeals by special leave, the facts are that acting on the directions of the NGT, the State of Maharashtra invoked its powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

16. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. It was also observed that:

"In Regulation 2 we have the definitions and as far as Part II is concerned, that is general planning and building requirements. Regulation 11.1 says that no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, these stipulations are already in place. What the National Green Tribunal brought to the notice of the authorities is indiscriminable cutting of hills in the Katraj Ghat. This unauthorized construction by breaking of hills resulted in an accident. That is why the NGT directed that on hill tops and hill slopes and the portion at the foot of the hill and surrounding 100 feet, no construction activity should be permitted and no development permission be issued and such directions be issued to the Municipal Corporations and Municipal Councils. Bearing in mind that there are in place legal provisions restricting the development activity on hill top and hill slope zones, all that the NGT and this Government Resolution directs is that in cases where there has already been a permitted development activity within 100 feet of the hill, then, no permission for additional construction be granted nor any development be permitted by sanctioning additional Floor Space Index (FSI) or Transferable Development Rights (TDR). In the event in sanctioned development plans if area of the above nature is in buildable zone, then, for carrying out development in such zone and while granting individual development permissions, an area of 100 feet surrounding the hills should be demarcated as non-buildable. It can be used as open space, road etc. We are surprised

that an order and direction of the NGT traceable to and in accordance with the planning law it challenged before us. Further, the directions of the State Government, which are but reiteration of the existing regulations, are under challenge. The impugned Government Resolution is in consonance with the provisions of the MRTP Act and the constitutional mandate enshrined in Article 21 and 48 thereof.

24. We are not in agreement with Dr. Sathe, Mr. Godbole and Dr. Saraf that merely because such directions are issued in exercise of the powers conferred by sub-section (1) of section 154, the development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai is altered or modified. We are also not impressed by their argument that by such a Government Resolution, a modification is brought about in the Development Control Regulations and all this is without recourse to the specific powers conferred by the MRTP Act. In other words, these are bypassed and by a Government Resolution, the above stand amended. In that regard our attention has been invited to the provisions in the MRTP Act enabling modifications or changes in the Development Plan and the procedure prescribed in that behalf.

25. We do not see any modification to the plan being brought about by the subject Government Resolution. If at all, the directions therein complement the provisions of the Development Control Regulations for the cities of the Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. As it is, there was no permission to construct buildings other than a electric sub-stations, water works etc. on hill tops. As far as these slopes are concerned, by their very nature, a hill slides down and if the slope is steep, then, no construction activity can be carried out. There is no guarantee or assurance that any construction activity in such areas would be able to withstand a landslide or accidents, resulting from erosion of the hills on account of natural reasons. It is experienced that human intervention is necessarily not responsible for a landslide, mudslide etc. On account of natural causes and calamities, such events can occur. Apart from that, the occurrence increases because of human intervention including a construction activity carried out at the foot of the hill or on top thereof. It is also possible if the hill is cut from its sides indiscriminately. It is also possible if there is damage to a hill while extracting minor minerals. The hill then becomes uneven. Then, it is not possible to prevent any calamity. Hence, in order to take care of the natural calamities and which have occurred in various places in the State of Maharashtra recently and also on account of unrestricted and unregulated breaking and cutting of the hills resulting in accidents endangering human life and safety that these supplemental directions have been issued. If they are for efficient administration of the Act and if they subserve larger public interest, then no fault can be found with the Government Resolution. Each of the operative directions, namely, serial Nos. 1, 2 and 3 of this Government Resolution subserve this object and purpose. If the Government Resolution has been issued after the attention of the Government has been invited to an accident in Katraj Ghat occurring due to unauthorized and illegal cutting of hills, then, it is not as if the State Government has construed it as a command or a binding order and issued the subject Government Resolution. The attention of the State Government being invited to such illegal and unauthorized so also uncontrolled, unregulated and unrestricted hill-cutting, that in order to prevent the same, the Government stepped in. It took recourse to its power conferred by section 154 of the MRTP Act in order to prevent future occurrences of this nature. If accidents and calamities can be prevented by timely intervention of the State Government in this manner, then, we do not think that on the specious and unsubstantiated pleas of the petitioners, we should strike down the Government Resolution."

17. The NHAI in its appeal contends that the NGT fell into error in issuing sweeping directions against it without considering that was no evidence to establish that it was in any way responsible for the degradation of the environment, which led to the tragedy. It is urged by Senior Counsel Mr. P.S. Narasimha that the NGT's findings are contrary to established facts and have also resulted in grave miscarriage of justice. He highlighted that there was no material on record to establish that the NHAI was in any way culpable or had failed to perform a public duty or neglected to avert a foreseeable calamity. Elaborating on

this, it was urged that the illegal mining activity was not carried on within the right-of-way or the carriageway of the highway. What occurred was the result of an act of God, i.e. extremely heavy rains, which resulted in flooding on the highway caused entirely on account of the debris collected which acted to obstruct the smooth flow of water.

18. It was highlighted that in any case, the NHAI could not be held responsible or made liable for the occurrence which led to the tragedy. Mr. Narasimha also argued that the NGT did not return any finding that the construction of the highway was in any way contrary to environmental clearances or permissions secured by the NHAI. Therefore, the findings of the Tribunal in so far as they pertained to the neglect or alleged omission of the NHAI, were contrary to law. He urged that the findings were illogical and irrational, and deserve to be set aside.

