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Vanashakti Public Trust &Anr.Vs. Maharashtra Coastal Zone Management Authority &Ors.

Appeal No. 1 of 2013

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Project Clearance, SEIAA

Appeal dismissed

Dated: 7 January 2015

Senior Counsel for Respondent no. 4 pointed out from the impugned communication that it was only a recommendation made by MCZMA and, therefore, it cannot be subject matter of challenge under Section 16(h) of the NGT Act, 2010. He argued that the project in question was not finally granted Clearance by the concerned Authority. He also pointed out that the construction work had not commenced yet for want of final approval and as the appeal was premature. Advocate for the Respondent No.3, argued on same line.

It was pointed out by learned Counsel for the Appellants that the impugned order categorically showed that Clearance was granted to the project and, therefore, the same could be challenged by filing the appeal. She focused on condition No. 7 of the impugned order.

Chief bone of contention of learned Counsel for the Appellants was that due to such condition No.(7), impugned communication tantamount to order of Clearance and that the MCZMA, had issued final order without considering relevant material.

Learned Counsel for MCZMA submitted that MCZMA had the power to approve the project when relevant material was examined and the project was found to be within relevant parameters. He pointed out that the Authority deliberated the issue of CRZ recommendations, for only those components for which IOD had been issued, had been approved after it was duly satisfied and the required conditions were laid. He further pointed out that the proposal regarding construction of 'Residential Hotel' was excluded by the MCZMA. Thus, the impugned communication was final clearance granted in favour of the Project Proponent (PP).

The question which arose for determination, was "Whether the Appeal is premature and as such liable to be dismissed, because it is untenable in view of Section 16(h) of the NGT Act, 2010?'

A plain reading of Section 16(h) makes it clear that an Appeal would lie only against the Clearance orders, if it is so granted by the competent Authority. In order words, no appeal is maintainable against mere communication or recommendation, in respect of a project activity. Such Appeal was to be treated "untenable".

The communication dated 26.7.2013, showed that subject itself was refereed as 'proposal' regarding redevelopment of MHADA layout of Aramnagar on certain plots. It appeared that the condition No. 1, mentioned that the proposed construction should be carried out strictly as per the provisions of CRZ Notification, 2011 and guidelines/clarifications given by MoEF time to time. A second condition was that this recommendation was for only those components of the proposal for which IODs

had been issued. Regulation 4 of CRZ Notification issued on 6th January, 2011 deals with permissible activities in CRZ area. In the present case the Housing Scheme was within CRZ area. Regulation 4(b), (c) and (d) were required to be read together.

From language of Regulation 4(b) it was manifest that the projects which involve more than 20,000 sq.m built-up area, “also attract EIA Notification, 2006” for clearance under the EIA Notification, subject to recommendation by the concerned State Coastal Zone Management Authority (CZMA). In such a case, MCZMA has to recommend the project for Clearance to the State Level Authority (SEIAA). However, MCZMA is not the final authority to take decision in such a matter. The Tribunal was of the opinion that condition No.(7) incorporated in the communication dated 27.7.2013, which was under challenge in this Appeal, was otiose and must be deemed as deleted, being illegal. MCZMA should recommend the project to SEIAA with reasons for approval or for non-approval as the case may be and SEIAA may independently examine merits of the recommendations prior to granting or refusing the Clearance by passing a ‘speaking order.’

Considering the above reasons, the Appeal was held to be premature and liable to be dismissed with observations made above and direction to delete the condition No. 7 from the impugned communication. Liberty was granted to file appeal if any further communication was received from MCZMA or SEIAA which will be adverse to either party. Accordingly, the Appeal was disposed of. No costs.

Shri A. Balakrishnan & Anr. Vs. Government of Kerala & Ors.

Application No. 170 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Consent to Establish, Red Category, illegal construction, Pollution Control

Application disposed of

Dated: 9 January 2015

The applicants brought forth this application to restrain the Kerala State Pollution Control Board (Board) from granting any Consent to Establish for the 7th respondent for establishing the industry in question which is graded "Red Category" under the provisions of Water (Prevention and Control of Pollution) Act and Air (Prevention and Control of Pollution) Act and demolish the illegal construction done by the 7th Respondent.

The case of the applicant was that the 7th respondent was proceeding with the construction illegally since it was being done without obtaining any permission either from the local authorities or Consent to Establish from the Board as required in law. A specific defence of the 7th respondent was that the construction was being proceeded with on the strength of the clearance given by the 6th respondent dated 25.9.2013. It was brought to the notice of the Tribunal that the application made by the 7th respondent seeking Consent to Establish was pending in the hands of the Board for a long time. On verification, the statement was found to be correct. Under the circumstances, the Tribunal thought it fit and proper to issue direction to the Kerala Pollution Control Board (Board) to consider the application of the 7 respondent for Consent to Establish on merits in accordance with law within a period of one month from the date of the order namely 7.11.2014.

It was reported by the Counsel for the Board that the application of the 7th respondent

was considered and Consent to establish the industry had been given by an order dated 7th January, 2015. There could not be any impediment for the 7th respondent in establishing the industry subject to the compliance of the conditions found therein. While doing so, if there were any violation or non observations of the conditions found therein, there was no impediment for the Board to take necessary action in that regard. It was also further clear that if the authorities of the Board on inspection on the strength of the compliance if the Pollution Control Board was not satisfied with the conditions attached to Consent to Establish, Consent to Operate would not follow. Hence, at this juncture, the application was disposed of. If there was any violation of the conditions found therein, there was no impediment for the applicant to approach the appropriate forum to ventilate his grievance for necessary redressal. No cost.

Shri K. C. Kuttappan & Ors. Vs. Shri Muduparambil Rajan & Ors.

Application No. 370 of 2013 (SZ)

(W.P.(C) No. 2236 of 2011)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: renewal of lease, High Court, Notification, Environmental Clearance

Application disposed of

Dated: 12 January 2015

The counsel for respondents 1 to 4 had not appeared despite the notice. It was submitted by the counsel for the applicant that the High Court of Kerala had made an order in W.P(C) No.4662 of 2014 dated 16.12.2014 which read as follows:

"Learned Advocate General has come up with the submission that the State shall not issue any fresh permit or renewal of any existing permit/lease till the matter is heard.

In view of the above submission made by the learned Advocate General, we adjourn these cases for hearing in the last week of January. In the meantime, we direct that without obtaining environmental clearance under the notification dated 14.09.2006, no fresh permit/lease or its renewal shall be granted henceforth."

The said statement made by the counsel for the applicant was recorded. In view of the same, the application was disposed of with liberty to the applicant to approach the Tribunal in the facts and circumstances if so warrant. No cost.

The Corporation of Coimbatore Vs. May Flower Sahkthi Garden & Ors.

Review Application No. 21 of 2014 (SZ)

In

Application No. 34 of 2013 (SZ)(THC)

(W.P. No. 3561 of 2011, Madras High Court)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: limitation period, review, Tamil Nadu Pollution Control Board, condonation of delay

Review Application disposed of

Dated: 12 January 2015

This was an application for review of an order of the Tribunal made on 12th February, 2014 in Application No.34 of 2013.

The main objection raised by the respondents was that the application was barred by limitation and was not maintainable. Admittedly the Application No.34 of 2013 was disposed of on 12th February, 2014 on merits of the matter directing the respondents to maintain the status quo and also with a direction to the Appellate Authority Pollution Control to dispose of both the appeals in Appeal Nos. 32 and 33 of 2013 as expeditiously as possible. Aggrieved over the order of the Tribunal the respondents made a Writ Petition No.12176 of 2014 before the High Court of Madras which was disposed of on 5.8.2014 with a direction to the appellate authority to dispose of the matter and an observation that the appellate authority would pass necessary order within a period of three months. Both the appeals in Appeal Nos. 32 and 33 of 2013 were pending before the appellate authority. The learned counsel for the applicant/ review petitioner submitted that despite the direction by the Tribunal and also the observations made by the High Court of Madras, there was no co-operation on the

part of the counsel for the applicant/ appellant which had caused undue delay. It was brought to the notice of the Tribunal that the appellate authority had posted this mater to 13th February, 2015 for final hearing and for arguments of both sides.

As per the rules, 30 days time was prescribed for preferring an application for review of the order. From the records, it could be seen that at the time of filing the review application, the condonation of delay application was also filed but subsequently the condonation of delay application was withdrawn by filing a memo and thus there was no condonation of delay application pending and therefore it was quite evident that the applicant seeking review of the order was barred by time and on that ground the application had to be dismissed. However, in view of the circumstances put forth by the counsel applicant/ review petitioner recorded above, it was necessary to issue a direction to the appellate authority – Tamil Nadu Pollution Control to dispose of the appeals within a period of two months. Accordingly, the Review Application was disposed of.

Jamshid Kersi Dalal Vs. Union of India & Ors.

Application No. 108 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Cantonment area, felling of trees, Municipal area, Maharashtra (Urban Areas) Protection and Preservation of Trees Act

Application disposed of

Dated: 12 January 2015

The parties were heard in view of Chapter IV (ib) of the Cantonment Law (I.P. Mittal) and communication dated 1st April, 2005, Letter No. 11026 /1/US/ D (Lands) 1995. In the Tribunal's opinion, the Cantonment area was excluded from applicability of Municipal Laws. The trees may be felled/cut/pruned from the defence estate. They were required to be planted as per the Cantonment Act.

Affidavit of Respondent No.3 and 4, showed that trees in question fall within the area of Respondent No.3, and are within A-1 Zone. It was an admitted position that the trees in question were not in Municipal area. Therefore, the Municipal Law namely, the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, was not applicable for felling of trees, situated within Cantonment area.

Considering the above legal position, Respondent No.3 Respondent No.4 were directed to follow the directions stipulates in above referred communication, as regards activity of felling of trees is concerned.

The Application was accordingly disposed of. No costs

Goa Foundation & Anr. Vs. Union of India & Ors.

M.A. No. 894 of 2012

in

O.A. No. 26 of 2012

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Prof. A. R. Yousuf, Mr. B. S. Sajwan

Keywords: Environmental Clearance, Western Ghats, res judicata, felling of trees, Forest Clearance

Application dismissed

Dated: 13 January 2015

Original Application No. 26 of 2012, titled 'Goa Foundation & Anr. Vs. UOI &Ors.' was filed before the Tribunal with the prayer that the respondents be directed not to issue any Environment Clearance under the Environmental (Protection) Act, 1986 and the Pollution Control Boards concerned should not issue consent under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981. It was the case of the applicant that various States had demarcated areas as Eco Sensitive Zone (ESZ) I and Eco Sensitive Zone (ESZ) II within the Western Ghats Area to protect and preserve the Western Ghat in the framework as enunciated by the Western Ghats Ecology Expert Panel (WGEEP) Report dated 31 August 2011.

It was noticed in the Goa Foundation judgment the MoEF had issued directions under Section 5 of the Act of 1986 on 13th November, 2013 for providing immediate protection in relation to Western Ghats to maintain its environmental integrity and tranquillity. It was for MoEF to consider the rival contentions of various States and objections while declaring and demarcating the eco-sensitive areas of Western Ghats.

To the draft Notification, States were required to file their responses before the MoEF, which thereafter was to proceed in accordance with law. Thereafter, the Applicants filed the present application with the following prayers:

1) "Stay the operation of order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu District;

2) Declare the order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu District, in violation of order dated 25th September, 2014 passed by this Tribunal in Original Application No. 26 of 2012 and in violation of Section 8 of Karnataka Tree Preservation Act, 1976;

3) Declare the order dated 10th December, 2014 passed by Deputy Commissioner and District Magistrate of Kodagu, District, Madikeri, Karnataka in violation of Supreme Court's order dated 12th December, 1996 passed in W.P. (C) No. 202 of 1995;

4) That stay the felling of trees till the NBWL Clearance is obtained; and

5) Pass any other such order(s)/direction(s) as the Tribunal deem proper in present facts and circumstances."

It was the case of the applicants that the Deputy Commissioner and the District Magistrate of Kodagu District, Madikeri, Karnataka, on 10th December, 2014, passed an order in relation to Transmission Line project from Kozhikode (in Kerela) to Mysore (in Karnataka) under Section 68 of the Electricity Act, 2003 read with Sections 10 & 16 of the Indian Telegraph Act, 1885 permitting felling of 1358 trees within the Margolly Estate. According to the applicant, the order of the Deputy Commissioner was in violation of the order of the Tribunal dated 25th September, 2014 in the case of Goa Foundation. Further, it was pleaded that the said order of was in total ignorance and violation of Section 8 of the Karnataka Preservation of Trees Act, 1976, which imposes restriction on the felling of trees, and of the order of Supreme Court dated 12th December, 1996, passed in the case of *T.N. Godavarman v. Union of India &Ors*., (W.P (C) No. 202/1995), the area being a 'forest land'.

The apprehension of the applicant was that, in furtherance to the order of the Deputy Commissioner, a total 50,000 trees shall be felled in private lands in the VirajpetTaluk of District Kodagu, Karnataka, which is an Ecologically Sensitive Area of the Western Ghats and thus, the order dated 10th December, 2014 shall be very prejudicial to the environment.

Upon notice, the respondents appeared and contended that the present application was not maintainable on the principles of res judicata, as the pleas in Original Application No. 414 of 2013 before the Southern Zone Bench of this Tribunal and even before the

High Court of Karnataka in Writ Petition No. 23456 of 2013, have since been decided.

According to the Tribunal, firstly, the application was not maintainable and secondly, the Tribunal should not exercise its jurisdiction in the facts and circumstances of the present case, for the following reason:

(a) Original Application No. 26 of 2012, in which the M.A. No. 894 of 2014 had been filed, had already been disposed of. Original Application having been finally concluded, the application could not lie before the Tribunal. Furthermore, as far as the violation of the judgment of the Tribunal passed in Original Application No. 26 of 2012 is concerned, The Tribunal opined that there was no violation of the directive contained in paragraph 14 of the judgment. There, it had been observed that the MoEF was to maintain environmental tranquility of the areas under consideration and should not allow irreversible alteration of the areas by granting Environmental Clearance or by permitting activities which would have an adverse impact on the eco-sensitive areas. In the present case, the Forest Clearance and permission for change of land use, in relation to 'Forest Area' or carrying on of non-forest activity, had been granted on 1stMarch, 2012, i.e. even prior to the pronouncement of the judgment in O.A. No. 26 of 2012. In light of this, there was no violation of the directions of the Tribunal.

(b) The applicant had specifically prayed that order dated 10th December, 2014, i.e. the impugned order, was in violation of the orders of the Tribunal and therefore, its operation should be stayed. Section 16 provides for appeals to the Tribunal. Admittedly, the order dated 10th December, 2014, had been passed under Section 68 of the Electricity Act, 2003 read with Sections 10 and 16 of the Indian Telegraph Act, 1885. These acts are not made appealable in terms of Section 16. Furthermore, none of these Acts find a place in Schedule I to the NGT Act, that provides the enactments, in relation to which, environmental disputes are to be dealt with by the Tribunal.

(c) The Learned Counsel for the applicant contended that the present application raised a substantial issue relating to environment and therefore the Tribunal should step in and pass appropriate orders on merits. However, even Section 14 contemplates that the dispute should be relating to a substantial question relating to environment or enforcement of a legal right relating to environment and should arise in relation to implementation of any or all of the enactments specified in Schedule I to the NGT Act.

(d) The applicant had raised a challenge not only to the Forest Clearance dated 1st March, 2012 in Original Application No. 414 of 2013, but had also raised the question of felling of 50,000 trees, as a result of laying of this transmission line and its impact on the ecology and environment of the Eco- Sensitive areas in village Kozhikhode in District Kodagu. All these questions were deliberated and commented upon by the Southern Zone Bench of the National Green Tribunal in its Judgment dated 7th July,

2014, in the case of ‘Coorg Wildlife Society. Though, finally the application was dismissed as being barred by time and latches the applicant had preferred a civil appeal before the Supreme Court which was pending for hearing.

(e) The issues and controversies raised in the present application had been specifically and materially raised and/or ought to have been raised in previous proceedings (Original Application No. 414 of 2013), which have been finally decided even inter se the parties. The present application was certainly hit by the principles of res judicata and/or constructive res judicata. Keeping in view the pendency of the appeal before the Supreme Court, in no event the present application could lie before the Tribunal.

(f) The impact of grant of Forest Clearance to the Project Proponent would be a permission to convert the land use from forest to non-forest activity. On the strength of the granted permission, the project proponent would be entitled to carry the project activity in the reserved forest area and it had to be understood that authorities were conscious of the eco-sensitivity of the area while granting such permission. Attempt of the present applicant was to indirectly challenge the Forest Clearance dated 1March, 2012 which has already been finally dealt with and disposed of vide Judgment dated 7th July, 2014.

The application was neither maintainable nor was a case where this Tribunal should exercise its jurisdiction. Only the question of maintainability of the application was dealt with and therefore, this order would not, affect the right of the applicant to take such other appropriate remedy as may be available to them for challenging the order dated 10 December, 2014, in accordance with law. Hence the application was dismissed without any order as to costs.

Dr. Irfan Ahmad & Ors. Vs. Mr. Nawang Rigzin Jora & Ors.

Original Application No. 277 of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf

Keywords: landfill site, Wetland, Pollution, Municipal Solid Waste (MSW) plant, Polluter Pay Principle, dumping site

Application allowed with directions

Dated: 13 January 2015

The applicants prayed that the landfill site located near Achan wetland, Srinagar should immediately be closed as it was already causing damage to the environment and would soon become a health hazard. According to the applicants, it had become extremely difficult for them to breathe freely. A number of complaints were made to the authorities concerned, but of no consequence. The method of dumping and disposal was also not rational. The water table of the area was very high which in itself did not approve of the location of such site for landfill. For these reasons, they prayed that dumping at the landfill site should be immediately stopped and the site should be permitted to be shifted elsewhere.

An affidavit on behalf of the respondent, State of Jammu & Kashmir, was filed before the Tribunal. It was stated that the subject matter of the application was also pending before the High Court of Jammu & Kashmir in Original Writ Petition (PIL) No. 354/2006 titled as Farah Khan v. State of J&K and others.

A meeting was held after the officers of the concerned authorities had paid a visit to the site and even communicated with the local residents. Certain other recommendations were made at subsequent meetings by different authorities and they were required to take necessary steps for regular evaluation of quality of ground water as well as potable water being supplied to the inhabitants of the area.

According to the applicant, the directions had hardly been complied with by the authorities and the state of affairs at the landfill site had gone from bad to worse.

It was the case of Respondents Nos. 1 to 4 that the Government of Jammu and Kashmir, vide order dated 27th March, 1985, allotted land measuring around 26 hectares to the SMC for dumping the municipal wastes in the year 1985. This site was being used for that purpose since then. However, these respondents clearly admitted that there was no scientific method adopted for the disposal of MSW at the site in question till 2006. The Jammu and Kashmir Pollution Control Board (JKPCB) granted consent to establish and operate, in relation to this site, for dumping of MSW and the MoEF had also issued the Environment Clearance.