19. The NHAI also highlights that it wrote letters to the local administration on 24.04.2011 and 15.07.2011, seeking its intervention on account of the illegal mining and activities and hill destruction, for which Rathod was responsible. However, the State government did not take any action. Likewise, Rathod did not take any remedial steps or cease the activity. The resultant tragedy entirely on account of the omissions of the state's authorities to take action and the neglect and culpable negligence on the part of Rathod, was the cause of the tragedy and the events which led to the loss of two lives. It was also emphasized that the direction to pay compensation was contrary to legal principles and undermined the law. It was argued that neither the NHAI nor its concessionaire had any control over the activities of the state, which granted the mining licences. Rathod, the licensee, had continued illegal mining in the vicinity causing the accumulation of debris. This in turn, resulted in the obstruction of a culvert which resulted in collection of a large volume of water. A huge sheet of water gushed out into the highway, sweeping away the car, tragically resulting in the death of two individuals. It was argued that in these circumstances, the NHAI could not be saddled with the responsibility of either paying damages to the dependents and legal representatives of the deceased nor could it be made liable to restore the environment through the payment of Rs. 50 lakhs or any part of it.

20. Rathod urges that the NGT's findings against him are contrary to law. He argues that the NGT did not implead those who had standing, i.e. the legal representatives of the deceased; in fact, they had filed a civil suit, claiming compensation against him, as well as the NHAI and the state, for alleged negligence and tortious liability. In those proceedings, the court is bound to record evidence and render findings based on the facts. The NGT could not thus have unilaterally, based on a one-sided view of the materials, held that he was liable.

21. It was submitted that the allegation that Rathod was primarily responsible for degradation of the hill, which clogged the culverts and water channels, resulting in the tragedy, was contrary to the facts. Mr. Vijay Verma, counsel for Rathod, relied on some portions of the magisterial report to say that the NHAI had the report of an independent engineer, who had pointed to certain deficiencies on the part of the concessionaire. Therefore, to hold him responsible for the tragedy, and direct him to pay a huge sum of Rs. 15 lakh and further pay amounts towards environmental damage, was unwarranted.

22. It was argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased. It is further argued in Rathod's appeal that apart from issuing notice for recovery of amounts towards alleged illegal mining, neither the state authorities nor the NHAI took any positive remedial action for strengthening the culvert and the catch water drains which were in disrepair, and constructed on the hill above the tunnel for drainage of rainwater. The masonry on the culvert for draining water was choked due to lack of maintenance. Such maintenance was the sole responsibility of the concessionaire and for that, the NHAI had to be held liable. It is also highlighted that Section 18 of the NGT Act mandates that the procedure established by the statute to exercise jurisdiction had to be followed. Since the legal heirs of the deceased had not applied to the NGT for any relief and had instead approached the civil court claiming compensation on account of wilful neglect and culpable inaction on the part of NHAI, the NGT ought to have left the matter for proper decision in

accordance with the evidence led. Instead the NGT took upon itself the task of a judging the appellant as one of those responsible for the incident. It is emphasised that the mining activity carried on was in accordance with the license and if there was any irregularity that was cured on payment of fine. So far as the collection of debris which ultimately led to the overflow of water and the deaths of two individuals goes, it is argued that the proper functioning of the drainage system would have ensured that such collection of vast quantities of water would not have occurred. Therefore, the inaction of the NHAI in taking timely action and intervening with the state authorities, led to the tragic incident. The responsibility for this incident could not have been placed at the doorstep of Rathod. The actions of Rathod, it is stated were too remote and could not have been the subject of damages at all.

23. In the appeals (by special leave as well as the statutory appeals by third parties), where the grievance is on account of the directions issued by the State of Maharashtra under Section 154 of the MRTP Act, the third party appellants challenge the order of the NGT arguing that the provisions of the NGT Act, especially sections 14, and 19 do not authorise that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. It is highlighted that such sweeping directions are illogical and are not based on any scientific study or analysis. It is argued that the NGT has issued general directions couched in a vague manner in para 17(e) of its order.

24. These appellants argue that the Bombay High Court also fell into error and did not appreciate that the entire basis of the Directions/Resolution of 14.11.2017 by the State of Maharashtra were the directions issued by the NGT. Highlighting various provisions of the MRTP Act, learned counsel argued that wherever development codes were formulated, they were in accordance with established principles, after following the prescribed procedure. Based upon these codes and the building regulations framed by various town planning departments, clearances and permissions/approval for development and construction were issued. It was argued that the mandatory and sweeping nature of the directions in para 17 (e) by the NGT has resulted in these directions being embodied in the impugned resolution, which has a catastrophic effect on those clearances.

25. Learned senior counsel, Mr. Shyam Divan, highlights that apart from the fact that the definition of 'hill' is vague, and even the regulations under the MRTP Act are silent in this regard, the NGT failed to consider that the impact of its directions and the impugned notification, in hilly terrains where the population is concentrated in particular areas, in small towns, semi urban and rural areas would be devastating inasmuch as all nature of buildings would be banned. It is pointed out that hill development is based upon consideration of individual local soil conditions, the stability of the surrounding terrain, etc. All these are taken into account by individual local town planning authorities when they permit or refuse permission to individual development or construction projects. The uniform adoption of the "no construction within the hundred feet area" rule, it is submitted, is completely contrary to well-established principles of town planning.

26. It is argued that the directions issued by the state government impugned in the writ petitions before the Bombay High Court, are contrary to the provisions of the MRTP Act inasmuch as they amount to supplanting provisions of the existing master plan and other development codes, which have the force of law and were framed after widespread consultations. It is pointed out that the provisions of the MRTP Act require that any change in such codes or master plans would have to be made after mandatory due consideration of objections, which are to be preceded by publication of the proposals. By directing the state government to follow the order in paragraph 17(e), the NGT in fact made directions contrary to law. It is argued that the state also acted contrary to the express provisions of the MRTP Act inasmuch as it did not follow the procedure required by the Act to change the master plan and the development codes.

27. It is further submitted that the NGT's directions were the basis of the state government's notification. It was argued that the state government's blind adherence to these directions amounted to abdication of its duties, was in contravention of express

provisions of the MRTP Act and also amounted to acting on the dictates of another authority. It was submitted that for these reasons, the impugned notification cannot be sustained. Counsel relied on the decision of this court in *Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.*[2] to highlight that the NGT has a narrow and circumscribed jurisdiction in regard to issuing directions as well as ordering compensation.

28. The Lokmanch justified the order of the NGT and blamed the NHAI, the concessionaire, Rathod and the state government for not taking adequate and timely measures in public interest. It is alleged that proper channels were not created and maintained alongside the highway to avoid water clogging on the main carriageway. It is argued that existing water channels were extremely narrow and were incapable of handling significant volumes, and that even those channels were clogged due to construction debris which had fallen on the sides. It is pointed out that under Section 4 of the National Highways Act, 1956 (hereafter "Highways Act") "highways" include lands appurtenant thereto, all bridges, culverts, tunnels, causeways and other structures constructed on or over the highway and all fences, trees, posts, etc. The duty of keeping them in good repair, clearly was that of the NHAI and the concessionaire.

29. So far as the Rathod's role is concerned, learned counsel, Ms. Shilpa Chohan, submitted that the NGT acted well within its rights and acted within its jurisdiction in entertaining and proceeding with the application, under Sections 14 read with 16 and 18 of the NGT Act. The Lokmanch sought mandatory injunction to restore the natural contour at the foot base of the hills, particularly the hill that was destroyed by the private respondents. It was submitted that apart from the enquiry report of the magistrate/sub-divisional officer, a report was also commissioned by the NGT through the local *tehsildar*; that report dated 15.09.2014 disclosed that unauthorised hill destruction under the pretext of minor mineral extraction was widespread during 2011-2013. This report showed that as many as 62 cases of hill destruction (mostly indulged in by developers), came to light. Many of these occurred without obtaining any permit or authorisation and were plainly illegal.

30. It is argued further that the private respondents were permitted to extract minor minerals only for a short period. However, they exceeded not only the permit, but also went further and destroyed the hill for the purpose of mining minerals. This over-mining as well as hill destruction was not within the permission or the terms of the license. It is highlighted that "hill cutting" or hill destruction causes shortening of hills, poses a potential danger of soil erosion and reduces vegetation, forestry, flora and fauna, and deprives natural support to the earth, therefore ultimately posing an environmental hazard to nearby areas, including residential areas. It is argued that the destruction of hills results in the distortion of the flow of streams and rivers, which change their courses resulting in heavy loss to human life and also to flora and fauna, besides at times, destruction of property. It is submitted that the NGT's decision requiring payment of compensation was within its jurisdiction; to support this, learned counsel relied upon the provisions of Schedule II to the NGT Act, particularly referring to the heads of compensation relief for damages that can be claimed and granted, i.e. death, permanent, temporary, or total, or partial disability or other injury, damages to private property, expenses incurred by the government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of the environment. It was submitted that the statutory basis for calculating these damages under Schedule II to the NGT Act is provided by Section 15, which empowers the NGT to provide relief and compensation to victims of pollution in terms of Schedule I for restitution of property, restitution of environment, and also importantly Section 17, which empowers the NGT to direct the payment of compensation on account of death of or injury to any person or damage to property, under all any of the heads specified in Schedule II, which is the result of any accident or is an adverse impact of any activity or operational process. It is submitted that there is nothing in the enactment which confines the jurisdiction of the NGT to adjudicate complaints, especially those relating to fatalities caused by environmental damage, to applications initiated by legal representatives or persons directly affected. It is submitted that if a particular accident or incident is so widespread as to affect an entire

area, it would be well within the jurisdiction of the NGT to entertain an application made by anyone. Learned counsel highlighted the difference in phraseology between Sections 15 and 17 on the one hand, and Section 18 on the other. It is submitted that Section 18(2) clearly is without prejudice to the provisions contained in Section 16 and primary jurisdiction can be invoked by the Tribunal upon being moved by anyone in this regard.

31. Ms. Chohan cited the decision of this court in *Mantri Technoze Pvt. Ltd.* v. *Forward Foundation*[3] to say that the NGT could legitimately issue directions which are binding on all other statutory authorities. She also relied on Section 33 of the NGT Act, emphasizing that the enactment overrides all other enactments. Reliance was also placed on the decision in *Hanuman Laxman Aroskar* v. *Union of India*.[4]

32. The State of Maharashtra supported the arguments made on behalf of the Lokmanch. It was pointed out that the jurisdiction to issue general directions to preserve and protect the environment, through restitution orders is found in Section 15(1)(c) of the NGT Act. It is also submitted that the power and jurisdiction to order compensation in the case of death, is independent and can be invoked in case of fatal accidents, as is evident from the provisions of Schedule II. The state further argues that the judgment of the Bombay High Court too is unexceptionable, inasmuch as it correctly appreciated and upheld the exercise of regulatory power under Section 154 of the MRTP Act. Counsel urged that the said provision was amended in 2015 and in the absence of any challenge to it, the exercise of power after due consideration of relevant factors, could not be countenanced.

The Issues

33. Four issues arise for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with respect to the ban on construction in and around foothills and lastly, the *vires* of the directions/notifications issued under Section 154, MRTP Act.