It was further submitted by the respondents that closure of the site was not practical as it had been under such use now for a considerable time and was most ideally located as it did not infringe any of the distances from the water bodies that were provided under the Rules of 2000 and was in consonance even with the other distances prescribed under the Rules of 2000. It was clear that the State Government and JKPCB wee supporting the establishment and operation of the MSW plant by the SMC. In the application filed by the applicant, they objected to the site selection but have not disputed the fact that since 1985, this was being used as a dumping site and they did not even refer to the availability of any better site which could be used for proper and scientific dumping of MSW in accordance with the Rules of 2000. Also this site was examined by environmental experts and they had concluded that the site selection was in consonance with the requirements of the relevant Rules.

Other two objections of the applicants were with regard to the foul smell emanating from the MSW dumped at the site in question and that the landfill site was not constructed on scientific lines and was located near the Anchar wetland. According to various directions passed by the High Court of Jammu and Kashmir and by the Tribunal from time to time, SMC and JKPCB had already started covering the waste and spraying the sanitreat powder in accordance with the Rules of 2000.

During pendency of the proceedings before the Tribunal, the Commissioner of the SMC was directed to discuss the entire matter with the State Government and inform

the Tribunal as to what would be the charges which shall be shared by the public at large for setting up such plant and collection and disposal of MSW in accordance with ‘Polluters Pays Principle’.

It came on record that the waste brought to the landfill site at Anchan was not being processed in accordance with the Rules of 2000. The Municipal Corporation was not only expected but was duty bound to take care ofthe MSW. The Commissioner of the Municipal Corporation, the Member Secretary of the State Pollution Control Board and Secretary, Environment of the Government of Jammu and Kashmir shall be personally responsible. In the present case, the authorities failed to discharge their duties in accordance with law. The authorities did not care to pay any heed to the complaints made to them. Thus, on the basis of ‘Polluter Pays Principle’, the Corporation was directed to pay a sum of Rs. Fourteen Lakhs (at the rate of Rs. 1 lakh per year for the defaults committed by them for this period, i.e., for the period after the Rules of 2000 were notified) to JKPCB, which shall use the amount only for restoration of the environment.

The following directions were passed:

a. The conditions imposed by the JKPCB and the Ministry of Urban Development, Central Government, shall be complied with, in relation to all stages and components of the project.

b. Sweeping of roads, cleaning of parks, common areas, and roadside low height drains through handcarts and dedicated trucks.

c. Management of construction waste as a separate activity by consent/permission & paid service.

d. Processing & treatment of MSW - To process bio-degradable waste through composting, refused derived fuel (RDF) and plastic waste etc.; Processing of non bio-degradable waste for fuel materials, plastic ingots, bricks & conditioning of recyclable materials.

e. The entire project to be constructed, established and operationalised strictly in consonance with the Rules of 2000.

f. The Judgment of the Tribunal in the case of People for Transparency, Through Kamal Anand v. State of Punjab &Ors. Original Application No. 40(THC) of 2013 decided on 25 November 2014, shall mutatis mutandis apply to this case.

g. The schedule of charges as approved by the Srinagar Municipal Corporation in their affidavit before the Tribunal was approved. The charges paid by the public at

large to the Municipal Corporation for ‘Environmental Charges’ shall be exclusively utilized by the State of Jammu and Kashmir and the SMC, only for the purposes of setting up of the MSW Plant and/or for developing other MSW Plants.

h. All the expenditure for constructions, establishment and operationalization of the plant shall be incurred under the supervision of the Committee. No expenditure would be incurred without specific approval of the Committee.

i. SMC was directed to seek authorization of the J & K Pollution Control Board in accordance with Rule 6(2) of the Rules of 2000, within four weeks from pronouncement of this order.

j. The project shall be completed in a time bound manner and in any case within a period of one year.

k. A Committee was constituted to ensure proper construction, establishment, operationalization of the plant and optimum running of the plant as well.

M/s Ahuja Plastics Ltd. Vs. State of Himachal Pradesh &Ors.

Appeal No. 26 of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi

Keywords: mining lease, forest land, Forest Conservation Act

Appeal dismissed

Dated: 13 January 2015

The Government of Himachal Pradesh on 16th March, 1984 decided to grant mining lease for mining of Lime Stone in an area comprised in Khasra No. 629/1 situated at Village Kalva, near Village Bhutmari (Renukaji), District Sirmour, Himachal Pradesh for a period of 20 years under the provisions of Mineral Concession Rules, 1960, to one ShriLalit Kumar. The Appellant – a registered company incorporated under the Indian Companies Act, 1956, got the said mining lease transferred in its favour and since then it is involved in the mining activity of extracting limestone.

After pronouncement of the judgment of the Supreme Court of India in the case of *T.N. Godavarman Thirumulkpad Vs. Union of India &Ors., (1997) 2 SCC 267*, the area in question being a forest land, mining activity was stopped by the respondent no. 4 vide its letter dated 24 February, 1997. The Appellant Company applied for diversion of 'forest land' for 'non-forestry land purpose' under the provisions of section 2 of the Forest (Conservation) Act, 1980. The Appellant Company also applied for renewal of mining lease on 17 October 2002. The approval for diversion of of forest land for mining purpose for five years in favour of the Appellant Company was granted by respondent no. 5 vide letter dated 7 December, 2005.

According to the appellant, the 30th Monitoring Committee in its meeting permitted the appellant to lift the balance stock of limestone lying at the mining site subject to conditions, which the Appellant Company complied with. Thereafter, the 32nd Monitoring Committee passed an order on 12 June 2013 observing that no fresh extraction of limestone was being done by the Appellant Company. The Appellant Company approached respondent no. 3 for permission to lift the balance stock, as soon as possible, to clear the path for free flow of water, for which permission was granted.

The Appellant Company was inspected on 17 January, 2014 and an inspection report was placed before the 33rd Monitoring Committee. The report stated that the period of 20 years for which mining lease was granted to the Appellant Company expired on 17April 2004. Furthermore, no specific permission had been granted in favour of the Appellant Company after 18 December, 2012 for extraction or lifting of limestone from the said site.

A Show Cause Notice dated 20 January, 2014 was issued to the Appellant Company by the Mining Officer, District Nahan. To this Show Cause Notice, the Appellant Company submitted its reply on 5 February, 2014, in which it was averred that they had not done any unauthorised mining.

The Mining Officer found the reply submitted by the Appellant Company entirely unsatisfactory and vide its order dated 10 February 2014, stated that the Appellant Company had failed to produce documents relating to any valid permission from the competent authority for carrying out mining operations in the area in question and transportation of the mineral thereof. The Mining Officer directed M/s. Ahuja Plastic Ltd. not to undertake any further mining operations in the applied for mining lease

area. The material accumulated at the left bank of Barag Khala towards upstream and downstream of PWD bridge near the premises of industrial units named as Aditi Chemicals and Ekta Chemicals, being the property of the Govt., should be remained as M/s. Ahuja Plastic Ltd. had no right over the accumulated mineral at the said site.

The appellant challenged the legality and correctness of this order by filing this appeal before the Tribunal. The respondents raised the issue that against the order dated 10 February, 2014, no appeal could lie before the Tribunal in terms of the provisions of the National Green Tribunal Act, 2010. Furthermore, that the Mines and Minerals (Development and Regulation) Act, 1957 and the Mineral Concession Rules, 1960 do not form part of Schedule I to the NGT Act, 2010 and the Tribunal would have no jurisdiction to entertain an appeal against the order passed by respondent no. 4.

The learned Counsel appearing for the Appellant Company contended that in the appeal they prayed for award of compensation of Rs. 63 lakhs in lieu of loss, damage in business and expenditure suffered by the Appellant Company, during the period of 2004 – 2010, along with interest. A prayer was also made for a direction to the respondents to renew the mining lease in its favour. The Learned Counsel also made reference to the provisions of Sections 15 and 17 of the NGT Act, 2010 in support of his contentions, which however had no merit. The provisions of Sections 17 are attracted only where damage to any person or property has resulted due to, or from an accident or an adverse impact of any activity or operation or process, under any of the Enactments specified in Schedule I, where such liability would be determined. Section 15 restricts the jurisdiction of the Tribunal to direct the payment of relief and compensation, restitution of property damaged and environment, to the victims of pollution or any other damage to the environment, arising from and under the Enactments specified in Schedule I. None of these provisions had any application to the loss being claimed by the appellant, on account of loss of business or expenses which he had incurred upon his labour or maintenance of machinery. In the entire petition, the appellant had not averred any facts in relation to environmental pollution and any damage to person or property arising from such pollution.

The Tribunal, therefore, was not an appropriate forum for the appellant to claim such reliefs. The appeal filed by the appellant was not maintainable under Section 16 of the NGT Act, 2010. The other reliefs claimed by the appellant also did not fall within the scope and ambit of Sections 15 and 17 of the NGT Act, 2010. Resultantly, the Tribunal had no jurisdiction to entertain and decide the appeal in question.

The appeal, therefore, was dismissed as not maintainable.

Mrs. Libertina Fernandes Vs. Goa Coastal Zone Management &Anr.

Appeal No. 106 of 2013

And

M.A. No. 1098 of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf

Keywords: Natural Justice, Illegal Construction, Coastal Regulation Zone (CRZ), Gram Panchayat

Appeal dismissed, M.A. disposed of

Dated: 13 January 2015

The challenge by the appellant was on the legality and correctness of the order dated 15 November 2013 passed by the Goa Coastal Zone Management Authority, Goa on the following grounds:

a) The impugned order was violative of principles of natural justice. The authority failed to provide adequate opportunity of hearing to the appellant and denied her advocate to appear and address the authority.

b) The order suffered from the infirmity of non-application of mind. The construction at the site in question existed prior to 1991 and as such the findings returned by the Authority were contrary to the records. It was based upon an ex parte inspection. Even the records produced by the appellant showing grant of permission by the Gram Panchayat to raise construction had been ignored by the authority. Thus, even on merits the impugned order was unsustainable.

The applicant filed Application No. 49 of 2013 before the Tribunal, titled, Goa Foundation v. Goa Coastal Zone Management Authority and Others on 29 June 2013. He had filed the writ petition before the Bombay High Court at Goa in Writ Petition No. 126 of 96 regarding the illegal construction within 200 metres of the high tide line

in the Costal Regulation Zone (CRZ) III coastal stretches and the total failure of the authorities to prevent such violation. The Writ Petition was finally disposed of by the High Court directing the Authority to examine specific cases and to take action in accordance with the provisions of Environment (Protection) Act, 1986. In this application, the applicant had prayed that the Tribunal should direct demolition of all the constructions listed in that application and those which have been raised in the 'No Development Zone' of the CRZ of Morjim and Mandrem villages. The applicant also prayed that the construction in the CRZ should be ordered to be stopped in these villages.

In furtherance to the orders passed by the Tribunal during the pendency of the earlier petition, the officers conducted an inspection on 24 August, 2013. A notice was issued to M/s Blue Wave, Morjim, stating that few violations were noticed. M/s Blue Waves Club was called upon to submit all documents and make their submissions on 5 October, 2013.

Show Cause Notice dated 18 September, 2013 was issued to M/s. Blue Wave Club, whereafter the order dated 15 November, 2013 was passed. In the order, it was noticed that massive structure was being raised by M/s. Blue Wave, which was noticed even during the inspection dated 11 February, 2013.

As per the order, photographs of the violations were shown to Mrs. Libertina Fernandes who had submitted that she had not destroyed the sand dunes but she had raised the permanent structure and even pillars were constructed. The authority vide its order dated 15 November, 2013 found no merits in the submissions made by her and passed the order directing demolition of the structures. Aggrieved from the said order, she preferred the present appeal before the Tribunal. She had averred that the inspection dated 24 August, 2013 was not conducted in her presence and was carried out behind her back. Besides furnishing, the above referred documents she stated that the structures in question were in existence prior to 19 February, 1991, the date of the Notification. It was also stated that the appellant had not carried out any reconstruction, repairs or alterations of the structures, which existed since 1987. She denied that she had destroyed any natural habitats of marine flora and fauna.

In reply to an earlier Show Cause Notice dated 8 April 2013, the appellant had submitted a reply on 25 April, 2013 wherein the appellant had not specifically denied, the existence of various new concrete constructions. Three inspection reports showed that large scale unauthorised and illegal construction without permission and sanction of any Competent Authority within the CRZ had been carried out.

The contention raised was that whether the Impugned order was in violation of principles of natural justice and if so, what was its effect?

Senior Counsel for the appellant contended that non-furnishing of the inspection reports dated 11 February, 2013 and 24 August, 2013 and not permitting an advocate

to appear on behalf of the appellant before the authority, in its meeting dated 5 October, 2013 was clearly a violation of principle of natural justice. It was further contended that the impugned order did not record appropriate reasons that would provide clarity to minimize the chances of arbitrariness and reflect proper application of mind. Even for this reason, the impugned order was liable to be set aside. The Counsel appearing for the authority contended that the requisite documents had been furnished to the appellant. The appellant was given fair opportunity to be heard. Furthermore, the appellant filed a detailed reply to the Show Cause Notice and it was only after hearing the appellant that the authority passed the impugned order dated 15 November, 2013 in accordance with law.

It is for the reason that the Counsel appearing for the appellant submitted that the appellant was not willing to submit to the jurisdiction of re-hearing the matter before the authority as he has got no faith in the said authority. The said authority was acting arbitrarily and with the biased mind against the appellant and as such they would not get justice before the authority. The Senior Counsel further contended that he would prefer the matter to be decided by the Tribunal itself. Resultantly, the Tribunal did not consider it necessary to deal with contention of violation of principles of natural justice.

According to the Tribunal, the impugned order dated 15 November, 2013 had recorded the reasons for issuing the directions contained in that order. It was not an order which suffers from the infirmity of non-application of mind or which does not state any reason, whatsoever, for passing the impugned order. Insufficiency of reasons can hardly be a ground for a Tribunal to interfere in the order passed by the authority.

Another aspect which created serious doubt was as to why the appellant had not produced any document, in relation to the property in question. No explanation, whatsoever, has been rendered on record for such non-production. The appellant denied the photographs placed by the Authority on record. There was no effort on the part of the appellant even to remotely prove that such huge concrete construction existed in time earlier to 2013-2014 much less prior to the date of Notification i.e. 19th February, 1991.

The Tribunal found no infirmity in the order of the Authority dated 15 November, 2013. Further, it was directed that the respondent Authority and all other concerned Authorities shall take all appropriate steps to demolish the entire new structure, whether finished or under construction. Thus, the appeal was dismissed. However, we leave the parties to bear their own costs. M.A. 1098 of 2013 was also disposed of.

Tril Info Park Limited Vs. The State Environment Impact Assessment Authority

Application No. 297 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Environmental Clearance, Consent For Establishment (CFE), expansion activity, SEIAA

Application disposed of with directions

Dated: 13 January 2015

This application was brought forth seeking to set aside the proceedings of the State Environment Impact Assessment Authority, (SEIAA), made in Reference SEIAA-TN/F-2352/2014 dated 12.11.2014 and also direct the respondent to consider the application made by the applicant for the proposed expansion dated 21.04.2014 seeking for the proposed expansion.

The case of the applicant was that the applicant was a joint venture company between the Tamil Nadu Industrial Development Corporation (TIDCO), Tata Realty and Infrastructure Ltd., and Indian Hotels Company Limited established in the year 2008 for the purpose of development of information technology, Special Economic Zone (SEZ). The applicant applied for Environmental Clearance (EC) on 08.04.2009 and also applied to the Tamil Nadu Pollution Control Board (Board) seeking for Consent for Establishment (CFE) under Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and Water (Prevention and Control of Pollution) Act, 1974 (Water Act). The CFE was granted vide the proceedings dated 30.09.2009 of the Board. Subsequently, Consent to Operate (CFO) was granted by the Board in the proceedings dated 24.07.2012 under the above Acts.

The Board sent a communication dated 24.09.2013 informing the applicant that while the total built-up area of the entire project is 5,28,277.24 metre square the approved construction area is 4,67,172,04 m square and that the constructed area exceeded the

extent specified in the CFE. Based on the SEZ Regulations there was a modification from the initial proposal for the areas of residential and commercial which were converted into IT or ITES Office Blocks. The respondent in the letter dated 23.10.2013 directed the applicant to obtain a certified compliance status of conditions imposed in the EC already issued by the MoEF from its regional office.

The respondent vide letter dated 10.10.2014 asked the applicant to furnish the certified compliance status and fresh applications in Form-I and Form-II which were filed on 21.04.2014 seeking EC for the proposed expansion. The respondent had referred to the EIA Notification dated 14.09.2006 by a letter dated 22.04.2014 informing about the penal clauses under Environment (Protection) Act, 1986 and also sought an apology letter for the deviation in the area and change in the product mix vide letter dated 04.08.2014. Despite all the above, the respondent sent the impugned letter dated 12.11.2014 stating about the stay granted on 21.05.2014 by the Zonal Bench for the Office Memorandum of the MoEF dated 12.12.2013 in Application No. 135 of 2014 and the application of this applicant for EC would be processed only after receipt of the orders of the Tribunal in this matter.

The applicant had already obtained all clearances including the clearance from the respondent and therefore, the Office Memorandum dated 12.12.2012 was not applicable to the case of the applicant. The MoEF had provided a detailed statement of compliance. Hence, it was arbitrary and unreasonable to reject the application of the applicant after keeping the same pending for a very long time under the pretext of the pendency of the Application No. 135 of 2014 before the Tribunal.

The sole respondent, namely, the SEIAA filed reply affidavit in which the SEIAA stated that the applicant submitted a fresh application on 22.04.2014 for the proposed expansion activity for built up area of 6,65,760 m square along with the certified compliance report dated 30.04.2014 from the Regional Office of the MoEF. The Project Proponent also submitted the status report along with the copy of the inspection report dated 18.06.2014 of the District Environmental Engineer of the Board wherein it was specifically stated that there was violation of EC already given. It was obvious that the applicant herein had not only changed the original scope of the project, but also violated the provision of EIA Notification, 2006 by carrying out additional construction for a changed scope without EC. Thus, it was a clear case of violation of notification as per the existing guidelines.

Though the Project Proponent furnished a letter of commitment and apology for the violation committed in the letter dated 22.08.2014, as per the procedure adopted by MoEF, the project had been delisted by the authorities and rejected as stated in the application. The application preferred by the applicant fell within the category of violation as per the provisions of the EIA Notification, 2006 and the guidelines dated 12.12.2012 and 27.06.2013 framed thereunder. Hence, action was being taken against the applicant as per the procedure laid down in the above Office Memoranda. Meanwhile, all the proposals involving violation had been held by the authorities. The

grounds raised by the applicant to the effect that action was to be taken against the violation in accordance with the EIA Notification, 2006 were incorrect as the stay of the Office Memoranda dated 12.12.2012 and 27.06.2013 restrained the authorities to process the applications of this nature.

The only point for determination by the Tribunal was whether the proceedings of the respondent in Reference SEIAA-TN/F-2352/2014 dated 12.11.2014 was to be set aside along with the direction that was asked for or not.

The learned. counsel for the applicant submitted that the official memorandum of MoEF, Govt. of India dated 12.12.2012 had no application to the project or for the further expansion sought for and hence the stay of the said memorandum granted by the Tribunal in Application No.135 of 2014 could not be applied to the present factual position. He also made all the attempts to distinguish the contents of the Office Memorandum dated 12.12.2012 with the facts of the case on hand and he would appeal that relief had to be granted.