I. Jurisdiction of the NGT

34. The relevant provisions of the NGT Act are extracted below:

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

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

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

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

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

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

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

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***14. Tribunal to settle disputes**.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*

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

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

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

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

provide,—

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

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) any determination of benefit sharing or order made, on or after the commencement

of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

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

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

17. Liability to pay relief or compensation in certain cases.

(1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.

(3) The Tribunal shall, in case of an accident, apply the principle of no fault

18. Application or appeal to Tribunal.

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal,

85

finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

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

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

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*"**33. Act to have overriding effect.**—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

35. A plain reading of the above provisions of the NGT Act would reveal that the tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction under Sections 14-15, and appellate jurisdiction under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to *"civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved"* relating to the implementation of *"the enactments specified in Schedule I"* [Section 14 (1)]. The other provisions [Sections 14(2) and (3)] are incidental to the primary jurisdiction under Section 14(1). Section 15, on the other hand, is couched in wide terms. Section 15 (1) provides that compensation or damages can be given by the NGT to *"victims of pollution and other environmental damage arising under the enactments specified in the Schedule I"* [Section 15 (1)(a)]; for restitution of property damaged [Section 15(1)(b)] and for restitution of the environment for such area or areas [Section 15(1)(c)]. Section 15(2) is procedural; Section 15(3) prescribes the period of limitation for applications. Section 15(4) enables the NGT to, having regard to the damage to public health, property and environment,

"divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit."

36. The enactments specified under Schedule I are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; and the Biological Diversity Act, 2002.

37. Schedule II reads as follows:

"SCHEDULE II [See sections 15(4) and 17(1)] HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED

(a) Death;

(b) Permanent, temporary, total or partial disability or other injury or sickness;

(c) Loss of wages due to total or partial disability or permanent or temporary disability;

(d) Medical expenses incurred for treatment of injuries or sickness;

(e) Damages to private property;

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;

(g) Expenses incurred by the Government for any administrative or legal action or to

cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

(l) Loss and destruction of any property other than private property;

(m) Loss of business or employment or both;

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

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.

39. The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, *inter alia*, payment of compensation, "*having regard to the damage to public health, property and environment*". This interpretation is borne out by a reading of Section 17(2) regarding the *apportionment* of liability for payment of compensation.

40. In the decision of this court reported as *Hinch Lal Tiwari* v. *Kamala Devi*[5], this court held that ponds constituted public utility and were meant for common use. The court held that ponds could not be allotted or commercialised, and that filling up of ponds was illegal. Recently, in *Jitendra Singh* v. *Ministry of Environment*[6], the Court quoted and applied the observations in *Hinch Lal* (supra), in the context of an appeal directed against an order of the NGT which had summarily dismissed an application under Sections 14 and 15 of the NGT Act seeking directions to cease the filling up of ponds in the Greater Noida Industrial Development Area.

41. Long ago, in *State of Tamil Nadu* v. *Hind Stone*[7], this court made following observations:

"6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957 ..."

42. Likewise, in *Lafarge Umiam Mining (Pvt.) Ltd.* v. *Union of India*[8] these pertinent observations were made:

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan *v.* Union of India *that environment has different facets and care of the environment is an ongoing process. These concepts Rule out the*

87

formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

43. Recently, in *State of Meghalaya* v. *All Dimasa Students Union, Dima-Hasao District Committee*[9] this court had affirmed a part of the decision of the NGT issuing directions in respect of large-scale mining in the state of Meghalaya, on the ground that it had an adverse impact on the environment. This was despite the fact that mining and the subject of mines is not specified in the list of enactments under the first schedule. The court also approved the NGT's directions, appointing experts, to assess the impact of such mining on the environment.

44. The legal position and jurisdiction of NGT was considered by this court in *Mantri Techzone* (supra) where it was held that the NGT has "*special jurisdiction*" for "*enforcement of environmental rights.*" It was held that:

*"**41.** The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.*

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

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

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

***45.** Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.*

***46.** Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers.*

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.

***47.** Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."*

45. It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "*restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act.*" Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.

46. As noticed earlier, Section 17 (1) refers to first schedule enactments; it talks of death of, or injury to, any person "or damage to any property or environment" which "*has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment*" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

47. The definition of "environment" under the EPA is wide and is an inclusive one: "*environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property".*[10] Similarly, "environmental pollutant" and "environmental pollution" are defined as follows:

"environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;[11]

"environmental pollution" means the presence in the environment of any environmental pollutant;[12]

48. Section 3(1) of the EPA confers upon the Central Government, wide power in relation to protection of the environment:

"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."

49. Long back, in *M.C. Mehta* v. *Union of India*[13] this court recognized the potential harm to the environment caused by mining operations:

"Legal parameters

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar *v.* State of Bihar *[(1991) 1 SCC 598.)*

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47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied."

50. Acting under the provisions of the EPA, the Central Government had issued a notification on 14.09.2006, mandating Environmental Impact Assessment (EIA) in exercise of its power under Section 3(2) of the EPA read with Rule 5 of the rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification; the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction.

51. Several irregularities were noticed over a period of time, with regard to minor mineral extraction, including sand, and there was need for introducing stringent regulations for those activities. A report of the then Ministry of Environment and Forests (MoEF, now MoEF&CC) submitted in 2010 was critical of the prevailing norms. As a result, this court and the NGT issued orders and directives making ECs compulsory for projects less than five hectares. The Central Government too initiated measures.

52. The following observations of this court were made in *Deepak Kumar* v. *State of Haryana*[14]:

*"**18.** Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.*

***19.** For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:*

"4.0. Issues and recommendations

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It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

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***4.5.** Requirement of mine plan for minor minerals*

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

***4.6.** Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals*

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

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***4.8.** Uniform minor mineral concession rules*

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

***4.9.** Riverbed mining*

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

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***5.0.** Conclusion*

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict

regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States."