In answer to the above, the counsel for the respondent submitted that the memorandum issued by the MoEF dated 12.12.2012 connected the application to the project of the applicant. Such communication was addressed and would further add that till the disposal of the Application No.135 of 2014 and without knowing the final result of the application, the application made by the applicant could not be processed or ordered to be passed. The Court felt that it was not necessary to go into the validity or otherwise of the Office memorandum dated 12.12.2012 since it was actually pending in Application No.135 of 2014. The stay had also been granted in respect of the application on the Office Memorandum.

The contention put forth by the applicant’s side that the Office Memorandum had no application to the expansion of the present project of the applicant and also the contention put forth by the respondent’s side that the official memorandum was squarely applied to the present project though it was an expansion did not arise for consideration. Hence, it was not considered. The applicant was only required to issue a direction to respondent authority to consider the application of the applicant pending for the past eight months and pass orders thereon. With the above observations and direction, the application was disposed of.

Goa Paryavaran Savrakshan Sangharsh Samitee Vs M/s H. L. Nathurmal & Ors.

O.A. No. 112 of 2012 &

M.A. No. 786/2014 IN O.A. No. 112/2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice (Dr.) P. Jyothimani, Dr. D. K. Agrawal, Dr. G. K. Pandey, Mr. Bikram Singh Sajwan

Keywords: mining lease, environmental damage, Environmental Clearance, illegal mining, Res Judicata

Applications dismissed

Dated: 13 January 2015

By this Judgment, 96 connected Original Applications were disposed of, as the common question of law arose that whether this Tribunal should exercise its jurisdiction in terms of Section 15 read with Section 18 of the National Green Tribunal Act, 2010, in view of the judgment of the Supreme Court in the case of *Goa Foundation v. Union of India and Ors., (2014) 6 SCC 590*?

The Tribunal referred to the facts and documents of Original Application Nos. 112 of 2013 and 134 of 2013 in the matter of *Goa Paryavaran Savrakshan Sangharsh Samitee v. Sh. Rajaram Poiguinkar & Ors* and *Goa Paryavaran Savrakshan Sangharsh Samitee v. M/s Sociedade Timblo Irmaos Ltd. & Ors*., respectively.

The Goa Paryavaran Savrakshan Sangharsh Samitee filed both these application. It was averred by them that the Portuguese earmarked 500 sites in Goa that were rich in minerals. It was announced that all these 500 sites were available on leases/concessions, for extraction of different ores/minerals from the said marked places, against payment of royalties. Respondent No. 1 had procured mining lease and Environmental Clearance was also accorded by the MoEF vide their letter dated 16 April, 2007. However, the permissions lacked in appropriate conditions being imposed for carrying on such activity including the condition requiring clearance even under the Wild Life (Protection) Act, 1972. Respondent No. 1 caused serious damage by extracting huge quantity of iron ore not only from the lease area, but even by criminally trespassing, the area around the said mining lease granted to Respondent

No. 1.

The applicant sought restoration of extensive damage of the environment and forest area in the ‘Buffer Zone’, close to one of the eco-sensitive Wild Life Sanctuaries, caused by Respondent No. 1 and other respondents in all other connected applications. Applicant also relied upon the judgment of the Supreme Court in the case of Goa Foundation (supra) to state that it is the liability of the respondent to restore the environment and ecology and referred to the exhaustive report submitted by Justice M.B. Shah Commission.

It was also the case of the applicant that Respondent No. 1 and all respondents in the connected applications violated the conditions of the Environmental Clearances granted to them. The applicant also made allegations against Ex Minister and Chief Minister that they abused their power and have colluded with the respondents in illegal extraction and export of minerals from the State of Goa. A large quantity of extracted mine was lying in the form of dumps in and around the mining area. These dumps themselves were a threat to the environment.

The applicant primarily raised the issue in regard to the mine dumps being there within and outside the leased area and that the Tribunal should issue directions in that regard. The other prayer relates to restoration of the damage done to the environment and ecology in the mined area and that the respondents in all these applications should be directed to pay compensation of Rs.1250 Crores or such other amount as the Tribunal may determine.

Respondent No. 1-State of Goa denied allegations made against the former Chief Minister, Minister and executive. The preliminary objections had been raised that the Supreme Court of India was examining the entire matter in the case of Goa Foundation (Supra) and, therefore, this Tribunal should not hear the present and all connected applications.

During the pendency of the proceedings before the Tribunal, M.A. No. 1020 of 2013 and 472 of 2014, were filed by the respondents praying that the proceedings of the main application and connected matters be stayed or kept in abeyance. These applications were dismissed vide order of the Tribunal dated 3 September 2014 and directions were issued stating that proceedings in all these applications would continue. M.A. No. 611 of 2014 was filed praying for issuance of directions to implement the order of the Tribunal dated 19 August, 2014, which was ultimately dismissed. Thereafter, in the Original Application, another application being M.A. No. 786 of 2014 was filed, praying for clarification of the order dated 3 September, 2014, passed by the Tribunal and that the proceedings in all these cases should continue. It was averred that the Order dated 3 September, 2014 was passed by a larger Bench and a smaller Bench could not pass a conflicting or varying order.

Supreme Court asked the Expert Committee to submit its report within six months

before the Supreme Court. The State Government had been directed to permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps. The Goa Pollution Control Board was also directed to monitor air and water pollution in the mining areas.

The Apex Court had not only asked the appointed Expert Committee to conduct a macro-EIA study and propose ceiling of the annual excavation of iron ore from the State of Goa, but had specifically kept the matter pending before it and directed filing of different reports within the prescribed period of six months or one year respectively. How the Permanent Fund is to be used, what will be the extent of mining; how would there be restoration of the damaged ecology and environment; further appropriate directions in regard these matters were to be issued by the Supreme Court in future. In the light of this, the issues raised before the Tribunal were covered by the judgment of the Supreme Court in the case of "Goa Foundation" (supra) and were subject to further directions which the Supreme Court of India may pass in future.

According to the applicants, the present application was not hit either by the principle of res judicata or of constructive res judicata. It is the contention of these applicants that neither the matters raised in these applications have been heard nor finally decided by the Supreme Court in the case of "Goa Foundation" (supra). According to the Respondents, firstly the very foundation of the issue raised in the present application was the same as that of the petition pending before the Supreme Court of India. Secondly, matters raised in this application were directly and substantially in issue before the Supreme Court which had been decided finally in the case of Goa Foundation (supra). Whatever matters remained, upon which the Expert Committee had been directed to submit its report, were still to be finally dealt with and decided by the Supreme Court.

The Learned Counsels for the applicants advanced another argument that the Permanent Fund established by the Supreme Court was intended to provide for intergenerational equity and sustainable development and did not cover restoration of the degraded environment and ecology in the mined areas. It is not possible to give the doctrine of Sustainable Development such a restricted meaning that would result in eroding the very essence of the principles governing this doctrine. Sustainable Development means the development that can take place and which can be sustained by nature, ecology with or without mitigation. In such matters the required standard is the risk of harm to environment or to human health is to be decided in public interest according to a 'reasonable persons test'. Thus, the Tribunal rejected this contention.

The Tribunal also did not agree with the contention of the applicant that the respondents should be directed to approach the Supreme Court of India for appropriate direction and/or clarification. Such an approach by the Tribunal had not found approval from the Supreme Court in various cases.

The applicants had raised issues which were directly and substantially in issue and were matter of adjudication before the Supreme Court or are covered under the directions contained in para-88 of the judgment in the case of Goa Foundation (supra) and its implementation. Thus, the Tribunal did not proceed any further with these applications on merits, as they were not maintainable and in any case, in view of the Principle of ‘Judicial Propriety’ it is not expected that the Tribunal would deal with the issues raised and prayers made in these applications any further or otherwise.

The Tribunal answered the question raised at the very outset of the Judgment in the negative and held that the Tribunal had no jurisdiction to entertain these applications. In any case, it will not be appropriate for this Tribunal to proceed with the hearing of these applications ‘on merits’ on the ground of ‘judicial propriety’. All the above Original Applications and Miscellaneous Applications were, therefore, dismissed.

M/s. Laxmi Suiting Vs. Chairman, Rajasthan State Pollution Control Board

Original Application No. 509 of 2014

AND

M.A. Nos. 880 of 2014 & 881 of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Dr. G. K. Pandey, Mr. B. S. Sajwan

Keywords: Natural Justice, Financial Liability, Pollution, CETP

Applications disposed of

Dated: 13 January 2015

Jodhpur PradushanNiwaran Trust (JPNT) vide its letter of demand/order dated 27th October, 2014 demanded an additional sum of Rs. 3,00,000/- from the applicant herein on the ground that it had upgraded its Common Effluent Treatment Plant (CETP). This was done with the purpose of ensuring adequate capacity of the CETP to enable JPNT to allot the discharge capacity to the new applicants of Rajasthan Industrial Investment Corporation (RIICO). The applicant challenged the legality and correctness of this order, inter alia, but mainly on the following grounds:

(a) The order had been passed in violation of the principles of natural justice as no person can be made liable without providing him an opportunity of being heard.

(b) The order of the Trust was in direct conflict with the judgment of the Tribunal dated 1 May, 2014.

In the submission of the applicant, the impugned order was liable to be set aside.

According to the Tribunal, firstly, from the impugned order itself it was evident that no opportunity of being heard had been granted to the applicant. The counsel for the applicant had relied upon the judgment of the Tribunal in the case of *M/s. Sesa Goa*

Limited and Anr. v. State of Goa &Ors, (2013) All India NGT Reporter (1) PB 55.

The other contention raised on behalf of the applicant also had merit. In the judgment of the Tribunal dated 1 May, 2014, in *M/s Laxmi Suitings v. State of Rajasthan and Ors.* it had been stated that all the industrial units operating in and around the industrial estate and even those operating in non-conforming areas without consent of the Board shall be liable to pay a sum of Rs. 5 lakhs each to the State Government or Board for causing pollution during all these years and having failed to take appropriate measures and establish anti-pollution devices, as required under the law. This shall be a one-time payment on the basis of 'Polluter Pays Principle'. The amount so collected from all the units shall be utilized exclusively for upgradation/expansion of the existing CETP and for establishment and development of new industrial estate and CETP in future.

The counsel for the applicant had also relied upon the recent order passed by this Tribunal in the case of *M/s. Himca Textiles v. Chairman Rajasthan State Pollution Control Board*, Application No. 514/2014, decided on 4 December, 2014 wherein the matter had been remanded to the Managing Trustee of the Jodhpur Pradushan Nivarak Trust for hearing in accordance with law and for passing appropriate orders in regard to the direction for payment of an additional sum of Rs. 3 lakhs, over and above the sum of Rs. 5 lakhs that had been paid by the applicant.

The applicant was entitled to the benefit of the order of the Tribunal in the case of M/s. Himca Textiles (supra). The applicant was also entitled to the relief claimed, as both the contentions raised by the applicant had merit.

Thus, the Tribunal allowed this application only to the limited extent that the order dated 27 October, 2014, of the Jodhpur Pradushan Nivarak Trust is set aside, with specific opportunity to the respondent no. 5 to pass an order afresh, after hearing the applicant. The applicant was to appear before the Managing Trustee of Respondent No. 5 on 28 January, 2015 at 11.00 a.m. and submit his reply, if any, treating the order dated 27 October, 2014 as a notice to show cause. Respondent No. 5 was to hear the applicant and pass order in accordance with law within two weeks thereafter. The main application stood disposed of accordingly.

M.A. Nos. 880/2014 (for production of documents) & 881/2014 (for stay)

Both these application did not survive for consideration as the main application stood disposed of. Resultantly, both these applications were also disposed of as having become infructuous.

Himmat Singh Shekhawat & Ors. Vs. State of Rajasthan & Ors.

Original Application No. 123 of 2014

and

M.A. No. 419 of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice M. S. Nambiar, Dr. D. K. Agrawal

Keywords: Environmental Clearance (EC), mining lease, illegal mining

Applications disposed of with directions

Dated: 13 January 2015

Many applications were clubbed into one application. The National Green Tribunal Bar Association filed Original Application No. 171 of 2013 under Sections 14 and 15 read with Sections 18 (1) and 18 (2) of the National Green Tribunal Act, 2010 stating that illegal sand mining in the Yamuna riverbed was going on in violation of law, without taking prior Environmental Clearance. The applicant relied upon the judgment of the Supreme Court in *Deepak Kumar v. State of Haryana, (2012) 4 SCC 629*. The application was filed with the prayer that the Tribunal should direct the authorities to take appropriate legal action against all sand mining which was being carried on without seeking prior Environmental Clearance or wherever Environment Clearance has been granted, in violation of its conditions. It was also prayed that respondent authorities should formulate proper scheme to prevent illegal mining.

When this application came up for hearing before the Tribunal on 5 August, 2013, the Tribunal passed a detailed order directing all concerned to prohibit illegal mining, particularly, on the riverbeds. On 14 August, 2013, when the case again came up for hearing, the Tribunal, issued certain directions and also required the States to submit a status report as to what steps had been taken by them in furtherance to the Judgment of the Supreme Court in the case of Deepak Kumar (supra).

Against the order of the Tribunal dated 5 August, 2013, the State of Madhya Pradesh

had preferred an appeal before the Supreme Court of India. In that appeal, it was stated that an application had been filed, being M.A. No. 685 of 2013, before the Tribunal, for modification of the order dated 5 August, 2013 praying that a District Level Committee shall be constituted to grant permission to carry on mining at the district level and that the Tribunal had not passed any final order in that regard. The Supreme Court vide its order dated 16 August, 2013, disposed of the appeal.

Another Original Application No. 279 of 2013(Thc) was filed praying that the order dated 30 August, 2013, passed by the Mining Officer, Solan, Himachal Pradesh be quashed and set aside. In view of the order dated 5 August, 2013, the authorityrestrained the applicants from carrying on any mining activity or removing sand from the riverbed without obtaining Environmental Clearance from MoEF/SEIAA. The lease had been granted to the applicant on 29 March, 2011, i.e., prior to Deepak Kumar's judgment (supra) and as such, the order of the Tribunal dated 5 August, 2013, was not applicable to their case. Therefore, the order passed by the Mining Officer, Solan, Himachal Pradesh was liable to be set aside and they should be permitted to carry on with their activity.

Himmat Singh Shekhawat filed an Original Application No. 123 of 2014, submitting that, he was the holder of Letter of Intent issued by the State of Rajasthan for excavation of minor mineral. According to him, he fulfilled three conditions for the grant and execution of mining lease. On 8 January, 2014, the State of Rajasthan issued guidelines as well as a notice on 6 May, 2014 for auction of minor minerals. The applicant was aggrieved from the procedure being adopted by the State Government. Thus, he prayed that the guidelines issued by the State of Rajasthan dated 8 January, 2014 and the Public Notice dated 6 May, 2014, by the State of Rajasthan, should be quashed and as an interim order, its operation should be stayed.

According to State of Rajasthan, post Notification dated 9 September, 2013, issued by the MoEF, they had not granted any mining lease without Environmental Clearance. However, in the period between 27 February, 2012 and 9 September, 2013, mining leases for minor minerals were granted to all the private respondents as no Environmental Clearance was required for such activity.

The Supreme Court, while setting aside the order of Himachal Pradesh High Court, which had permitted one year period for the lease holders to obtain Environmental Clearance, had directed stoppage of mining operations on the ground that the order was passed without granting opportunity of representation to the lessees who were having a valid lease.

The stand of MoEF in these cases was that the Ministry had already taken a decision on 2 September, 2014 that no Environmental Clearance will be granted for extraction of minor minerals from any river bed where the area is less than 5 hectare in terms of its Office Memorandum dated 24 December 2013.

According to the State, prior to Deepak Kumar's judgment (supra), mining in less than 5 hectare was allowed without Environmental Clearance. Hence, order in the case of Deepak Kumar (supra) had no application to the leases which existed prior to 27 February, 2012, and accordingly, Notifications issued by the MoEF dated 9 September, 2013 and 16 December, 2013, had no application to these cases.

Another material issue that was in consideration was whether State Rule providing for mining activity to be carried on in an area of less than 5 hectares would cause environmental concerns, particularly when no Environmental Clearance was obtained for the same. This was answered in the affirmative. Indiscriminate, uncontrolled and unregulated mining activity being carried on in any area, particularly the riverbed, was bound to have an adverse impact on ecology and environment.

Appeal No. 23/2014 as well as M.A. No. 469/2014, M.A. No. 469 of 2014, 470 of 2014, 473 of 2014 479 of 2014, 480 of 2014 488 of 2014, 489 of 2014 could be disposed of merely by a direction to the concerned authorities to consider and dispose ofthese applications for grant of Environmental Clearance expeditiously. The mining activity of all these respondents had been prohibited under the orders of the Tribunal, primarily on the ground that they had not received Environmental Clearance. If applications are filed as cluster and the total extent of the cluster exceeds 5 hectares, the entire cluster will be taken as a unit for granting Environmental Clearance, subject to all the owners joining the cluster application.

Thus, the respondent authorities, particularly SEIAA, were directed to dispose of the applications of all these private respondents seeking Environmental Clearance as expeditiously as possible, not later than three months. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014, and 469/2014 stood disposed of.

Keeping in view the persistent conflict between the State Regulations and the Central Notifications, the Tribunal passed the following directions:

I. Notification dated 9 September 2013 was invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986

II. Office Memorandums dated 24 June, 2013 and 24 December, 2013 to the extent afore- indicated are invalid and inoperative being beyond the power of delegated legislation.

III. Existing mining lease right holders would have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. They would be entitled to a reasonable period (three months) to submit their applications for obtaining the same, and in any case not later than six months.

IV. All the States and the Ministry of Environment and Forest shall ensure strict

compliance to the directions issued by the Supreme Court in the case of Deepak Kumar (supra).

V. The Secretary, MoEF was to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006. It shall also discuss recommendations to be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, and the related conditions.

VI. Secretary, MoEF along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.

VII. The respondent authorities, particularly SEIAA, were to dispose of the application of all the private respondents who had already filed applications seeking Environmental Clearance, not later than three months. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stood disposed of.

VIII. Original Application No. 123/13 was disposed of with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law in within a period of three months.

The Original Applications, Miscellaneous Applications and Appeals were accordingly disposed of while leaving the parties to bear their own costs.

Mohali Industry and Commerce Association Vs. State of Punjab &Ors.

M.A. No. 773 of 2014

AND

Original Application No. 139 of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi

Keywords: Mohali, Environmental Pollution, Illegal Dumping, Municipal Solid Waste,

Application disposed of with directions, M.A. dismissed

Dated: 13 January 2015

The applicant filed the present application under Sections 14 and 15 read with Section 18 of the National Green Tribunal Act, 2010 against the pollution and environmental degradation caused by the illegal dumping of industrial and Municipal Solid Waste (MSW) by the Municipal Corporation, Mohali in rivulet “Patiala Ki Rao” and in the surrounding areas. The prayer was that the Corporation be directed to immediately stop illegal dumping of Mohali’s industrial, municipal, medical and toxic waste and garbage in the rivulet of “Patiala Ki Rao” and the surrounding areas. They should be directed to clean and remove all illegal dumping at the site in question. Notice of this application had been issued to the respondents.

Vide order dated 7 August 2014 the Tribunal had constituted a Committee of Senior Officer of the State of Punjab from Environment Ministry, Environmental Engineer of Punjab Pollution Control Board, a Senior Officer of the Corporation and a Senior Officer of Urban Development Ministry, State of Punjab to visit the site and submit a report in regard to the status of the site in question and dumping of MSW on such site. On 29 September 2014 when the matter came up before the Tribunal, it was noticed that the authorities would get in touch with each other; particularly the Punjab Pollution Control Board and effective steps were to be taken to remedy the shortcomings that had been pointed out by the Committee. For compliance thereof the

matter was adjourned. Thereafter, a detailed affidavit was filed on behalf of the Corporation, submitting the details of the project and the measures that the Corporation proposes to take not only to dump the MSW but also other wastes in accordance with the Municipal Solid Waste (Management and Handling) Rules, 2000 and other cognate provisions.

It was the common stand taken on behalf of all the respondents that Mohali shall form part of the Model MSW Management Plan, 2014 as it was one of the eight clusters carved out for the entire State of Punjab. They would establish the MSW plant expeditiously and in any case, within a period of two and a half years. Once this plant was established, all grievances raised by the applicant would cease to exist and there would be no adverse impact on environment. They further submitted that the land that had been acquired for construction of the project had to be released from notification as the result of the judgment of the Supreme Court in the case of *Gurinderpal Singh &Ors. V State of Punjab & Ors.*, Civil Appeal No. 10181/2013 decided on 11 November, 2013.

One of the contentions raised by the applicant was that even after filing the present application, no effective steps had been undertaken by the authorities to remedy the wrongs existing at the dumping site in question. One of the aspects of the present case was that the industrial waste and other wastes from the industrial area were not being collected by the Corporation and were not being dealt with in accordance with the MSW Rules of 2000.

Thus, this application was disposed of with the following directions: -

1. The Corporation and all other concerned authorities shall ensure completion of acquisition proceedings at the earliest and in any case not later than one year, as prayed by the Learned Counsel appearing for these authorities.

2. The MSW Plant shall be completed and made operational by all concerned as expeditiously as possible and in any case not later than January 2017.

3. The directions passed and the plan accepted by the Tribunal in the case of People for Transparency shall mutatis mutandi operate and apply to this case, as well as that order shall be treated as integral part of these directions.

4. The present site in question would be treated as a ‘temporary dumping site’. On this site, the Corporation and all other concerned authorities shall collect, segregate, dump and dispose of the MSW and other waste strictly in accordance with the Rules of 2000 and/or other relevant Rules.

5. There shall be door to door collection of the municipal waste and it shall be manually segregated at the collection points as well as at the loading points

and finally at the dumping site.

6. The waste that is recyclable shall be given to licensed persons who are entitled to recycle plastic and other waste. Every effort would be made to send this plastic waste and other allied waste that could be used as fuel, to such industry and units which can consume such waste as fuel. Remnant garbage and MSW shall be dumped at the site in question after constructing proper pits with proper lining. The waste shall be covered by soil. There shall be spray of disinfectant at regular intervals to ensure that there is no foul smell emanating or the environment is not contaminated in any manner, whatsoever.

7. The Municipal Corporation shall carry out collection of waste from door to door and from the transportation points regularly and without default. For the above, the Municipal Corporation would be entitled to prepare a schedule of environmental charges which every household, commercial, institutional or industrial units and/or any other person, living in and/or occupying any building, would be liable to pay, depending upon the area occupied by such person and approximate waste generated. The authorities will ensure provision of a green belt/temporary boundary wall around the temporary site.

8. The Municipal Corporation shall be liable to collect the MSW and all other wastes from the industrial area in accordance with the Rules of 2000.

9. The Corporation shall provide dustbins of distinct colours preferably green, red and black with appropriate signage upon it describing the kind of waste that can be put into that dustbin. This must be provided in the entire residential and industrial area falling under the jurisdiction of the Mohali Municipal Corporation.

10. The Corporation shall fix responsibilities on concerned officers of the area, to ensure compliance of these directions.

11. The Head of the Corporation shall report compliance of these directions to the Secretary (Environment), State of Punjab and Secretary, local bodies, State of Punjab, who in turn, shall inspect the temporary site in question, as well as observe the progress of completion of project, in accordance with the Rules of 2000.

12. In the event of default in compliance of these directions, the Tribunal would be compelled to pass coercive orders in accordance with the provisions of the NGT Act and the Code of Civil Procedure, 1908.

13. The applicant or any other person was given the liberty to approach the Tribunal in the event of persistent defaults on the part of the Corporation and/or other concerned authorities.

M.A. No. 773/2014

This application did not survive for consideration as the Original Application No. 139 of 2014 was disposed of. Consequently, this application stood dismissed as having become infructuous.

Manoj Misra & Anr. Vs. Union of India &Ors.

Original Application No. 6 of 2012

And

M.A. Nos. 967/2013 & 275/2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf

Keywords: River Yamuna, Dumping of Debris, Construction Activity, Drains, Polluter Pays Principle

Application dismissed with directions

Dated: 13 January 2015

The primary subject matter of the Original Application No. 6 of 2012 was the recent encroachment and dumping of building debris and other solid waste in the river bed/flood plain and even into the natural water body of River Yamuna. The applicant had prayed in Original Application No. 6 of 2012 that all the debris and other solid waste dumped in the river bed should be directed to be removed and the natural water body be restored to its original form.

The grievance of the two applicants in Application No. 300/2013 was in regard to the ongoing encroachments and the conversion of Kushak Drain into parking and road-cum-parking space and conversion of land use of the Shahdara Link Drain from 'utility' to 'commercial' and proposed construction of commercial undertaking in the form and nature of "Delhi Haat" - a commercial shopping complex, over and above the drain.

The applicants prayed that the Tribunal should direct stopping of construction activities on both these drains, that the drains should not be covered, that Expert Committees should be appointed to suggest methods for maintenance of storm water drains as ecologically secure green ways and the respondents or any other person be prohibited from demolishing or destroying the natural and/or artificial drains in Delhi.

According to the Delhi Pollution Control Committee ('DPCC') and the State Level Environmental Impact Assessment Authority ('SEIAA'), it was stated that these projects may fall within the Clause 8(a) of Environmental Impact Assessment Notification, 2006 and if that be so, the SDMC or the Delhi Municipal Corporation or any other agency, had not approached any of the respondents for getting Environmental Clearance, ought to have been taken. In Original Application No. 6/2012, respondent no. 1 had taken the stand that the present application did not involve substantial question relating to environment. According to them, it was the responsibility of all the concerned State Pollution Control Boards to control and monitor the discharge of industrial effluents in order to ensure that untreated industrial effluents do not fall into the river.

The DDA/respondent no. 3 stated that the DDA was not the person responsible and hardly any relief could be claimed against them under the provisions of the NGT Act, 2010. According to this respondent also, the responsibility was on the municipalities and municipal authorities for dealing with MSW. According to the respondent nos. 2, 4 and 5, the Tribunal had no jurisdiction to entertain this application, as it did not involve any substantial question of law relating to environment.

Vide order dated 31 January 2013, the Tribunal directed State of UP, the DDA, Government of NCT of Delhi and the East Delhi Municipal Corporation to start the removal of debris from the river banks and the water bodies mentioned in the petition near River Yamuna. All authorities were also directed to identify the sites for dumping of debris and waste and in the meanwhile all construction debris was directed to be transported to the site at Gazipur.

Vide order dated 1 February 2013, a Special Committee was constituted. The Tribunal had also appointed Local Commissioners to visit the sites in the entire stretch of Yamuna that flows in Delhi and to report with regard to removal of construction debris and other waste. The reports from the Local Commissioners had shown that the directions issued by the Tribunal were not being carried out. The report of the High Powered Committee was provided to all the authorities and they were directed to remove the debris thrown by the respective authorities and take them to the earmarked sites. The Tribunal also directed all concerned authorities to ensure that no fresh debris or waste was thrown on the riverbed. In the order dated 17 July, 2013, the Learned Local Commissioners had filed their respective reports. They brought to the notice of the Tribunal that dumping continued on the river bank particularly in Geeta Colony.

In the order dated 22 July, 2013, the Tribunal, while invoking the 'Polluter Pays' Principle, directed that any person who was found dumping debris on river bank in Geeta Colony site or any other site, shall be liable to pay compensation of Rs. Five Lakhs.

The MoEF had constituted an Expert Committee vide its order dated 13 September,

2013. This Committee was to critically analyse and examine the YRFD Plan of DDA, steps to be taken for further improvement of river bank and also to consider other relevant aspects. This Committee submitted its report on 19 April, 2014.

The Expert Committee opined that 32 STP's ought to be installed at minor and major drains of Delhi, in addition to the existing STP's. Once these proposed STP's are established and made operational, the drains would be kept clean and would be ensured that sewage does not enter these drains. The Committee also made certain other recommendations.

The area proposed for the implementation of YRFD scheme was the active Flood Plain which was frequently flooded by medium floods. According to the Expert Committee, the proposed activities will reduce the flood carrying capacity and aggravate flooding. It thus, for the reasons stated in its Report, suggested that the YRFD plan of DDA was untenable and should be stopped and be replaced by another plan for restoration of the river and its floodplain.

To ensure complete and effective implementation of the recommendations made by the Expert Committees in their reports, the Tribunal issued the following directions:

i. The entire project, called 'Maily Se Nirmal Yamuna', shall be completed by 31 March, 2017.

ii. The concerned agencies shall prepare their respective Action Plans in terms of the reports as well as this judgment and submit it to the Principal Committee constituted, in not later than four weeks from the date of pronouncement of this judgment.

iii. (a) The DJB and other concerned Corporations under whose jurisdiction the existing STPs fall, shall ensure that all these STPs should be made fully operational and up to date with the technology. The water released should be recycled and prevented from being discharged into the River Yamuna.

(b) All the industrial clusters in Delhi shall be provided with Common Effluent Treatment Plants (CETPs).

iv. The flood plain should be identified for the flood of once in 25 years in the by the DDA on a map. Any construction activity or any cultivation in the demarcated flood plain was prohibited. Also, no dumping of debris or anything else was allowed on that area. The violator shall be liable to pay compensation of Rs. 50,000/-.

v. All the concerned authorities, corporations, bodies were to clean all the 157 natural storm water drains within four months.

vi. Existing wetlands and water bodies, should be deepened and enlarged. The Chief Secretaries of the States of Himachal Pradesh, Uttarakhand, NCT of Delhi, Haryana and Uttar Pradesh, Secretary, Water Resources, Government of India and Secretary,

MoEF, were to hold a meeting within four weeks to prepare an immediate action plan required to ensure proper environmental flows throughout the year.

vii. Restricted activities of floriculture and silviculture could be carried on, subject to specific permissions and restrictions as may be imposed by the authorities/Principal Committee and also subject to the orders of the Courts.

viii. The Government of the NCT of Delhi and the neighbouring States shall, within a period of three months, identify the site where the sludge/dredged material from the drains and River Yamuna is to be stored.

ix. If needed, the public authorities/Municipal Corporations could require the public to contribute to any expenditure based on the 'Polluter Pays' Principle. Funds/compensation so collected shall exclusively be used for this project. The charges could be collected as part of the property/house tax.

x. The concerned authorities should place large-sized dustbins, beyond the demarcated Flood Plain and towards the inhabitation, as well as in the bio-diversity parks. They shall issue circulars, display signages etc. for educating people at large for effective completion of this project.

xi. All concerned authorities shall deal with utmost priority in case any application in furtherance to any construction or authorization is moved by any of the authorities, Corporations or DJB, directly or through the Principal Committee, in execution of the Project.

xii. The 'Principal Committee' was constituted which shall be responsible and under whose supervision the directions contained in this judgment and the project reports shall be complied with. All concerned Authorities responsible for carrying out directives of this judgment, shall report the matters and submit the respective reports and data to the Principal Committee. The Committee shall file quarterly report of compliance before the Tribunal.

In view of the above discussion, Original Applications and M. A. stood disposed of in terms of this judgment. The parties were left to bear their own costs.

Prem Chand Guleria & Anr. Vs. Union of India & Ors.

Original Application No. 27 of 2014

and

M.A. Nos. 92 of 2014, 140 of 2014, 314 of 2014 & 752 of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice M. S. Nambiar, Dr. D. K. Agrawal, Prof. Dr. A. R. Yousuf

Keywords: Illegal Mining, Air Pollution, Forest Area, Forest Clearance, License

Application disposed of with directions

Dated: 13 January 2015

The applicant instituted this application under Section 18(1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010 praying that the official respondents be directed to stop the illegal and unauthorised mining activity and stone crusher plant being run by private respondent no. 5. Further, the official respondents should also be directed to do an Environmental Impact Assessment and prepare proper plan in that regard. The private respondent should also be directed to pay damages and penalty for causing harm and damage to the environment.

These reliefs were prayed on the premise that the applicant was residing in the village at a distance of less than 1000 meters, from the site where the private respondent no. 5 was carrying the illegal mining and stone crushing activity. It was averred by the applicant that the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No. 228 of 2002, had declared the entire land of Himachal Pradesh to be a 'Forest Land' and, thus, directed a complete ban on stone crushing activities in the State. As a result thereof, only those stone crushers were permitted to operate which already had the necessary clearances and approvals, required under the law. Respondent no. 5, was also permitted to carry on such activity and was holding a valid licence till 30 December, 2003. Thereafter, the land was declared as a forest area, thus, requiring respondent no. 5 to take Forest Clearance under the Forest (Conservation) Act, 1980.

Despite the fact that the said clearance had not been granted, respondent no. 5 continued to operate till 15 September, 2009.

It was the case of the applicant that respondent no. 5, in collusion with the official respondents fabricated the records and the official respondents helped respondent no. 5 in carrying on with the illegal mining. Even though, respondent no. 5 had requested for M-Forms on 30 October, 2006, but they appeared to have been issued in backdate from April, 2004. The Forest Department conducted an inspection on 2 September, 2003 on the land of respondent no. 5, which was different from the land on which the stone crushing activity of respondent no. 5 was going on. The inspection was conducted without the presence of the Sub Divisional Magistrate (SDM) of the area, in violation of the Policy Guidelines for Registration, Location, Installation and Working of Stone Crushers in Himachal Pradesh dated 10 August, 2004. Further, according to the applicant, the permission granted to the private respondent was based on incorrect facts and the lease deed dated 18 June, 2011, was executed, with respect to private land in Khasra No. 25/1, which was a land where no mining activity had been ever carried out.

The respondent no. 3 filed a reply, stating that the house of the applicant was at the aerial distance of more than 1000 mtr and by road it was 5 kms from the crusher site. A separate reply on behalf of respondent no. 2 and 4, was filed, where according to them, respondent no. 5 had installed the stone crusher at Khasra no. 1267/1, after obtaining prior approval from the Competent Authority during the year, 1999. Referring to the Policy Guidelines, it was submitted that the said parameters had been provided in terms of distance and that the stone crusher site of respondent no. 5 was within the permissible limits. After the expiry of earlier mining lease, respondent no. 5 had applied for mining lease for private land having Khasra no. 25/1 and accordingly a mining lease which falls in district Hamirpur, was granted in favour of respondent no. 5 vide order dated 13 July, 2004. It was stated that in compliance of the order of the Tribunal dated 5 August, 2013 in OA No. 171/2013, NGT *Bar Association v. Union of India*, the above sanctioned mining leases of respondent no. 5 had been suspended and that respondent no. 5 was running stone crushing activity only on the basis of old stacked stocks. On these facts, it was prayed that this application be dismissed.

Along with the main application, the applicant also filed M.A. No. 140 of 2014 praying that the illegal activity of mining and running of stone crusher by respondent no. 5 should be immediately stopped. In fact, the applicant had filed two more applications, viz., M.A. No. 92 of 2014 and M.A. 314 of 2014, with similar prayers. Respondent no. 5 stated that the illegal operation of the crusher was being done by one Smt. Ruma Devi. Resultantly, the State Government had imposed a penalty against Smt. Ruma Devi for a sum of Rs. 3,29,35,000/-. This land was ‘Forest land’, but was being used for carrying on stone crushing activity in an unauthorised and illegal manner.

Respondent No. 5 had not placed any documents on record showing that he was granted consent to establish and operate by the HPPCB and that he holds a mining lease for the area in question. After the arguments were over, the learned Counsel appearing for respondent no. 5 placed a copy of the order dated 15 November, 2014, by which the HPPCB had renewed the consent for functioning of stone crusher at the premise in question. Similarly, respondent no. 6, did not file any proper reply. It was only at the time of final arguments on 8 December, 2014, that certain documents were placed on record, showing her interest in the land in question. A copy of the affidavit sworn by Smt. Ruma Devi was placed on record stating that in furtherance to penalty notice dated 28 August, 2014, an amount of Rs. 2,61,74,300/- had been deposited and the balance sum of Rs. 39,26,145 is due. The HPPCB even issued an order dated 27 October, 2014, to respondent no. 6, granting renewal of the consent, on the conditions specified in the said order. The consent was stated to be valid till 23 December, 2014. Presently, respondent no. 6 was operating without any valid consent.

The question before the Tribunal was whether the units run by respondent nos. 5 and 6, including their mining activity, were operating in accordance with law or not?

As per condition no. 1 of the consent order dated 15 November, 2014 issued by the HPPCB, renewal of consent was valid till 29 December, 2014 or till available stocks were exhausted, whichever was earlier. Further, condition no. 10 stated that the unit can carry out production only with the permission of the mining department. These conditions in terms were contradictory, if the unit had to only be permitted to deal with the stocks lying on the site, there could be no question of the unit carrying on production activity. Also, the State Government had imposed heavy penalty upon respondent no. 6 for carrying on illegal and unauthorised mining and stone crushing activity.

In light of everything, the Tribunal disposed of the Original Application with the following directions:

a. A Special Committee was constituted which would inspect the sites of mining and stone crushing activities of both respondent nos. 5 and 6. This Committee shall conduct a joint inspection, without notice to either respondent nos. 5 or 6 and submit a report on the following:

i. Verify whether the stone crushers are operating or not.

ii. Whether respondent nos. 5 and 6 were operating under a valid and operative consent from the HPPCB.

iii. Have these units obtained permission of the concerned Department or

Authority and hold mining lease for carrying on such activity?

iv. Capacity of the stone crusher, its source of raw material, water supply and electricity etc.

v. Are these stone crushers offending any prescribed distances or limits and are violating any of the conditions or requirements of the mining policy of the State and/or the judgment of the Supreme Court in Deepak Kumar's case and/or orders of the National Green Tribunal.

vi. Whether respondent no. 5 and/or 6 have obtained mining licences, and if so, for which area and have they restricted their mining activity to that area alone.

b. No consent shall be granted and/or renewed in relation to these units, without taking into consideration the inspection report that was to be prepared by the Special Committee appointed under this order.

c. The Special Committee shall observe whether both these crushers provided all requisite anti-pollution devices and will also collect samples of stack and ambient air quality and place the analysis reports before the Tribunal along with its final report.

Thus main application stood disposed of, the four Miscellaneous Applications also stood disposed of in terms of the above order.

Rajiv Narayan &Anr. Vs. Union of India &Ors.