(emphasis supplied)

20. *The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.*

21. *Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.*

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28. *The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.*

29. *We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly."*

53. By virtue of a notification,[15] environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the state had granted no less than 62 minor mineral permits in the vicinity; unauthorized activity (in the form *inter alia*, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because Rathod's mining lease covered an area in excess of 5 hectares; it fell within the regulatory notification of 2006. There is nothing on record to show that the relevant clearance was obtained by Rathod. Plainly, therefore, the facts of the present case disclosed violation of the EPA-an enactment listed in Schedule I of the NGT Act. This meant that the

NGT's jurisdiction under Section 15(1)(a) and Section 17 could not have been disputed.

54. This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "*and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property*" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

II. Was the direction to pay compensation towards death, and damages towards restitution justified?

55. In the present case, the deceased were concededly travelling on the highway. The incident of flooding occurred, and was caused due to clogging of the water channels. The report of the sub divisional magistrate indicated that the Inspecting Engineer (Arvi Associates, a firm) had given a report after inspection. On behalf of the independent engineering firm appointed by the NHAI, an oral deposition was given before the sub-divisional officer. It was stated that the roadside channel and culvert from where water is disposed of, had been rendered screen blinded and a pipeline of 1.2 m diameter existed there for disposal of water. The necessity of remedial action was communicated to the concessionaire, before the occurrence of the accident. It was also stated that in terms of the instructions of the NHAI, the concessionaire was informed about the deficiency on 15.05.2013 and by a further letter dated 04.06.2013. An action plan for completing pre-monsoon work was sought from the concessionaire. However, the concessionaire did not submit an action plan despite lapse of one month.

56. The SDO's report noted that the culvert had been constructed from the new tunnel and was existing from 2004. Apparently a 1m diameter pipe was positioned in the culvert and had made a causeway. One hotel also had constructed an approach road and placed a 950 MM pipe. The existing drainage capacity of the octroi post and the hotel was insufficient due to heavy rains as a result of which rainwater was not totally drained. This water started accumulating on the road. Certain ramps were also constructed by Tata Motors for its convenience; they were removed by the concessionaire; nevertheless, the ramps were prepared again. The existing cross drainage provision was of a sub-culvert-type structure and the size at the time of the old highway was 1m × 1 m. The report further observed that the natural drainage and sides of hills of the highway was adversely affected and had been tampered with. The disposal of water on the right side overhead of the tunnel through the cross train on the old highway *via* the catch drain and subsequently the channels for the water flow were choked due to development work and adversely affected the clearance of rain water. The report indicates that after the accident on 06.06.2013, the local administration cleared the debris which had created obstacles, to facilitate the free flow of water into the catch drain culvert and further flow of water.

57. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 ("the Highways Act") and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:

> *"4.* ***National highways to vest in the Union****. — All national highways shall vest in the Union, and for the purposes of this Act "highways" include—*
>
> *(i) all lands appurtenant thereto, whether demarcated or not;*
>
> *(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures*

constructed on or across such highways; and

(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.—*It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.*

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8A. Power of Central Government to enter into agreements for development and maintenance of national highways *— (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.*

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

58. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:

*"**16. Functions of the Authority.**— (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government."*

59. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed, and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).

60. This issue had arisen in *Rajkot Municipal Corpn.* v. *Manjulben Jayantilal Nakum*[16] in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions[17] and stated that:

*"**18.** The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is*

within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit injuria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time corelative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. *Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the corelative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 192 of CPC or with leave of court under Order I, Rule 8 CPC by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.*

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24. *Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in* Sheppard *v.* Borough of Glossop *[(1921) 3 KB 132 : 1921 All ER Rep 61, CA]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can*

build a cause of action....

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39. *It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. ..."*

61. In the UK, the duty of a highway authority was described by Diplock L.J. in *Griffiths* v. *Liverpool Corporation*[18] as follows:

"The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute."

62. Again, Diplock, LJ stated in *Burnside* v. *Emerson*[19] described the duty as follows:

"in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition."

63. Later, in *Haydon* v. *Kent County Council*[20] Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

"If section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under section 58 has been made out. Parliament did not define those facts for the purpose of section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount and nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty."

64. In *Stovin* v. *Wise*[21], the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that *"Drivers of vehicles must take the highway network as they find it"*. It was held that statutory power could not be converted into a common law duty. The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways

96

and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,

> *"In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised."*

65. *Stovin* (supra) and its enunciation that the existence of a public duty did not *per se* extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in *Gorringe* v. *Calderdale Metropolitan Borough Council*[22]. The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in *Robinson* v. *Chief Constable of West Yorkshire Police*[23], which observed as follows:

> ***"32*** *At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example,* Entick *v.* Carrington *(1765) 2 Wils KB 275 and* Mersey Docks and Harbour Board *v.* Gibbs *(1866) LR 1 HL 93. Dicey famously stated that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen": The Law of the Constitution, 3rd ed (1889), p 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, section 2.*
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> ***33.*** *Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example,* Dorset Yacht Co. Ltd. *v.* Home Office *[1970] AC 1004, as explained in* Gorringe's case *2004 (1) WLR 1057, para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question:* Geddis *v.* Proprietors of Bann Reservoir *(1878) 3 App Cas 430. It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.*
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> ***34.*** *On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in* Michael's case *[2015] AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" [2016] CLJ 128:*
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> > *"In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger."*
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> ***35.*** *As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example,*
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> Barrett *v.* Enfield London Borough Council *[2001] 2 AC 550 and* Phelps *v.* Hillingdon London Borough Council *[2001] 2 AC 619, as explained in* Gorringe's case *2004 (1) WLR 1057, paras 39-40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example,* Smith *v.* Littlewoods Organisation Ltd. *[1987] AC 241, concerning a private body, applied in* Mitchell *v.* Glasgow City Council *[2009] AC 874, concerning a public authority.*
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> ***36*** *That is so, notwithstanding that a public authority may have statutory powers or*

duties enabling or requiring it to prevent the harm in question. A well known illustration of that principle is the decision of the House of Lords in East Suffolk Rivers Catchment Board *v.* Kent *[1941] AC 74. The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care":* Gorringe's case *2004 (1) WLR 1057, para 23.*