M.A. No. 762 of 2014

in

M.A. No. 44 of 2013

O.A. No. 36 of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf

Keywords: Industries, Air Pollution, Water Pollution, Water Cess

Application disposed of with directions

Dated: 13 January 2015

According to the applicant, it was noticed that small and big industries that were emitting black smoke in the area, were causing air pollution and health hazards to the local residents. The MoEF, vide its order dated 31st August, 2010, had imposed a suspension on consideration of projects for Environmental Clearance, which were located in a critically polluted area/ industrial cluster, identified by the CPCB. One of the polluted areas identified by the CPCB was Ghaziabad and consequently this moratorium became applicable to that city. The applicant prayed for issuance of various orders, including closing of the polluting industries, strict implementation of prescribed standards and ensuring complete implementation of the action plan for improving air quality within the scope and ambit of the Acts specified in Schedule I of the NGT Act.

Vide orders dated 15 January 2013 and 15 February 2013, the Tribunal had directed the joint team of CPCB and Uttar Pradesh Pollution Control Board (UPPCB) to inspect the sites and give a report to the Tribunal. The industries that were operating without consent of the Board and without permission of the competent authorities and were causing pollution were ordered to be closed. It came to the notice of the Tribunal that large no. of industries were permitted to carry on their operation by issuance of

NOC without obtaining the consent of the UPPCB. M/s Rathi Steel and Power Ltd. was stated to be one of the most seriously polluting industry. This unit had been given time by CPCB and UPPCB to take proper steps and measures to prevent and control the pollution. These measures had not been taken despite repeated extensions. In order to take preventive steps for water, air and noise pollution, the Unit had changed its manufacturing technology from time to time.

UPPCB issued a Closure Notice on 18 January 2013 to this Unit which was challenged by the applicant who filed a Writ Petition (Civil) No. 437 of 2013 in the High Court of Delhi challenging the order of the Tribunal dated 15th January, 2013 and the Closure Notice dated 18 January 2013 issued by the UPPCB. Delhi High Court by order dated 24 January 2013, granted liberty to the applicant to either approach the Tribunal or the Supreme Court of India. The Supreme Court vide its order dated 8 February 2013 extended the stay order for another two weeks from 8th February, 2013 to enable the applicant-industrial unit to run their industrial unit. Vide order dated 8 February 2013, the Supreme Court gave liberty to the applicant to approach the Tribunal for modification of the order dated 15 January 2013 and extended the time granted by the High Court for a further period of two weeks without making any observation on the merits.

The applicant however filed an Miscellaneous Application (M.A. No. 44 of 2013) praying that the industrial unit was ready and willing to comply with all the norms to bring the industry within the permissible limits of pollution. On these specific averments, the applicant made the following prayers:

(a) Pass appropriate direction granting time to the applicant-industrial unit till 25.4.2013, for revamping and installation of most modern equipments to bring the air pollution within the permissible limit and till then the applicant- industrial unit may be permitted to operate its industrial unit;

(b) Pass such other or further order/s as this Court may deem fit and proper in the interest of justice."

The Tribunal while clearly noticing the above stand of the unit, and its assurance to do the needful by 25 April 2013, ordered it not to be closed. However, it was made clear that in the event of default of compliance of the directions, the order itself shall be deemed to be a closure notice to the industry. With these directions, the application was disposed of vide order dated 21 February, 2013.

The main application, where all polluting industries were involved, particularly the ones which were operating without valid consent of the Board were ordered to be taken up on 15th March, 2013. Learned Counsel appearing for the original applicant and large number of industries, in relation to whom various directions had been passed by the Tribunal, argued that this unit (M/s Rathi Steel & Power Ltd.) was constantly causing serious pollution and the order of the Tribunal dated 21st February,

2013, was working very unfairly against those industries and prayed for revival of the matter.

Vide order dated 15 March 2013, the joint inspection team was required to complete the inspection of the units. On 22nd March, 2013 when the matter came up for hearing, it was submitted that despite earlier orders, M/s. Rathi Steel & Power Ltd. continued to be one of the most polluting industry. Further, it was the contention of other respondents, that this unit was taking undue advantage of extension of time granted to it for compliance of the directions, while other units were suffering the consequences of closure etc.

When the matter came up for hearing on 29th November, 2013 it was pointed out that the industry had still not taken all the required measures to prevent and control pollution. The joint inspection report dated 18th November, 2013 was filed and taken on record. There were three requirements to which the unit was expected to comply with (a) consent of the Board under Air Act, (b) consent of the Board under Water Act and (c) authorisation for handling the hazardous waste under the Hazardous Waste (Management and Handling) Rules, 2008. The Board was directed to produce the consent orders for the last seven years during which, undisputedly, the industry was causing serious pollution.

M.A. No. 44/2013 filed before the Tribunal only related to grant of extension of time for complying with the directions of the Boards which had not been complied with till date.

According to the Counsel appearing for the Respondent in the Board, the Supreme Court of India probably while granting the stay meant to stay the execution of the direction in relation to that regard. Firstly, the prayer in M.A. No. 44/2013 and even before the Supreme Court of India in the miscellaneous application would be inconsequential inasmuch as the time granted in M.A. No. 44/2013 was upto 25th April, 2013 which was long over. Secondly, no direction had been passed after 29th November, 2013 requiring the industry to produce its books of accounts, balance sheet and other expenditure or income as was directed earlier.

In the inspection report dated 31 August 2013, the inspecting team had noticed as many as six major shortcomings. However, these appeared to have been corrected to some extent in terms of the observation made by the inspection team in its inspection dated 31st October, 2013. The joint inspection team finally inspected this industry on 10th October, 2014. After detailed inspection, the joint inspection team, inter-alia, but primarily, noticed further more deficiencies and made appropriate recommendations.

The prayer in M.A. No. 44 of 2013 was in fact completely granted by the order of the Supreme Court and by the Tribunal and sufficient time had been granted to the unit to install anti-pollution devices. Despite grant of such time, the deficiencies had not been removed.

The major source of water for the industry were three tube-wells as mentioned in the inspection report dated 10 October 2014 and admittedly the industry had obtained no permission from the Central Ground Water Authority to extract the ground water. This had been specifically averred by the said Authority in their Affidavit dated 15 November 2014, filed before the Tribunal. Furthermore, the industry was consuming huge quantity of water. It had not paid the requisite amount of cess for consumption of ground water, in accordance with the provisions of the Water Cess Act for all these years.

Hence, the Tribunal passed the following order:-

1. M.A. No. 44/2013 had become infructuous as the only prayer in the said application was for granting of time for revamping and installation of most modern equipments to bring the air pollution within permissible limits till 25th April, 2013. Now nearly one and a half years had passed there from.

2. The joint inspection team was directed to inspect the unit and submit its final report to the Tribunal clearly stating whether the industry was complying all the directions issued by the Boards and was a non-polluting industry. The joint inspection team should clearly report as to the quantum of extraction of ground water by the industry, the cess payable and amount of cess actually paid by the industry for all these years. It should also be placed on record whether the industry has obtained the permission from the Central Ground Water Authority for extraction of ground water, if so, with effect from which date. The joint inspection team shall also verify if the units have authorisation to deal with hazardous wastes, if the same was found in the premises of the unit.

3. The industry was to show cause as to why it should not be directed to pay compensation for polluting the environment and its restitution for the period when it operated without consent of the Board and admittedly caused pollution as it had not installed proper antipollution devices to control and check air and water pollution.

4. The Uttar Pradesh Pollution Control Board and the competent authority under the Water (Prevention and Control of Pollution) Cess Act, 1977 were directed to issue notice to all the industries, particularly industries like M/s. Rathi Steel, wherever they were extracting ground water and were not paying appropriate cess in accordance with Water (Prevention and Control of Pollution) Cess Act, 1977. Further, if such industry was causing any pollution by their activity, show cause notices shall be issued by the Board within two weeks from the date of this order and it should proceed with such industries in accordance with law.

This application was accordingly disposed of with the above directions and without any order as to costs.

M/s Techno Engineering & Rubber Industries Vs. Maharashtra Pollution Control Board & Anr.

M.A. No. 04/2015

Appeal No. 37 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keyword: Consent to Operate, Water Act, Air Act, renewal of consent order, closure

Appeal allowed

Dated: 13 January 2015

By filing this Appeal, the Appellant challenged the impugned order dated 18 October, 2014, issued by the Maharashtra Pollution Control Board (MPCB), directing him to close down the industrial unit, under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and under Section 33A of the Water Air (Prevention and Control of Pollution) Act, 1974. The Appellant ran a small industrial unit, dealing with casting activities of manufacturing certain parts required for manufacture of pumps. The Appellant also filed Misc Application No.4 of 2015, assailing the refusal of consent order issued by MPCB dated 13.10.2014, claiming that he had received the same only on 4.12.2014. The consent to operate to Appellant's unit was granted on 29 December, 1995, for period of one year by the MPCB, under the provisions of the Water Act. The Air Act came into force subsequently and therefore at the relevant time there was no question of seeking consent under the Air Act. The Appellant could not run unit due to certain financial problems. The Appellant was unable to ask for continuation of the consent to operate, after expiry of initial period of one year, and

subsequently, he paid certain amount as required by the MPCB, after his Application for renewal of consent.

The MPCB carried out visit to the unit on 30.11.2013, in order to verify status. It was informed that the industry would start casting activity after some days. The MPCB thereafter directed the Appellant to pay additional fees of Rs.25,000/- as early as possible within three days.

MPCB carried out another visit on 18.9.2014, at the site of industrial unit of the Appellant. It was reported that the unit had not applied for renewal, as it was not regular operation and was declared as 'sick unit'. The report did not show any record or observation regarding any kind of air pollution or water pollution caused by the industrial unit at the relevant time, due to industrial activity, which was in operation.

The MPCB gave Notice dated 20.9.2014, to the Appellant and called upon him to explain as to why grant of consent should not be refused under the provisions of the Water Act and the Air Act, and the Hazardous Waste (M &H) (Amended) Rules,2000.

The question which needed to be addressed in the present Appeal was whether the impugned orders stood test of legal propriety and correctness, in view of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981.

The grounds which were stated in the closure order were:

- the orders were passed on the ground that renewal of the consent lapsed on 31.10.1996 and therefore, the unit was required to be closed.
- The Appellant did not provide adequate air pollution control system and did not pay consent fees towards renewal of the Application and also, did not submit self-monitored analysis report.
- MPCB had issued SCN for refusal of consent, vide communication dated 20 September, 2014, but the Appellant failed to reply the same.
- He violated the provisions of the Water Act and the Air Act.
- His Application for consent to operate had been refused by the MPCB, under Section 27 of the Water Act and the Air Act.
- The Appellant's unit was not satisfying RRZ policy, as it is located at the distance of 1 km in "A-II zone of Nag-river" which is notified river.

The Appellant was not called to give any explanation and never given opportunity of hearing in the context of grounds stated in the closure order, impugned in this Appeal. The impugned order did not speak about non-compliance made by the Appellant, in

the context of excess emissions of ambient air beyond permissible limits, nor it reflected anything about adverse impact on the quality of water as a result of industrial activity the unit run by the Appellant. In other words, the Appellant's industrial activity was not shown to be polluting industry, prima facie, so as to attract any provisions of the Air Act or the Water Act, to order closure thereof. Thus, material ground for closure was that there was no further consent obtained by the Appellant after 31.10.1996. Thus, expiry of the date of consent was the main ground on which the impugned order was passed. Second ground for the impugned order was that the unit did not satisfy RRZ policy. The third ground was that for unit the MPCB issued SCN refusal of consent vide letter dated 20 September, 2014, of which the Appellant had failed to reply.

The visit report dated 18 September, 2014, itself showed that the unit of Appellant was declared as 'sick unit'. Obviously, the Appellant's unit was asking for financial support from the Govt. or other Agencies, under the fiscal Laws, as provided under various schemes. Show-cause Notice was issued by the MPCB to the Appellant on 20th September, 2014, as stated in the impugned order at Sr. No.2, but it is untrue that the same was not replied at all by the Appellant. The record showed that the Appellant gave reply on September 30 2014 to the said Show-cause Notice. He explained the circumstances under which there was non-compliance. He explained that the Govt. department gave financial help, but it was inadequate. He explained that he would do needful within one month. Secondly, the Appellant had not applied after expiry of first year of consent, but the MPCB accepted the amount of Rs.25,000/- from him, as renewal fees and allowed him to run the unit. Thus, from time to time, he was permitted regularization of industrial activities.

Thus, mere fact that his consent had expired in 1996, could not have the ground for closure of unit in 2014, when he was allowed to run the industry or allowed from 1997 to 2014 and particularly when several visits were paid by the MPCB officers, warning Notices were issued from time to time and fee was accepted for running of the unit from time to time.

According to the Tribunal the impugned order was unsustainable in the eye of Law. The order of closure dated 13 October, 2014, was also illegal and liable to be quashed in view of the Circular of the MPCB, inasmuch as the Regional Officer had no delegated powers to issue such order. At the same time, though the Appellant's is a small unit and there was illegality committed by the MPCB, the Appellant also cannot escape from blame of causing delay and committing the error of avoiding due procedure to apply for consent for a long period. Hence, while allowing the Appeal, the Tribunal was of the opinion that the Appellant shall deposit amount of Rs.50,000/- with the office of Collector, Nagpur, which shall be utilized for afforestation work in MIDC area and particularly, in the proximity of Appellant's unit. The Appellant will be responsible for care of the plantation done. In the result, the Appeal was allowed and impugned orders dated 18 October, 2014 and 13 October, 2014, were quashed and

the Appellant was directed to deposit Rs.50,000/- in the office of Collector, Nagpur within four weeks and report compliance of the same to the Registrar, NGT (WZ) along with payment receipt. The Collectorate shall accept such amount in the Escrow Account and incur expenditure of the same for plantation of trees in the MIDC area and as stated above, if possible in the proximity of the land if available around the unit of Appellant of which the Appellant shall be made caretaker.

The Appeal as well as Misc Application were accordingly disposed of. No costs.

Nirma Ltd. Vs. Ministry of Environment & Forests &Ors.

Appeal No. 04 of 2012

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi

Keywords: Environmental Clearnace, Wetland, Cement Plant

Appeal allowed

Dated: 14 January 2015

It was the case of the appellant that the Environment Clearance in accordance with the provision of Act/Rules had been reviewed and recalled on account of extraneous and political considerations. The Expert Committee of five scientists was constituted by the Supreme Court of India vide order dated 18th March, 2011 in special leave to appeal (civil) no. 14698/2010 from the Judgment and order dated 24th June, 2010 in 3477/2009 of the High Court of Gujarat at Ahmadabad disposing of the petition (PIL opposing setting up of the cement plant with captive electricity generation plant in

question) to visit the site and answer the following issues: a. Whether the lands in question were wet lands/water bodies? b. Whether the project could come up on such wetlands/water bodies and if so what would be its impact on Environment? Would it lead to Environmental degradation? c. If at all the project could come up what steps the user agencies would take in the interest of Environment Protection; d. Prescribed current situation of the project may also be indicated by the Expert body. In pursuance to the report of the Expert Committee, the EAC recommended revocation of the environment clearance on the ground that it was initially accorded on undisclosed and incorrect postulates.

Respondent no. 3 opined that the Board had no objections for the allotment of proposed land to the project proponent, provided, it shall obtain environment clearance from MoEF as per the EIA Notification dated 27th January, 1994. The policy regarding the Conservation of wet land was issued by MoEF on 2nd February, 2007; and an application for grant of Environmental Clearance to the project was made by the appellants to MoEF on 5th September, 2007.On this backdrop, the Government of Gujarat passed resolution approving the grant of land ad measure 268-52-5 Ha of the said villages to the Company on some material terms and conditions.

The Respondent No. 4 filed PIL-SCA 3477/2009 opposing the said project before the Gujarat High Court on 25th March, 2009. This was followed by grant of consent to establish the said cement and captive power plant by the GPCB on 25th May, 2009. The State Government appointed an expert committee to visit the site. The Committee gave its report on 4th August, 2009.

According to the appellants the MoEF took U-turn as to the validity of the project and the environmental clearance granted to it at the instance of one Ms. Sunita Narayan who addressed an email to the then Minister of Environment and Forest Mr. Jairam Ramesh to have a relook into the project. The MoEF sought adjournment, when the aforesaid petitions came up before the Supreme Court for hearing on 17.05.2011, in order to buy time to start the process of reversing the environmental clearance granted to the project previously. The MoEF appointed an Expert Committee of 7 Members to check the ground situation on 21.01.2011. The Committee reported that Samadhiyala Bandhara possessed all the characteristics features of wetland ecosystem. On 11.03.2011 a show cause notice was issued to the appellants under section 5 of Environment (Protection) Act 1986 to show cause as to why environmental clearance accorded to the project should not be revoked. This notice was challenged by the appellants before the Gujarat High Court in writ petition being SCA No. 3542 of 2011. The High Court issued the notice but refused to grant stay in the said writ petition. The appellants therefore moved the Apex Court by preferring an SLP bearing no. 559 of 2011 against the refusal to grant stay by the High court of Gujarat.

When the bunch of said SLPs preferred by the respondent no. 4 and another came up for the hearing before the Supreme Court on 18.03.2011 the Learned Solicitor General submitted that he would like to revisit the environment clearance granted to the project and there upon the Apex Court directed the Expert Appraisal Committee of the MoEF to call for the report of an Expert Body consisting of 5 scientists who were to visit the site. According to the Prof. Babu Committee, the site may be classified only as a wet land and water body and the existence of the plant at the site is incompatible with ecology and the Project may not be proceeded with.

Prof. Babu Committee Report was placed before the Apex Court. The Apex Court while passing the order dated 9th September, 2011, observed that the narrow issue which arose for determination was whether the EC had been obtained by suppressing the material fact. The Apex Court noticed that the EAC in its Report dated 5th May, 2011 had concurred with the view expressed by the scientists saying that the site had been appropriately re-classified as water bodies, and a Show Cause notice was issued by MoEF on 11th May, 2011 to Nirma Ltd accordingly, and therefore MoEF was obliged to the decide whether clearance dated 8th December, 2008 should or should not be revoked. The Apex Court directed the Appellant's Nirma Ltd., to give its reply to the report dated 5th May, 2011 of EAC as also to the Show Cause Notice dated 11th May, 2013. The MoEF was directed to take its decision on revocation of the clearance dated 8th December, 2008 on the said of the reply as aforesaid within 3 months from the date of the order dated 9th September, 2011.

According to the Appellants, they undertook study on the issue of waste land through Department of Environmental Science and Engineering GJU Institute of Science and Technology, Hisar, Haryana, and as the study undertaken was not completed, it could not submit its additional reply to the Respondent No. 1 and explain its position vide letter dated 23.11.2011addressed to the MoEF. The Appellants also informed the MoEF that they would be seeking appropriate directions from the Apex Court in that regard on 9.12.2011. The Appellant submits that the MoEF without giving any heed to their request for granting one more opportunity for final hearing on critical issue proceeded to pass impugned order dated 1.12.2011.On 9.12.2011 the Apex Court was apprised of the impugned order, whereupon the Apex Court disposed of the aforesaid SLPS accepting the request of the Appellants to proceed against the impugned order in accordance with law.

Thus this appeal came up for hearing before the Tribunal. Respondent No. 1 refuted the case of the Appellant and the Respondent No. 2 and 3 maintained that the land in question was waste land and not a wet land/water body.

From the perusal of the Judgment dated 26-4-2010 passed by the High Court of Gujarat in the said petition, it appeared that the main grievance of the petitioners was

in respect of the allotment of land by the Government of Gujarat for setting up of such plant in the middle of sweet water reservoir created by the construction of 250 meters long waste weir called Samadhiyala Bandhara; and the proposed site of the plant also occupied the land falling in catchment area of reservoir; and construction of the cement plant in such circumstances would destroy the entire reservoir. The respondents therein dismissed this application as ill-founded and contended that the capacity of the reservoir upon implementation of the recommendation of the Expert Committee as directed by the Government would increase and setting up of cement plant would generate local employment.

The High Court of Gujarat after hearing the parties dismissed the Review Application preferred by the petitioners in special 3477/2009, on merits and the petition for special leave to appeal (civil) (14698/2010) preferred against the Judgment and order dated 26-04-2010 passed by the High Court of Gujarat in SA 3477/2009, was disposed of following the statement made on behalf of M/s Nirma Ltd that the competent authority under Environment (Protection) Act, 1986 had passed an order against Nirma on 1 December 2011 and the company would proceed in appeal before the Tribunal vide order dated 9th December, 2011.Thus the entire controversy over the project being established on the land in question came to an end except the narrow issue whether environmental clearance dated 8 December 2008 had been obtained by suppressing the material facts.

The Apex Court on 9 September, 2014 observed that the narrow issue before the MoEF was whether the decision of granting environmental clearance should be recalled being based on the footing that the cement plant would be constructed on the waste land and the MoEF was required to decide whether environmental clearance should or should not be revoked. The Apex Court directed the MoEF to complete the exercise of decision making within 3 months from the date of the said order. It was pursuant to these directions that the impugned decision was taken and the Apex Court having found nothing more to consider on merits disposed of the said petitions by order dated 9 December, 2011. Thus, the Tribunal only had to examine whether the action of revocation of the environmental clearance on the ground of material suppression of fact was justified or not.

Learned Counsel for the appellant submitted that the Central Government could not have done or revoked the environment clearance granted to the project by due process of law in directly by invoking the provisions of Section 5 on the premise of the land being “wetland as per Ramsar Convention” which otherwise could have been directly done by duly declaring the same land as wetland-an ecologically sensitive area. He further submitted that the grant of EC found no challenge except the aforesaid writ petition preferred to the High Court of Gujarat who had duly disposed of the said petition.

Learned Counsel for the Respondent No. 4 submitted that the plea of malice in law cannot be raised for the first time in the appeal when this issue was not raised before the Apex Court in reply to the notice issued on the SLP. He further submitted that neither Sunita Narayan the author of the email dated 14.01.2011, nor the then Minister of Environment and Forest had been made parties to the appeal and, therefore, the real facts regarding the episode of email remained shrouded for want of authentic material on record; and the plea of malice in law must fail. He further pointed out that there existed enough material on record to suggest the existence of water body/wetland as defined under Ramsar convention and therefore it could not be said that the action taken by the Central Government for revocation of EC was without just cause or excuse, reasonable or probable cause.

It was difficult to hold that there was any deliberate concealment or submission of false or misleading information to the authorities according to environmental clearance. Moreover, the High Court of Gujarat, whose verdict had attained finality, had taken into account the recompense the appellants made by foregoing 100 hectares of land, 80 per cent of which was under submergence, and by deepening certain portion of the land and channelizing the storm water towards the water body. The project proponent had given up Captive Power Plant and Coke Oven Plant and the project was designed not to discharge any effluent or any material in the water body created by Samdiyala Bandhara. These aspects of the matter were not fully taken into account either by Prof. Babu Committee or MoEF during the process leading to the revocation of the environmental clearance granted to the project proponent.

The Appeal was therefore allowed and the Impugned Order dated 1stDecember, 2011 issued by respondent no. 1 was set aside. The effect of the project on the water bodies thus created by the Samdiyala Bandhara needed to be monitored and study undertaken in that regard for a period of 2 years on the commencement of the project. The respondent no. 3 was directed to monitor and undertake study of the effects of running of the project on the water body of such nature created by Samdiyala Bandhara in conjunction with CPCB Zonal Office at Baroda from the date of the commencement of the project. The applicant was to bear the expenses incurred by the State Pollution Control Board and CPCB for monitoring and conducting such study. At the end of the study the report shall be tendered before the Tribunal.

Sarang Yadwakar &Ors. Vs. The Commissioner, Pune Municipal Corporation &Ors.

M.A. No. 52 of 2014

in

Original Application No. 2 of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U. D. Salvi, Dr. D. K. Agrawal, Prof. A. R. Yousuf, Dr. R. C. Trivedi

Keywords: Implementation of Order, Re-Alignment of Road, Removal of Debris, River

Application disposed of with directions

Dated: 14 January 2015

The applicants were seeking implementation of the order issued by the Tribunal along with penal action against all those involved in failure to comply with the said order/directions. The applicant was also seeking directions for cancellation of construction of all roads falling in flood plains of all rivers and shown in the Development Plan of Pune; and further for recovery of cost incurred on the construction of the road and to be incurred for removal of debris from all concerned persons and officers working for the Respondent, Pune Municipal Corporation. The principal reason for seeking these directions, were the acts of commission and omissions committed by the Respondents and concerned officials in disregard and breach of the directions passed by the Tribunal in Judgment delivered on 11th August, 2013 in Application No. 2/2013. The Respondent No.1 undertook a project of construction of the road from Vitthalwadi to National Highway No. 4 Bypass and the appellant objected to this project inter-alia on the grounds that: a) The construction of the road falls in the river bed i.e. within the blue line thereby causing massive environmental, ecological and social damage. b) Construction undertaken under the garb of development plan as a draft development plan is banned as not been approved by the State Government. c) No permission to carry out such construction has been issued by irrigation Department. d) The construction requires permission from Archaeological Department it being the construction touching the Vitthalwadi Temple

and its surrounding areas which are declared asgrade-1 heritage building and such permission has not been obtained.

Learned Counsel for the Applicant submitted that the approach of the Tribunal while passing the Judgment dated 11th July, 2013 was to allow the free flow of the water in the river bed, particularly, in the area falling within the blue line, and for that purpose the Tribunal ordered the re-alignment of the road as far as possible closer and beyond the blue line right from chainage 0+400 to 1+750 and further directed the construction to be on elevated pillars alone in the area falling within blue line. Instead of doing this Learned Counsel for the Applicant submitted, the Respondent No.1 was bent upon keeping the road lying within the blue line as it is with inconsequential changes as suggested therein and this was clearly contumacious.

Evidently it was the Respondent No.1 who was actively engaged in the project of construction of the road in question. The Respondent No.2 had distanced itself from the activity undertaken at the site in question by making a statement in its reply that the Water Resources Department had already laid the conditions for issuance of NOC for construction of river side road from Vitthalwadi to National Highway No. 4 bypass to the Pune Municipal Corporation; and now it was the responsibility of Pune Municipal Corporation, Respondent No. 1 to obey the orders issued by the Tribunal.

The Respondent No. 3 acknowledged that there were directions to the Respondents to take appropriate steps against the unauthorised construction. The Respondent No.3 also acknowledged the facts of directions to the Respondents to ensure that no encroachment/construction in future was to be permitted on or inside the blue line of river Mutha. However, the Respondent No.3 further added that on the inspection of the site on 28-02-2014, maximum road was found completed and there was no construction activity found in bed of river Mutha during the visit except the minor civil work in progress.

Learned Counsel appearing on behalf of Respondent No. 1 submitted that 92 per cent of the work involving construction of retaining wall between chainage 0+450 to 1+750 was completed, and back filling and development of crust for the road was in progress till the time Stay on the work of construction of the road was imposed by the Tribunal and Rs. 15.34cr were spent on the said works before January, 2013; and it was not physically possible to realign the road beyond the earlier marked blue line and the total expenses made on the construction would go waste. He further submitted that the NGT had not ordered any demolition of the already constructed part of the road and as such it would be prudent to allow the completion of the balance part of the work so as to facilitate its opening for its intended use.

Patently, the effort of the Respondent No. 1 was to persuade the Tribunal to re-look the directions passed vide Judgment dated 11th July, 2013 on the ground of feasibility in light of the options furnished and likely waste of public funds on execution of the said directions. None of the Respondents had challenged the Judgment dated 11th July, 2013 nor was any Review of the said Judgment sought. The Judgment had thus attained finality and was binding on all parties. The application was for coercive action compelling the Respondents to execute the directions in the said Judgment and for penalising the Respondents for their contumacious behaviour.

The Respondent No. 1 in clear terms revealed in his reply dated 11th February, 2013 that the Respondent No. 2 was not funding the said project and the project was being operated through Pune Municipal Corporation through its own funding. According to the Respondent No.1, in deference to the interim orders the work of construction of the said project was halted. It therefore did not lie in the mouth of Respondent No. 1 now to say that 92 per cent of the work had/has been completed. If that was the case it was clear admission of the fact that there had been violation of the orders of the Tribunal and the Respondent No. 1 the Pune Municipal Corporation and its officials executing the work were responsible for it.

The Respondent No.1 was permitted to complete the project on conditions-which were or had been designed to provide safeguards to environmental and ecological interest. The directions at para 38(b) conveyed how things ordered were to take shape. This direction required the Respondent No.1 to make every effort to re-align the road to bring as far as possible closer to and beyond the blue line road from chainage 0+400 to 1+750 so as to ensure the extension of the least part of the project in the riverbed-Mutha or blue line.

The Tribunal had also directed the Respondent No.1 to undertake the demolition of the structures which came up at and inside the blue line of river Mutha vide direction (g) at para 38. It was also noticed that the Respondent No.1 had issued notice to some of the structures lying within the blue line of river Mutha for demolition. There could not be two standards one for the common man and other for the Respondent No.1.

On one hand 92% of the work of construction of the road at the cost of Rs.15.34 crores drawn from public exchequer had been completed within blue line and on the other hand there was grave risk of impediment to the free flow of the river water which was an open invitation to natural calamities occasioned by un-precedented rainfall. On this backdrop the Tribunal considered the options which in the opinion of the Respondent No. 1 were supposed to provide solution to safe discharge of peak

flood in the locality i.e. stretch under consideration between chainage 0+400 to 1+750 beyond blue line without causing additional submergence.

The conclusion of all three options was: “I. Steep rise in flood levels due to 25.89% reduction in carrying capacity II. Inundation on right bank due to obstruction of the road to natural flow of storm water and/or one way gates closed due to pressure of flood water. And flood water from river entering on the right bank flood plains.” Attempts were made to search for a solution which would offer: a. Road stretch between the chainage 0+400 to 1+750 beyond blue line with sufficient number of box culvert openings all along such road so as to provide the reduction in original cross sectional area to the extent of around 26% as compared to the cross sectional area after the construction of road which would provide maximum free flow of river water without posing any danger of flooding. b. The strength of the road on embankment with such box culverts is not compromised and is capable of bearing the peak traffic load envisaged.

Ultimately, an additional supplementary affidavit dated 3rd November, 2014 was filed by the Respondent No. 1 on 11th November, 2014. The respondent no. 1 undertook not to permit in future any building construction activities within the blue line and to initiate forthwith the process of minor modifications DC Regulations under Section 37(1) of MRTP Act, 1966 to prohibit any such further building construction. According to the respondent No.1 the combination of retaining wall and proposed culverts ensured to the inhabitants in the area a protection from inundation both resulting from release of flood water and run off of storm water. A fact remained that there was hardly any technical merit in the proposal of constructing box culverts to achieve dual purpose of preventing inundation in the residential area and at the same time allow maximum free flow of river Mutha.

The Tribunal passed the following directions:

1. The Respondent No.1 was to remove all the debris dumped including embankments constructed at the present site particularly, within blue line right from chainage from 0+400 to 1+750 and shift the same to red line by following 1 in 25 year Rule, within three months beginning of the work being made for such removal within 15 days from the date of this order.
2. The Chief Engineer, PWD of the state of Maharashtra was appointed to do the work of removal of debris dumped including embankment constructed on failure of the Respondent No.1 to do so as directed in execution of the

directions passed in Judgment dated 11th July, 2013, and such work shall be carried out by the PWD under the direct supervision of its Chief Engineer.

3. Cost and expenses incurred were to be recovered from the Respondent no. 1 and were to be defrayed from their account accordingly.
4. M.A. No 52 of 2014 was disposed of accordingly.

Lokendra Kumar Vs. State of U.P. & Ors.

Application Nos. 328/2013, 288/2013, 353/2013, 348/2013, 351/2013, 350/2013, 349/2013

AND

M.A. No. 767/2014

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Dr. G. K. Pandey, Mr. RanjanChatterjee

Keywords: Brick Kilns, Environmental Clearance (EC), Mining Projects, Mining Lease, Mining Rules

O.As allowed, M.As dismissed

Dated: 14 January 2015

The prayer in all these cases pertained to quarrying brick earth without obtaining environment clearance and also for a direction against the respondents to comply with the directions of the MoEF dated 15.05.2012 and 24.06.2013 and the order of the Supreme Court dated 27.02.2012 rendered in Deepak Kumar Vs State of Haryana.

It was stated that in many villages nearly 282 brick kilns were established. They were permitted by the District Administration without requiring them to obtain environment clearance. According to the petitioners the quarrying of brick earth in the brick kiln causes damage to environment and airable land. The excavation of the said minor mineral indiscriminately, affects the underground water recharge. The Government of India through the MoEF issued a notification dated 14.09.2006 providing for prior environment clearance before such mining and other activities contained therein.

According to the applicants, the State Governments in order to circumvent the notification of the Government as well as the order of the High Court had started permitting excavation of the minor mineral in the extent less than 5 hectares. When the matter was taken to the Apex Court in Deepak Kumar Vs State of Haryana, Supreme Court while directing the State Governments to immediately frame rules

under Section 15 of the Minor and Mineral and Development Regulation Act, 1957, had directed that till then even if it is less than 5 hectares, prior environment clearance is required.

MoEF has issued an office memorandum dated 18.05.2012 directing that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. It was stated that the Government of U.P. had not complied with the directions of the High Court of Allahabad.

It was also the case of the applicants that the Directorate of Environment of U.P. in the letter dated 05.07.2013 addressed to the State Government had indicated that excavation or quarrying of brick earth require prior environment clearance. However, the District Authorities of Baghpat District ignored all the letters including the Judgments of the Supreme Court. Again, the applicant complained to the District Magistrate Baghpat on 16.08.2013 about the illegal activities of quarrying brick earth by the brick kiln owners without obtaining environment clearance. The District Magistrate had been accepting the payment of royalty and permitting the owners to excavate earth without environment clearance which was illegal.

Mata Brick Field filed O.A. No. 353 of 2013. The applicant prayed for issuance of appropriate directions to the respondents including the SEIAA, Lucknow U.P. to dispose of its application for grant of environmental clearance as per the memorandum of MoEF dated 24.06.2013 and also for a direction against them to grant environment clearance. It was the case of the applicant that on the representation of the brick kiln owners, the MoEF had constituted an expert committee for issuing recommendations in the matter of grant for environment clearance to brick kiln owners. It was based on the report of the expert committee, the MoEF had issued guidelines by which the excavation of brick earth was categorised as B2 category and accordingly the SEIAA, in the States, are empowered to grant environment clearance after fulfilling of various conditions contemplated therein. The applicant has applied to SEIAA on 08.08.2013 asking for environment clearance. However, there was no action taken based on the said application which resulted in a further representation on 04.11.2013.

According to respondent no. 8, the EIA Notification dated 14.09.2006 had not included manufacturing of brick kiln in its Schedule and therefore, for the purpose of excavation of earth soil for manufacturing brick kiln, environment clearance was not required and therefore the application was liable to be dismissed. It was also stated that the applicants have not mentioned as to what violation has been committed by the brick kiln owners in making excavation.

As per the reply of respondents no. 1 to 5 it was stated that under the EIA Notification 2006, it is mandatory to obtain Environmental Clearance for establishment of the projects listed in the Schedule and that mining of minerals is listed in Item No. 1. It is

stated that in case of mining lease of area more than 50 ha, Environmental Clearance should be obtained from MoEF while in respect of less than or upto 50 ha, the clearance is obtained from the SEIAA.

It is the case of the Mining Department of Uttar Pradesh that the Department has issued a Notification called Uttar Pradesh Minor Mineral (35th Revision) Rules, 2012 by virtue of its powers under Section 15 of MMDR Act, 1957. Under the said amendment, the rules were amended to provide that the manual excavation of ordinary soil/brick earth up to 02 m shall not be included as a mining activity.

According to the applicants the U.P. Minor Minerals (Concession 35th Amendment) Rules, 2012 as well as in 37th Amendment are not in accordance with the terms of the Judgment of the Supreme Court. Therefore, in spite of the amendments stated to have been carried out by U.P. Government they are to be ignored since they are against the Judgment of the Supreme Court and excavation of soil for brick manufacturing is covered under the EIA Notification.

Ms. Savitri Pandey learned counsel appearing for the State submitted that when once 35th amendment as well as 37th amendment were passed by the State Government, which was as per the direction of the Supreme Court in Deepak Kumar Judgment, it was not open to the Tribunal to issue direction to the parties to follow the Supreme Court Judgment ignoring the legislative function of the State. Such direction would be beyond the jurisdiction of the Tribunal. It was also her case that in respect of mining lease for the area above 5 hectares mining was not permitted without prior environment clearance.

The following issues were decided by the Tribunal:

1. Whether the original applicants were entitled for the relief claimed namely to have the respondents stopped quarrying brick earth without obtaining environment clearance.

2. Whether the amendments stated to have been made by the State of U.P. and Haryana are as per the direction of the Supreme Court issued in Deepak Kumar Vs State of Haryana and Ors and if not whether such amendments can be ignored and the States can be directed to follow the directions of the Supreme Court, till proper amendments are made.

It was pursuant to the Judgment of the Supreme Court in Deepak Kumar Vs State of Haryana and Ors and also after considering the representations received from the brick manufacturers and after considering the report of expert committee constituted by the MoEF on 30.01.2013, the MoEF in its office memorandum dated 24.06.2013 decided that the activities of borrowing/ excavation brick earth and ordinary earth up to an area less than 5 hectare may be categorised under B2 category subject to various guidelines in terms of the provisions under “7.1 Stage(1-screening)” of EIA

Notification 2006.

Not only did the Supreme Court consider the inclusion of brick earth and soil apart from sand as minor mineral but directed the State Governments to frame adequate rules based on the MoEF recommendations and Core group 2010 of Ministry of Mines, Government of India. Till such regulations were made the Supreme Court made clear that lease of minor mineral including renewable for less than 5 hectares to be granted by the State or Union Territory only after clearance from MoEF.

Accordingly, the Tribunal held that the amendments brought in by the State Government of Haryana and U.P. were to be ignored and in spite of the same, until and unless the State of U.P. and Haryana passed appropriate amendments to their respective mining rules in accordance with the directions issued by the Supreme Court in the Deepak Kumar case, the last portion of the Judgment of the Supreme Court shall continue to be in operation. Accordingly, all the applications were allowed. As for the contempt application regarding the Haryana Legislative amendment and the alleged disobedience, it was found that there were no material and particulars given so as to enable the Tribunal to invoke Section 26 of the NGT Act 2010. Accordingly, Miscellaneous application 767/2014 stood dismissed.