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40 *However, until the reasoning in the* Anns case *was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including* Hill's case *[1989] AC 53. The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in* Gorringe's case. *Since that case, a public authority's non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.*

41 *Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see* Gorringe's case *2004 (1) WLR 1057, para 38, per Lord Hoffmann.*

42 *That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."*

66. In *Yetkin* v. *Mahmood*[24], where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

"...The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established."

67. A similar approach was indicated by this court in *Municipal Corpn. of Delhi* v. *Sushila Devi*[25] (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

"13. *By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see* Brown *v.* Harrison *[1947 WN 191 : 63 TLR 484],* Quinn *v.* Scott *[(1965) 1 WLR 1004 : (1965) 2 All ER 588] and* Mackie *v.* Dumbartonshire County Council *[1927 WN 247]). The duty of the*

owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corpn. of Delhi *v.* Subhagwanti *[AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect", — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."*

68. This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in *Vadodara Municipal Corporation* v. *Purshottam V. Muranji*[26].

69. The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it *inter alia*, states that:

"During pre-monsoon rains all the excavated muck has been carried to NH4 alongwith rain water and block Satara bound traffic lane for quite some time. The problem will be severe during heavy rains of July and August.

As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end."

70. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, *prima facie*, disclose their liability.

71. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, giver the gravity of the matter and the danger posed to the members of the public. The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

99

"Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application."

72. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a *prima facie* determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum Rs. 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/planting of trees etc.

Point Nos III and IV: Correctness of NGT's directions contained in Para 17 (e) of its impugned order, and the legality of the order/notification of the state of Maharashtra, issued under Section 154, MRTP Act

73. As to the third point, two issues arise for consideration - firstly, the power of the NGT to issue directions banning development and building activities of the kind contained in Para 17(e) of its impugned order, and secondly, the correctness of the procedure adopted while issuing such directions, in this case.

74. In the *All Dimasa Student Union case*[27], this court considered the nature of powers and jurisdiction of NGT. The relevant discussion is as follows:

*"**156.** What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows*[28]*:*

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***157.** Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What subsection (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Subsection (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:*

*"**10-A. Commission for scientific investigations**.—(1) Where any question*

100

arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9."

158. *Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10 -A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above."*

75. The court also took note of Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (framed under Sections 4(4) and 35 of the NGT Act).[29] This court then held as follows:

"***160.*** *Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.*

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)*

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164. *We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case."*

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.

78. Courts in the US, notably the US Supreme Court, have been faced with problems arising from regulatory adjudication. The scope of such decision making which resembles an adjudicatory outcome by courts, was considered in *Securities Exchange Commission* v. *Chenery Corp.*[30] This case arose from an order of the Securities Exchange Commission (SEC) refusing to approve a utility company's bankruptcy reorganization plan, due to that plan's favourable treatment of management's stock purchases during the reorganization period. The SEC originally had based its disapproval on its understanding of general corporation law principles. The Supreme Court initially struck down that decision as a misreading of the principles. On remand, the SEC reaffirmed its rejection of the reorganization plan. But this time, the SEC relied on its interpretation of the standards of the Public Utility Holding Company Act of 1935. When the Supreme Court decided the appeal for the second time, it affirmed the SEC's order. The court clarified that SEC would be allowed to establish such an interpretation by means of a particularized order rather than a general regulation and observed that:

> *"Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case by case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primary in the informed discretion of the administrative agency."*

79. Similar observations were made by this court in *PTC India* v. *Central Electricity Regulatory Commission*[31]. The court stated as follows, after analysing the provisions of the Electricity Act 2003:

> *"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law.*
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> *50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62*

102

whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

80. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

81. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded-without any *rationale* and based on no scientific or technical evidence, or experts' opinion, that development and construction should not be carried out within 100 feet of a "*lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops*". The decisions of this court, including the *All Dimasa Students Union case* (f.n. 9); *Mantri Technoze Pvt. Ltd. case* (f.n.3); the *Hanuman Laxman Aroskar case* (f.n. 4) and the *Tamil Nadu Pollution Control Board case* (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

82. To consider the last issue, i.e. validity of the notification/direction issued by the state government, it is necessary to briefly outline provisions of the MRTP Act. The MRTP Act was framed and enacted for the purpose of use, planning and development in the regions (of Maharashtra). This was through the establishment of Regional Planning Boards, New Town Development Authorities and Special Planning Authorities, as the case may be, for specified "notified areas". The Act provides for the preparation of development plans, appointment of Special Planning Authorities for notified areas, and creation of new towns for designated areas by means of development authorities. The MRTP Act also enables compulsory acquisition of land for public purposes in respect of the plans and for purposes connected therewith. The Act provides for an elaborate procedure for preparation of the regional plan by a Regional Planning Board ("the board") and development plan by any planning authority. The board has to follow the procedure contained in Chapter II(C). Section 16 provides the procedure - the regional boards have to (after necessary survey) prepare land-use maps for the region, and prepare a draft regional plan, after which they have to publish a notice about the plan in the Official Gazette, inviting objections and suggestions from any person with respect to the draft plan. The board has to refer the objections, suggestions and representations received by it to the Regional Planning Committee ("the committee" hereafter) appointed under Section 10 for consideration and report. The committee, after giving a reasonable opportunity of being heard to the affected persons has to submit its report to the board, after which the board has to prepare the regional plan after considering the suggestions, objections and representations and the report of the committee. This is to be submitted to the State Government for approval. On approval of the plan by the State Government under Section 15, the final regional plan has to be published under Section 17.