Kranti Sahakari Sakhar Karkhana Ltd. Vs. The Revenue & Forest Department, Maharashtra &Ors.

Appeal No. 26 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Conversion of Forest land, Construction, Conservator of Forests, Wild life, MoEF

Appeal allowed

Dated: 15 January 2015

By filing this Appeal, the Appellant sought permission under Section 2 of the Forest (Conservation) Act, 1980, and hence filed this Appeal under section 16 of the NGT Act, 2010.

By passing impugned order dated 28.7.2014, the Govt. of Maharashtra, decided not to recommend proposal of the Appellant to the Govt. of India (MoEF), for conservation of forest land, which was sought to be converted, in order to seek use a part of forest land, which was already divided in various parts, for construction work in order to establish buildings needed for educational purpose.

The Appellant filed required Application in Form-A, which was submitted to the Deputy Conservator of Forest, giving all the details of proposed activities. The Conservator of Forest, Kolhapur, Circle recommended proposal on 3.1.2011. The proposal was sent to the concerned Authority for the purpose of forwarding the same to the MoEF. The I/c Chief Conservator of Forest (CCF), (Wild Life) State of Maharashtra, Nagpur, communicated its decision to CCF for further configuration. In the next meeting the proposal was rejected by the Board. The Appellant was duly informed and communicated the decision of the State Govt. that the proposal was refused by the competent Authority and the same was decided not to be forwarded to the MoEF.

Learned Counsel for the Appellant argued that after completing the process, proposed project ought to have been recommended for consideration of the MoEF. He invited our attention to provisions of the Forest (Conservation) Rules, 2003, particularly, Rule-6.

The Forest (Conservation) Rules, 2003, require that after having received the proposal, it has to be processed under Rule-6 (3) (a) by the State Govt. In case, State Govt. does not find certification of feasibility of the proposal or certification of the maps in regard of the proposal by the Forest Officer or the Conservator of Forests, then it could be sought from the Principal Chief Conservator of Forests, who shall forward the proposal to the State Govt. Thereafter, State Govt. is under obligation to forward the proposal as required under Rule-6 (3),(e), (ii), to the MoEF for its consideration.

According to the Tribunal the above Rule was violated in the present case. The subsequent rejection of the proposal at the State level was not warranted when after the period of sixty days plus fifteen days, the rejection which was presumed under provision of the Rules, was not intimated to the Appellant. As a matter of fact, had such intimation been given to the Appellant, under the Rules, there was no further need to process the proposal and push it through the pipeline, but the same was not done and it went up to the State level and finally was rejected vide the impugned order. Besides, the Appellant was not heard at time of rejection of the proposal. In case of passing any adverse order, the Administrative Authority, is required to hear other party, who will be affected by such adverse order

In the result, the Appeal was allowed and the impugned order was set aside. The State Govt. was to forward the proposal to MoEF with recommendations either to grant the same or refuse the same on merits thereof by giving due reasons. The proposal was be forwarded to the MoEF within two months.

Nagrik Upbhogta Marg darshak Manch & Anr. Vs. State of Madhya Pradesh & Ors.

Original Application No. 143/2013(THC) (CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P.S. Rao

Keyword: E-waste, E-waste (Management & Handling) Rules, 2010, Extended Producer Responsibility (EPR)

Application disposed of with directions

Dated: 15 January 2015

In this petition, the Petitioner raised the issue of ill effects of Electrical and Electronic waste ('E-waste') in the State of MP. It is the contention of the Applicant that after the notification of the E-waste (Management & Handling) Rules, 2011('Rules of 2011') under the Environment Protection Act, 1986 by the MoEF, Government of India no concrete steps had been taken by the authorities concerned in the state of MP to implement the Rules of 2011 leading to environmental degradation.

The Applicant contended that though the MP State Pollution Control Board ('MPPCB') had put forward a framework for management of E- waste in the State, it had not made any headway in implementing the rules. Though an announcement was made way back in May, 2012 that E-waste Collection Centres will be opened in all the major cities of Madhya Pradesh but nothing had been done in this regard. The Applicant stated that inspite of raising the issue with the concerned authorities no action had been taken by the authorities and therefore he had no other alternative except to approach the High Court of Madhya Pradesh to direct the Respondents to immediately implement the 'Rules of 2011' in letter and spirit.

Consequent to the notice issued by this Tribunal the MPPCB submitted their reply dated 05.05.2014 stating that the MPPCB had issued a circular in the month of August, 2010 to all the Regional Officers of the MPPCB to immediately start taking necessary action in accordance with draft E-waste (Management & Handling) Rules 2010 published by the MoEF on 14.06.2010. Accordingly, the Regional Officers of

MPPCB have directed various organizations, institutions and industries to comply with the draft rules.

The MPPCB filed further reply dated 03.07.2014 pursuant to the directions issued by the Tribunal on 05.05.2014. From their reply it appeared that the MPPCB had prepared a list of 19 major companies dealing with the Electrical & Electronic Equipment (‘EEE’) whose products are distributed throughout the State of MP and under Section 5 of the Environment (Protection) Act, 1986 issued directions to them in compliance of the provisions of the Rules of 2011 to provide the details of the Collection Centres or ‘take back’ the E-waste, details of the registered Dismantlers or Recyclers and submit a compliance report on Rules of 2011.

The Respondent No.7, Rajasthan State Pollution Control Board ('RSPCB') in their affidavit dated 20.08.2014 stated that the Board granted authorization to 9 E-waste Dismantlers in the State of Rajasthan out of which 7 Dismantlers had valid registration and 2 had applied for renewal. It was further stated that the Board had issued show cause notices to the major Producers of the E-waste for non compliance of the provisions of the Rules of 2011 and would be duly taking action against the defaulters in accordance with the law and accordingly stated that the RSPCB was taking all the necessary steps for implementation of the Rules of 2011 in the State of Rajasthan.

In compliance of the directions issued by this Tribunal the Chhattisgarh Environment Conservation Board (‘CECB’) filed their reply stating that immediately after the notification of the Rules of 2011, the CECB issued directions during May, 2012 itself to all the Regional Officers of the Board for implementation of the Rules of 2011 in their respective jurisdiction.

In compliance of the directions issued by the Tribunal on 04.07.2014 the CPCB filed their reply on 19.09.2014 listing about the responsibilities of the CPCB that had been stipulated in Schedule-III of the Rules of 2011 and accordingly CPCB, being aware of its responsibilities, had initiated various steps for effective implementation of Rules of 2011. However, the CPCB stated that the responsibility of enforcing the Rules of 2011 for proper Collection and disposal of the E-waste lies with the State Pollution Control Boards or Pollution Control Committees as the case may be.

None of the three States falling under the jurisdiction of this Bench had started implementing the Rules of 2011 with full force and neither required number of Collection Centres, Dismantlers and Recycling Centres had been authorised so far to take care of the huge quantity of E-waste that was being.

The following directions were issued to the respective stake holders:-

i. Direction for the Producers to follow: to comply with the requirement of the rule 4 in respect of the items listed in Schedule I of the Rules of 2011 with regard to

collection of E-waste, enforcing and implementation of EPR, setting up Collection Centres and system of take back, developing and financing arrangement. It shall also be the responsibility of the producers to get themselves registered and obtain authorisation from the State Pollution Control Boards and fulfill all the requirements of rule 9 of the Rules of 2011. Every Producer shall incorporate prominently devoting at least 10% of space/time with respect of each of the advertisement issued for their product under Schedule I of Rules of 2011 with regard to the requirement of proper management and handling of E- waste.

ii. Responsibility of State Pollution Control Boards: The State Pollution Control Boards shall ensure that the Producer who offers to sell EEE listed in Schedule I of the Rules under their own brand or imported shall obtain authorisation as required under Rule 9 of Rules of 2011.

iii. As defined under Rule 3(c) the Bulk consumers were also required to comply with the requirement of Rule 6 of the Rules of 2011.

iv. The Dismantler and Recycler shall apply for registration as required under the Rule 7 & 8 respectively.

v. The Producer, Bulk Consumer, Dismantler, Recycler shall all comply with the requirement of rules and condition of the authority failing which the respective State Pollution Control Boards shall take steps for Suspension/Cancellation of Authority in respect of holder of such Authority as empowered under Rule 10 of Rules of 2011.

vi. Effective implementation of the EPR shall rest entirely with the Producer and for the aforesaid purpose and its sound management the Producer shall be made responsible.

vii. The State Pollution Control Boards shall issue notice to all stakeholders for getting themselves registered as required under the Rules of 2011 and for submitting necessary information by way of complying with the requirement under the Rules for getting the registration done.

viii. The Notice shall be issued by the State Pollution Control Boards of all the 3 states within 2 weeks of the receipt of this judgment.

xi. The Secretaries of Urban Development Departments of all the 3 states shall apprise all urban local bodies (Municipal Committees/ Councils/ Corporations) with regards to the compliance of the Rules of 2011 including the requirement under Rule 14 read with Schedule 3, item no. 3.

x. The State Pollution Control Boards of Madhya Pradesh, Chhattisgarh & Rajasthan, along with the respective State Governments shall submit, within 4 months the action taken report with regard to the implementation of the Rules, 2011.

xi. The three States were directed to take up follow up action as stated in Original Application No. 183/2014 in the matter of Toxics Link Vs Union of India and Ors on implementation of the Rules of 2011.

The Original Application was disposed of. No order as to costs. The matter was listed for compliance on 26 May 2 015.

Ajay Dubey Vs State of Madhya Pradesh &Anr.

Original Application No. 144/2014 (CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P.S. Rao

Keywords: Water Act, Air Act, environmental pollution, environmental norms, clearance

Application disposed of

Dated: 15 January 2015

Applicant stated that there were large number of industries in operation in the State of Madhya Pradesh and before commencing their operations these industries were required to take clearance under the provisions of Air (Prevention and Control of Pollution) Act, 1981 ('Air Act') as well as Water (Prevention and Control of Pollution) Act, 1974 ('Water Act'). The Madhya Pradesh State Pollution Control Board ('MPPCB'), after receiving the applications from the industries and after carrying out necessary inspection, granted the clearance under the aforesaid Acts. It was further stated that under the Water Act the industries were required to treat the effluents before discharging from their premises so that it cannot pollute the Water bodies. The Applicant claimed that having observed that the rules were not being followed, he filed an application before the MPPCB under the RTI Act on 27 October, 2008 and the Respondent No. 2, MPPCB supplied the information sought by the Applicant vide their letter dated 02 December, 2008. In the said document it was found that the norms prescribed under the Air and Water Acts are found to be beyond the prescribed limits. The Applicant made a prayer to direct the Respondents to strictly comply with the provisions of the aforesaid Acts and also direct them to conduct enquiry and initiate strict departmental action against the concerned officials who were found not discharging their duties and allowing the industries to run by violating the provisions of Air and Water Acts.

After admitting the case on 29 May, 2014, notice has been issued to the Respondent No.2 MPPCB. In their reply dated 1 September, 2014 the MPPCB submitted that before granting consent for establishment and operation of the industries, the MPPCB

followed the procedure prescribed under the Air and Water Acts. The industries were recognized under Red, Orange and Green categories to address the type of pollution generated by them. It had been further stated that the MPPCB conducted the required monitoring(s) to understand the trend of pollution and for taking corrective measures.

On 11 November, 2014 the MPPCB filed their further reply stating that it had written letters to all the Regional Officers in the state to conduct the requisite legal monitoring to ascertain the environmental status before initiating action against the defaulting industries and accordingly the Regional Officers conducted monitoring of the polluting industries duly taking legal samples and based on the outcome of the analysis of the samples action was initiated against the defaulting industries in accordance with law.

The Applicant's averments were general in nature. By just enclosing copies of the lists furnished by the MPPCB under the RTI Act, he jumped to the conclusion that consent was granted/renewed to all the listed industries and they were permitted to continue their operations even though they were allegedly violating environmental norms and not maintaining the required pollution standards. In the Tribunal’s opinion, since the Applicant had not brought out any specific case against any particular industry found violating the norms or any particular officer of MPPCB for the alleged dereliction of duties in granting of permission in violation of the aforesaid Acts, directions could not be issued to take action against any particular industry or officer. However, the MPPCB shall always strive to ensure that the industries permitted to establish and operate follow the prescribed environmental standards and initiate strict action against those which are flouting the norms, in accordance with law. The Applicant was free to approach the Tribunal whenever if he came across with any specific case of violation of norms/standards by any particular industry.

With the above observations, the OA was disposed of. There is no order as to costs.

Shri E. Seshan Vs. Union of India &Ors.

Application No. 84 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: prohibition of construction, felling of trees, educational institution

Application disposed of

Dated: 19 January 2015

The applicant sought an order prohibiting from any construction and felling of trees within the campus of the 6th respondent and regulate the kinds of activities and events that could be conducted within the campus.

Though original interim order of injunction was granted restraining the respondents from making any further construction and felling of trees within the campus of the 6th respondent, subsequently the same was modified to permit the 6th respondent to complete the pending construction of two hostel buildings and an undertaking given by the 6th respondent not to cut any trees in the future was also recorded. While the matter stood so, the counsel for the 1st respondent, MoEF, placed a copy of the Notification S.O.3252 (E), New Delhi dated 22nd December, 2014 issued by the MoEF. Pointing to the said notification the learned counsel for the 6th respondent submitted that the Educational Institutions were exempted from the purview of the EIA Notification 2006 in clause (8) and hence the application could be disposed of.

The relief sought for by the applicant was to injunct the 6th respondent from making any construction in the future. In view of the exemption referred above, the said relief could neither be considered nor granted. The learned counsel for the Applicant further submitted that had also sought for the relief to regulate the kinds of activities and events that could be conducted within the campus. In the Tribunal's opinion, this part of relief sought for did not fall within the jurisdiction or power of the Tribunal and

hence the same did not require consideration. Hence the application was disposed of. The learned counsel for the applicant made an appeal for giving liberty to approach the appropriate forum for necessary reliefs if so required and the same was recorded. No cost.

Sandeep Azrenkar &Anr.Vs. State of Goa &Ors.

Application No. 22(THC)/2013 (WZ)

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: private forest area, construction/development, felling of trees, Forest Department

Application partly allowed

Dated: 22 January 2015

The land in question was located at Xelpem within the jurisdiction of Mapusa Municipal Council. The Applicants submitted that the Sawant and Karapurkar Committees which were formed to identify the private forest areas of State of Goa, already submitted their Reports which were before the Apex Court. The Applicants claimed that the Karapurkar Committee Report identified the above survey numbers as Forests and therefore, no further development activities could be permitted in the said plot without prior approval under the Forest Conservation Act. The Applicants alleged that during the year 2000, the Respondent Nos.9 to 11 were able to secure several permissions to fell trees on the plot and the trees were felled under cause of “re-plantation”. The Applicants, therefore, requested the Chief Conservator of Forest Goa, to enforce the provisions of Forest Conservator Act, 1980 on the said survey numbers as Karapurkar Committee had identified them as “forest”.

This Application was dealt by High Court of Bombay. The High Court further directed the Respondents not to proceed to develop the property based on

development permissions granted on the plot in question till further orders.

Respondent Nos.9, 10 and 11 submitted their counter Affidavit in the Tribunal on 24-4-2014. They submitted that they were the co-owners of the said property since long from about 1905. The Respondents claimed that only when the Writ Petition No.286/2003 was served on the Respondents, they came to know that some of the P.T. Sheet Nos. were identified as private forest area by Karapurkar Committee. The Respondents claim that they engaged service of M/s. Alpha Agritech Consultants

Pvt. Ltd. The Consultants submitted their Report in Oct, 2005 concluding that the entire area of 28 Hectare of said property did not qualify as Forest. The Respondents also challenged the Karapurkar Committee Report on the ground that no field visits were done by the Committee. It was the claim of the Respondents that though the High Court had stayed said development on the identified property, the High Court permitted the development in non-forest area as identified by the Forest Department. The Respondents claim that the Forest Department in its Affidavit dated 30-6- 2008 categorically mentions identification and demarcation of only 2.84 hectares as part of forest area from PT Sheet No.47 and 48. The Respondents, therefore, relied on the Report of the Expert Consultants and further submit that they have made an enquiry under R.T.I. Act regarding an inspection report or the map of identified in the subject property prepared by the Forest Department.

The Respondents relied on the plan provided with R.T.I. inquiry which indicated only two patches i.e. plot Nos.1 and 2 admeasuring 1.27 hectare and 1.57 hectare respectively, as identified forest. Considering these documents along with the Expert Consultant Report, the Respondents claimed that both these documents were matching in terms of the area, location and the extent of forest patches and further state that they were willing to maintain the said area in its natural status as recommended by the Expert Consultants.

The question which needed to be answered was, “Whether the land in question or any part thereof is a Forest?”

The Forest Department carried out the ground survey for actual identification and demarcation of private forest area as per the orders of the High Court of Bombay, at Goa. The Forest Department submitted progress report of the work of identification and demarcation of private forest before the High Court and in Affidavit dated 30-6-2008 recorded that the said identified private forest land by SLEC about 28 Ha has actually 2.84 Ha of private forest. Subsequently, the Forest Department filed another Affidavit on 11-12-2009 mentioning that there was an error which was committed in the transfer of data and accordingly it was submitted that Xelpem area has 12.61 Ha of private forest and this block comprised of PTS Nos. 47, 48, 65 and 66 of Xelpem village.

Tribunal asked the Forest Department about availability of such map of demarcation

which was responded in affirmative and therefore, on 14-8-2014 the Forest Department was directed to submit the authentic copy of such map prepared by Forest Department, identifying and demarcating 12.61 Ha area as private forest out of the land in question through affidavit.

Learned Counsel for Respondent Nos.9 to 11, submitted that there was confusion and lack of clarity in the submissions made by the Forest Department. The Forest Department had listed different PTS Nos. in different progress reports and therefore, the submissions made by the Forest Department cannot be relied upon. He also relied on the map produced by the Forest Department in the Criminal Case filed against the Respondents for felling of the trees where only two plots of total 2.84 ha area, are shown as forest area. It was his submission that when enquired under R.T.I. Act, the Forest Department submitted that there were no survey reports or maps for the said identification and demarcation of 12.61 Ha of private forest area.

Learned Counsel for the Applicants submitted that though she prayed for declaring entire area of 28 Hectares as forest, she was willing to accept the findings of the Forest Department, identifying and demarcating 12.61ha private forest, as an exceptional case without prejudice to other cases. The Forest Department filed progress reports from time to time, particularly, in 2006 and 2009 where it was clearly recorded that total 12.61 ha of land in question had been identified and demarcated as private forest. She submitted that the Respondents had neither filed any Affidavit nor any say before the High Court. She also challenged the report of the consultants on various grounds as set out in the affidavit of Applicant. She also contended that the illegal tree felling by the Respondents had been noticed by the Forest Department and appropriate cases had been filed against them. It was her contention that the Respondents were fully aware that the area had been identified and demarcated as private forest and therefore, in order to exclude this area from covering under the 3 criteria adopted for private forest identification, such illegal tree cutting was practiced. It is her contention that the map which was relied upon by the Respondents was a matter of record in the criminal case only, which clearly showed that the two plots had been the present forest patches as were found present in 2012.