83. Chapter III deals with the procedure for preparation of development plans by a

planning authority. Section 23 provides that the planning authority should make a declaration of its intent to prepare such a plan and publish the same in the Official Gazette, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette. Thereafter under Section 26, the planning authority has to prepare a draft development plan, not later than two years from the date of notice published under Section 23, and publish the notice in the Official Gazette stating that the development plan has been prepared, once again inviting objections or suggestions from any person with respect to the draft plan within a period of sixty days from the notice. Section 27 provides that the planning authority having regard to, and guided by the proposals made in the regional plan, shall not carry out any modification therein without prior concurrence of the Regional Planning Board. Section 28 mandates the planning authority to consider suggestions or objections received by it under Section 26(1) and provide a reasonable opportunity of being heard to any person including the representatives of the Government who may have filed any objections or suggestions, and thereafter modify or change the plan in such manner, as provided under Section 28(4). Section 29 further provides for modification of the draft development plan, which is of substantial nature. By this, a planning authority or the Town Planning Officer is required to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than sixty days from the date of such notice. The section then requires the authority concerned to consider all objections and suggestions received by it and give a reasonable opportunity of being heard to any person including representatives of government departments who may have filed any objections or made any suggestions in respect of the draft development plan before making such modifications or changes in the draft development plan. Section 30 requires the planning authority to submit the draft plan to the State Government for approval, within twelve months from the date of publication of the notice under Section 26 that the draft plan has been prepared. Section 31 provides that the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette, sanction the draft development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft development plan to the planning authority for modifying the plan as it may direct, or refuse to accord sanction. It further provides that where the modifications proposed to be made by the State Government are of a substantial nature, the State Government has to follow the procedure contemplated under Section 28 to give a reasonable opportunity of hearing to the objectors before finalizing the modification.

84. Section 37 confers powers on a planning authority to carry out such modification in a final development plan as will not change its character. This power could be exercised by a planning authority after publishing a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification, not later than one month from the date of such notice. This section also enjoins the planning authority to serve notice on all persons affected by the proposed modification and, after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. Section 40 provides for appointment of a Special Planning Authority for developing certain notified areas, and Section 40(1)(*c*) provides that the State Government may, by notification in the Official Gazette appoint Bombay Metropolitan Region Development Authority (BMRDA) established under the Bombay Metropolitan Region Development Authority Act, 1974 to be the Special Planning Authority for developing any undeveloped area specified in the notification as a notified area. Section 116 then lays down that a Special Planning Authority shall have all the powers of a planning authority as provided in Chapter VII of the MRTP Act for the special purpose of acquisition of such land in the notified area either by agreement or under the Land Acquisition Act.

85. So far as plans and developments that were approved before the impugned notification was issued, this court is of the opinion that they cannot be disturbed and the right of the applicants, be they developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. This is evident from a ruling of this court in *T.*

104

Vijayalakshmi v. *Town Planning Member*[32]. This court stated that town planning legislations (like the MRTP Act) are regulatory; and that when a development plan is in force during the proposal for its amendment, courts should not interfere with them on the assumption that the approved plan for building or development, would not be eventually permitted. It was held that:

> *"Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force."*

86. This court has ruled, that even modification to an existing development plan, under the MRTP Act, under Section 37, is in the nature of a legislative function. This court had observed under *Pune Municipal Corpn.* v. *Promoters and Builders Assn*[33] speaking of Section 37 (1) that:

> ***"4.*** *Reading of this provision reveals that under clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification.*
>
> ***5.*** *Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody.* (Union of India *v.* Cynamide India Ltd. *[(1987) 2 SCC 720]*, SCC paras

5 and 27. See generally H.S.S.K. Niyami *v.* Union of India *[(1990) 4 SCC 516] and* Canara Bank *v.* Debasis Das *[(2003) 4 SCC 557 : 2003 SCC (L&S) 507].) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See* generally ONGC *v.* Assn. of Natural Gas Consuming Industries of Gujarat *[1990 Supp SCC 397].) Therefore, the view adopted by the High Court does not appear to be correct.*

87. This issue was again underscored by this court in *Machavarapu Srinivasa Rao* v. *Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority*,[34] where it was held as follows, in respect of provisions of the Andhra Pradesh (Urban Areas) Development Act, 1975:

> *"20. An analysis of the above-noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."*

88. In a decision which concerned change in development plan under the MRTP Act, this court observed that any changes in a development or master plan involve consultations and a high degree of expertise, in *MIG Cricket Club* v. *Abhinav Sahakar Education Society*[35]:

> ***"28.*** *It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same."*

89. Now, under the provisions of the MRTP Act[36], regional plans and development plans have to take into account features such as soil conservation, preservation of natural features, prevention of flooding etc, while factoring planning for each city or area concerned. In turn, such regional and development plans would constitute the blueprint for local town planning authorities to grant or refuse permission to individual applicants. In these circumstances, the use of Section 154 of the MRTP Act, in the present case, in fact amounted to a modification of all plans - regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in this background that one has to consider the argument of the state, which found favour with the High Court, that such notification was issued in public interest.

90. The unamended Section 154 of the MRTP Act read as follows:

> ***"154 Control by the State Government***
>
> *(1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.*
>
> *(2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State Government on such dispute shall be final."*

91. Section 154 (1) was amendment by a substitution (with effect from 22.04.2015). The new provision [Section 154 (1)] reads as follows:

"154. (1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions."

92. Directions can be issued "notwithstanding" any other provisions of the Act, "*for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time.*" No doubt, the *non-obstante* clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resortec to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT DEPARTMENT
Madam Cama Road
Hutatma Rajguru Chowk
Mantralaya, Mumbai 4000032
Government Resolution No. TPS-1817/ANS-90/97/UD-13
dated 14 November 2017

The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palik/Nagarpalika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers under section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

1. *The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet should be shown as No development/Open space Reservation.*
2. *In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.*
3. *In the event the 100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for nonbuildable purposes such as open space, road et cetera.*

In the name of and by order of the Hon'ble Governor State of Maharashtra"

93. There are several authorities for the proposition that though an administrative order need not necessarily comply with principles of natural justice such as granting hearing, yet, administrative decisions or orders have to be based on some reasons. In *Shri. Sitaram Sugar Mills Company* v. *Union of India*,[37] (which concerned the zoning regulations for the

purpose of levy sugar under the relevant statutory order, in terms of the Essential Commodities Act), the Supreme Court held as follows:

> *"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable ultra vires.*
>
> *A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."*

94. In *Cellular Operators Association* v. *Telecom Regulatory Authority of India*,[38] this court held that subordinate regulatory legislation, can be set aside in judicial review, if they show no *rationale* or are arbitrary:

> *"62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable.*
>
> *63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the reason for a call drop can technologically be found out and whether it is a network-related reason or a user-related reason.*
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> *XXXXXX XXXXXX XXXXXX*
>
> *66. The reason given in the Explanatory Memorandum for compensating the consumer is that the compensation given is only notional. The very notion that only notional compensation is awarded, is also entirely without basis. A consumer may well suffer a call drop after 3 or 4 seconds in a voice call. Whereas the consumer is charged only 4 or 5 paise for such dropped call, the service provider has to pay a sum of rupee one to the said consumer.*
>
> *This cannot be called notional at all. It is also not clear as to why the Authority decided to limit compensation to three call drops per day or how it arrived at the figure of Re 1 to compensate inconvenience caused to the consumer. It is equally unclear as to why the calling party alone is provided compensation because, according to the Explanatory Memorandum, inconvenience is suffered due to the interruption of a call, and such inconvenience is suffered both by the calling party and the person who receives the*

108

call. The receiving party can legitimately claim that his inconvenience when a call drops, is as great as that of the calling party. And the receiving party may need to make the second call, in which case he receives nothing, and the calling party receives Re 1 for the additional expense made by the receiving party. All this betrays a complete lack of intelligent care and deliberation in framing such a regulation by the Authority, rendering the impugned Regulation manifestly arbitrary and unreasonable."

95. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them.

96. For the above reasons, we hold that the impugned judgment of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14.11.2017) are hereby quashed.

97. In view of the above discussions, CA 6932/2015 and CA 5971/2019 are hereby disposed of in terms of the directions in this judgment. The other appeals by special leave by third parties, against the NGT's order, and the order of the NGT, are partly allowed in the above terms. There shall be no order on costs.

———

[1] In terms of Clause 19.4.2, the measure of damages which NHAI could recover was calculable in terms of each days delay in complying with the remedial measures suggested by the engineer, based on the "*higher (a) 0.5% of the Average Daily Fee and (b) 0.1% of the cost of such repair or repair estimated by the Independent Engineer*" The same clause (17.8.1) stated that:

"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this agreement and the Authority shall be entitled from such date to recover damages, to be calculated and paid for each day of the delay until the breach is cured, at the higher of (a) 5% (five percent) of Average daily fee and 1% (one percent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession. The recovery of such damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof."

[2] 2019 SCC OnLine SC 221.

[3] (2019) 18 SCC 494

[4] (2019) 15 SCC 401

[5] (2001) 6 SCC 496

[6] 2019 SCC OnLine SC 1510

[7] (1981) 2 SCC 205

[8] (2011) 7 SCC 338

[9] (2019) 8 SCC 177

[10] Section 2(a) EPA

[11] Section 2(b) EPA

[12] Section 2(c) EPA

[13] (2004) 12 SCC 118

[14] (2012) 4 SCC 629

[15] No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette

[15] (1997) 9 SCC 552

[17] *Gorris* v. *Scott* [(1874) 9 Exch 125] and *Kilgollan* v. *William Cooke & Co. Ltd.* (1956) 2 All ER 294, CA]

[13] [1967] 1 Q.B. 374

[13] [1968] 1 W.L.R. 1490

[20] [1978] Q.B. 343

[21] 1996 (3) All ER 801

[22] 2004 (1) WLR 1057

[23] 2019 (2) All ER 1041

[24] 2011 QB 827

[25] (1999) 4 SCC 317 at page 323

[26] (2014) 16 SCC 14

[27] See f.n.9 (supra).

[28] "***19. Procedure and powers of Tribunal.***—*(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.*

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Penal Code, 1860 and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

[29] The said rule reads as follows:

*"**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."*

[30] 332 U.S. 194 (1947)

[31] (2010) 4 SCC 603

[32] (2006) 8 SCC 502

[33] (2004) 10 SCC 796

[34] (2011) 12 SCC 154

[35] (2011) 9 SCC 97

[36] Section 14 and 22

[37] (1990) 3 SCC 223

[38] (2016) 7 SCC 703