The Tribunal was of the opinion that there was no substantial reason for interfering in the findings of the Forest Department regarding identification and demarcation of 12.61 Ha of private forest land in village Xelpem. It was therefore held that, that land shall be treated as private forest. The Chief Secretary was directed to issue necessary instructions to the Forest Department.

The Application was, therefore, partly allowed declaring 12.61 ha. of the land in question, as identified and demarcated by the Forest Department, as a private forest. The Forest department was directed to take all necessary steps immediately to preserve and protect this forest land as per the Law. Any construction on said land if done was to be demolished within eight weeks by the Collector, North Goa. The directions issued by High Court of Bombay at Goa in M.A. No.350/2003 in W.P.

No.286/2003 on 2/7/2003 will continue to remain in force till entire demarcation work of private forest was completed in the State. Application was accordingly disposed of with no cost.

Wireless Colony Co-Operative Housing Society Vs. Chaitrali Builders/Sumashilp (P) Ltd. &Ors.

Application No. 48 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: noise pollution, Environmental Clearance (EC), residential area, Noise Monitoring

Application disposed of with directions

Dated: 27 January 2015

The Applicant Society filed this Application under Section 14 of the National Green Tribunal Act 2010, alleging that the operation/activities of Respondent Nos. 1 to 6 were causing continuous noise pollution, in the premises of Applicant Society, exceeding the norms. The Applicant submitted that the Pune Municipal Corporation (Respondent No. 8) directed the Respondent Nos. 1 to 6 on 7-8-2013 to reduce the Noise levels of their activities within the prescribed limits on or before 31-10-2013. The Applicant claimed that this order of the Authority was not complied with by the Respondent 1 to 6.

The Applicant claimed that since 2007, they were regularly complaining to the authorities and even in November 2012, MPCB conducted the Noise Monitoring and on finding that the noise levels are exceeding the standards, directed the PMC to take

necessary action. The Applicant claims that the Noise Pollution is a serious health related issue and continuous high noise levels are affecting the health of the society members, particularly, children and old ones. The Respondents Nos. 1 to 6, by their inaction, in total disregard to comply noise related regulations, are collectively and continuously causing the Noise Pollution.

Respondents Nos. 1, 3, 4, 5 & 6 filed common Affidavit opposing the Application. The Respondents claimed that they had taken all scientific measures to resolve the noise pollution problem and submitted that they were in regular contact and discussions with the Applicant society to solve the problem of noise pollution. They further submitted that they had taken necessary measures for Noise Pollution control and were even ready to take further appropriate measures if required. However

Respondent No. 2 filed separate affidavit on 28-8- 2014 and submitted that the Application against the Respondent No. 2 was only limited to the extent related to noise caused by AC blowers, AC outdoor units, AC systems, Generator sets, untimely transportation activity, exhaust fans and chilling plant. Respondent No. 2 submitted that after the meeting held by PMC on 23.7.2013, they diligently stopped loading and unloading activities after 9.00 pm. They further submitted that it was the responsibility of Respondent No. 1 to comply the specific conditions under Environmental Clearance dated 17-12- 2007, more particularly related to, Noise Pollution abatement and control.

The Respondent No. 7 submitted that they had received the complaint in this matter on 9-3-2012 and investigations were carried out on 16-11-2012 and subsequently, they recommended the Pune Municipal Corporation to take further necessary action, in view of the observed higher noise levels, as per Government of Maharashtra GR dated 21-4-2009. MPCB further submits that the above GR identifies and notifies various authorities for regulating the Noise Pollution and accordingly, the Pune Municipal Corporation was the concerned ‘Authority’ for the zoning of areas under the Noise Rules and also, control of Noise Pollution due to construction and development projects Municipal areas.

MPCB further submitted that as per the GR dated 21-4-2009 issued by Environment Department Government of Maharashtra, the Municipal Commissioner and the Police authorities had been notified as ‘prescribed authority’ for enforcement of noise rules in the urban areas. In accordance with this notification, MPCB had conducted the ambient noise monitoring from time to time and communicated the findings to the concern authorities.

The Tribunal had directed MPCB to conduct source-wise noise monitoring besides the ambient noise levels on May 27, 2014. Accordingly MPCB carried out a detail study and submitted the findings in its affidavit dated 16-7-2014. MPCB concluded that the cumulative effect of various sources of Noise Pollution located at premises of Respondent 1 to 6, was that the ambient noise levels were found to be exceeded for

the day and night time in the premises of Applicant.

The following issues needed to be resolved for final adjudication of the present Application:

i. Whether noise levels in premises of the Applicants are exceeding the norms? If so, whether it can be reliably attributed to the pollution sources located within the premises of Respondent No. 1 to 6.

ii. Whether the prescribed statutory conditions for the noise control are being complied with by the Respondents?

iii. Whether there is any scope for further mitigatory measures which can be adopted by the Respondent No. 1 to 6?

iv. Whether the authorities are required to be issued any specific directions for control of the Noise Pollution.

MPCB received the complaint from the Applicant regarding the noise pollution in 2012 and MPCB had carried out noise monitoring and had even requested PMC to take suitable action in view of the observed noise pollution.

Though neither Pune Municipal Corporation nor MPCB came on record with the scientific analysis, such uncertainty will not prevent from applying the precautionary principle. The Tribunal was of the opinion that the activities of Respondent Nos. 1 to 6 were the major and significant contributors to the noise pollution at Applicant society. The Issue No.1 was accordingly answered in the ‘Affirmative’.

MoEF while appraising the Application for EC had identified the noise pollution as an important and significant issue, and therefore, laid down such specific conditions. However, after grant of EC, no enforcement of these conditions was ensured either by MoEF or MPCB.

MPCB conducted noise monitoring and observed that some of the equipments were causing noise pollution. The MPCB also recorded that cumulative effect of large number of outdoor ACs, exposed towards the Applicant-society, are causing noise pollution. The Tribunal was of the opinion that though MPCB had not granted consent with specific standards for activities of the Respondent No.1, general standards available were not being complied by the Respondent No.1. Thus Issue No. 2 was answered in the ‘Negative’.

Respondent Nos. 1 to 6 claimed that they carried out several measures to reduce noise from their activities. The project setting of the Respondent No.1 was a large scale construction and development activities had been permitted by the Developmental Authorities, just next to a Residential Colony. Such a critical aspect was not adequately considered while granting EC. The Tribunal was of the opinion that certain

immediate measures were required to be carried out to control the noise pollution. And therefore Issue No.3 is also answered in the ‘Affirmative’.

During argument when inquired, it was submitted on behalf of PMC as well as MPCB that there are no specific guidelines, procedure or protocol and therefore, it was left to independent agencies to deal with the issue.

In view of the above the Application was partly allowed. Following directions were issued for compliance:

i) The Respondent Nos.1 to 6 shall comply with all the conditions of EC and all the outdoor ACs located towards Applicant’s Society, shall either be removed or realigned in front area or centralized air conditioning within 6 months.

ii) The Respondent Nos.1 to 6, shall submit an action plan, to the Commissioner of Pune Municipal Corporation and MPCB, within one month and implement the action plan in 6 months.

iii) CPCB shall issue appropriate guidelines for bringing uniformity and also scientific reliability in noise monitoring to be carried out in case of complaints within 6 months.

iv) The Secretary, Urban Development Department, may consider to devise a suitable training program for all Local Bodies and planning authorities in consultation with MPCB and ‘YASHDA’ for training on noise monitoring and also noise abetment measures, in order to effectively implement the Noise Rules, 2000.

v) In case, the Respondent Nos.1 to 6, do not comply with above directions, the Commissioner of Pune Municipal Corporation, shall immediately stop all activities of the Respondent Nos.1 to 6, by giving advance Notice, without awaiting for further direction from the Tribunal and submit compliance report.

vi) The Respondent Nos.1 to 6, shall pay costs of Rs.5 lakhs (Rs.five lakhs) for causing excessive noise pollution by its activities, which shall be deposited with Pune Municipal Corporation (PMC), and shall be spent on environmental protection activities like plantation, awareness etc. in consultation with Applicant society.

Application disposed of. No costs.

Mr. V. Chandirasekar Vs. Union of India &Ors.

Application No. 424 of 2013 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: license, No Objection Certificate, Consent to Establish

Application disposed of

Dated: 28 January 2015

The applicant sought for a direction to the respondents to pass appropriate orders to cancel / withdraw all license/permission/clearance and consequently issue appropriate direction to the respondents 1 to 11 to stop the commencement of 12 respondent's steel plant at Seliayamedu Village, Bahour Commune, Puducherry, Pirivupalayam.

The applicant conducted several awareness meetings, procession and demonstrations for the sake of protecting water bodies, irrigation and agriculture in and around Pondicherry. The application was filed in the interest of public since there was a danger to the environment and to the health of the people because of the proposed steel industry by M/s. Tigon Steels (P) Ltd , the 12th respondent herein. The 12th respondent industry had suppressed important information regarding the features existing within the 20 km radius of the proposed Unit. The applicant submitted that the emission from the furnace would get mixed in the air, water resources and was deposited in the fertile lands resulting in severe health hazards and make the soil unfit for agriculture.

The applicant further submitted that the No Objection Certificate issued by the Puducherry Pollution Control Committee clearly stated that the project proponent shall shift the unit to a new location, if any public complaint was raised against the Unit. The applicant further submitted the departments who issued the license had not taken care of the water bodies, historical monuments, residential areas, schools etc. before issuing the NOC.

It was submitted by the counsel for the respondents 1 to 11 that the Consent to Establish dated 28.2.2012 granted in favour of the 12th respondent was only for a period of two years and it came to an end on 27.2.2014 and apart from that the 12th respondent was not carrying on any constructional activities. Under the circumstances nothing survived in this application and hence it had to be disposed of. The matter was adjourned for a few hearings on the request of the counsel for the applicant to get necessary instructions from his client. It was fairly conceded by the applicant that constructional activities were not being carried on by the 12th respondent. A perusal of the Consent order to Establish the Unit given by the Pollution Control Committee shown as 2nd respondent to the 12th respondent indicated that it was for the period of two years commencing from 28.2.2012 and thus it came to an end 27.2.2014. From the above it was clear that the relief sought for did not require further consideration by the Tribunal and hence the application was disposed of.

M/s. Jeyam Metal Industries Vs. Assistant Engineer (O&M), TANGEDCO &Ors.

Application No. 02 of 2015 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: malafide intention

Application disposed of

Dated: 29 January 2015

Pursuant to the direction of the Tribunal, the 1st respondent, the Assistant Engineer (O&M), TNAGEDCO appeared before the Tribunal and submitted that without the knowledge of the pending proceedings and also only on the instructions of the higher-up he issued the impugned notice and hence the notice was not given with any malafide or mens rea or any wanton or intention and tendered his apology and his statement was recorded. At this juncture, the learned counsel for the 1st respondent

submitted that the respondents 1 to 3 did not propose to further pursue or take any action pursuant to the impugned proceedings and the same could be recorded and the application could be disposed of. On the undertaking of the respondents 1 to 3, the application was disposed of.

Vanashakti A Public Charitable Trust &Anr. Vs. Union of India & Ors.

M.A. No. 60 of 2014

M.A. No. 123 of 2014

Appeal No. 7 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Environmental Clearance (EC), limitation period

M.A. No. 123 allowed, M.A. no. 60 & Appeal dismissed

Dated: 29 January 2015

The Appellants originally filed this Appeal on 15.3.2014, challenging OMs dated 17 October, 2013, 16th November 2013 and 20th December, 2013, issued by MoEF, regarding moratorium on development activities in particular ecological sensitive areas of Western ghats. The Appellants also prayed to direct the MoEF not to grant

any Environmental Clearance (EC) in ecologically sensitive zones 1 and 2, pending hearing and final disposal of this Appeal.

Respondent 6 challenged the Appeal on the grounds of limitation of time and delay through MA 123 of 2014. It was therefore decided to adjudicate on the issue of limitation, first, before going into the merits of matter.

The Appeal was filed in the Registry of the Tribunal on 15.3.2014. The Appeal was heard first time on 28/4/2014, when Project Proponent (PP), was added as Respondent No.6. Subsequently on 3/7/2014, the Appellants requested for amendment of pleadings and prayer clause which was allowed. Thereafter the Respondent No.6 filed Misc Application No.123 of 2014 on 31/7/2014 raising preliminary objections, opposing the Appeal on limitation ground. The matter was again heard on 11/8/2014 when learned Counsel for the Appellant was informed about the MoEF directions issued on 13.11.2013. The Appellants were asked to verify whether the areas indicated in the Application were governed under the said directions and whether bauxite mining of the Respondent No.6, fell within the said area. The Appellant on 6th September, 2014 sought to amend the appeal memo by electing remedy of keeping Appeal as it was and limiting the challenge to the extent of EC granted to the Respondent No.6, as regards bauxite mining. However, even up to 30th September, 2014, no such election of remedy was made by the Appellant.

Respondent No. 6 stated that none of the Appellants at any stage raised even a single objection against the project. The Respondent No.6 further stated that the Appeal, as originally filed on 15.3.2014, mentioned EC granted to their bauxite mining project on the grounds which clearly demonstrated that Appellants were aware of EC granted to Respondent-6 while filing the Appeal on 15.3.2014. In spite of having this knowledge, they had chosen not to challenge this EC in their original Appeal and had just prayed that the Respondent No.1 i.e. MoEF should not grant any EC in the identified ecological sensitive areas (ESA). It was the contention of the Respondent No.6 that even up to 30th September, 2014, no election of remedy was made by the Appellants in spite of clear direction from Tribunal in the earlier orders. Only on 30.09.2014, they selected such remedy challenging EC of Respondent No.6, leaving Appeal of other issues and claims.

The Respondent No.6, therefore submitted that though EC was granted on 6.1.2014, the same was challenged before the Tribunal only on 24.7.2014, even if considering the date of order of Tribunal, it could be considered as only on 3rdJuly, 2014. Therefore, his contention was that even considering the scenario adverse to him, the Appeal was filed after a period of more than 5 months. He contended that as per Section 16 of the NGT Act, the Appellant is required to file an Appeal within 30 days, which can be further extended by the Tribunal up to 60 days, only after satisfying itself about the reasonability of the causes of such delay before condoning such delay. The Respondent No.6 also submitted that the Appellants had not filed any Application

for such condonation of delay.

Counsel for the Appellants submitted that they had mentioned the impugned EC granted to the Respondent No.6, as one of the grounds of the Appeal and therefore, it cannot be segregated in isolation from prayers. In fact, even in limitation para, it was submitted that the project of the Respondent No.6, was approved on 6.1.2014, which prompted the Appellants to file this Appeal. The Appellants also contended that they filed M.A.No.60 of 2015 highlighting the reasons for delay in submission and only after, the bauxite mining project of the Respondent No.6, was approved by MoEF, they came to know about the OMs.

The limited question, which had to be answered, was whether the said Appeal was within limitation.

Admittedly, EC was granted to the Respondent No.6 on 6.1.2014 and published in newspaper through public notice on 11.1.2014. The Appellants were aware of such grant of EC while filing Appeal. The original Appeal was not having only general or specific prayer against the EC granted to the Respondent No.6. Amended Appeal was received by the Tribunal on 11.8.2014 and the same was received by the Respondent No.6 on 24.7.2014. The mere mention of the EC granted to Respondent No.6, in the grounds of original Appeal did not subscribe to the prayers to Respondent No.6, in the absence of only specific or general prayer to this regard. The Appeal had been filed beyond 30 days of the grant of EC i.e 6.1.2014. The Appellants themselves mentioned in amended memo of the Appeal that they came to know about EC dated 6.1.2014 on 11.1.2014, when it was published in local newspapers. Even considering that the limitation period triggered on 11.1.2014, Appeal had been filed, with amended prayer, to challenge the impugned EC of Respondent-6, well beyond 90 days.

The Appeal was found to be barred by limitation of time. M.A.No.123 of 2014 was allowed and consequently Appeal No.7 of 2014 was dismissed along with M.A.No.60 of 2014. The Main Appeal as well as Misc. Applications were accordingly disposed of.

Vinod Raichand Jain Vs. Union of India & Ors.

Application No. 90 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: felling/cutting of trees, expansion of road project,

Application disposed of

Dated: 29 January 2015

The Applicant sought injunction against tree cutting and public auction, which was to be held on 2nd and 3rd September, 2014, in respect of those trees, which were planned to be cut/felled. This Application was filed under Section 14 read with Section 18(1) of the National Green Tribunal Act, 2010.

Between Shikrapur –Chakan, State Highway No.55, the Public Works Project Department (PWPD), Pune, planned widening of Highway No.55 within Shirur and Khed (Rajgurnagar) Tehsils, (district: Pune). The project work required removal/cutting of in all 1189 trees. The trees were proposed to be felled/cut down, because they come in the midway of expansion project.

According to the Applicant, the Respondent No. 5, appeared to have granted permission for tree felling only for 769 trees, without application of mind, and without following proper procedure. The requirements of Law had not been followed and, therefore, the Applicant gave Notice dated 27th August, 2014, to the Executive Engineer of PWD, Pune. He, thereafter, filed present Application.

A statement was made by learned Advocate for the Respondents that unless alternative road or stretch of land will be identified or arrangement can be made for replantation/new plantation of trees, the project work will be stalled till such issue will be resolved. Thus, it was agreed that both the works should be permitted to proceed simultaneously.

The Tribunal was of the opinion that the permissions for felling of trees were duly obtained by the PWD Authorities before commencement of project in question. The permissions had been obtained under the Maharashtra Felling of Trees (Regulation) Act, 1964, from the competent Authority.

The Project Proponent was put under legal obligation to make available land alongside the road to be widened for plantation. On his failure, Govt. undertook such work in in order to ensure simultaneous plantation of trees, which was required to be done as per Govt. policy, which was in vogue even at that time.

Shri. Sadashiv Salunke, Executive Engineer, could see that there was permission available for removal/cutting of trees, yet the illegality could obstruct the project, but there was no land available for plantation/replantation of the trees. So, alternative arrangement was made by selecting land of CRPF.

According to the Tribunal expansion of State Highway was an important project in public interest which cannot be stopped, only because there are trees, which may obstruct the project when alternative arrangement for plantation/afforestation can be made. Learned Counsel appearing for the Respondent No.3 informed that number of trees will be planted to maintain ecological balance, as per the directions of competent Authority, which granted permission to fell trees in question. It was directed that the concerned Authority i.e. Project Proponent, Executive Engineer of the project and DIGP, GC, CRPF, shall manage to execute proper agreement and place a copy thereof on the record of the Tribunal, within period of three weeks. The Registrar of NGT (WZ), was directed to forward copy of this Judgment to the Additional Chief Secretary, PWD, Govt. of Maharashtra for suitable action, as may be deemed proper and particularly in the context of work/conduct of PWD officials, named in the Judgment.

The Application was accordingly disposed of .

***Suo motu* case**

The News Item of Plan for a Cricket Stadium in Tirupathi in "The Hindu"dated 21.11.2013 Vs. Union of India &Ors.

Application No. 365 of 2013 (SZ) (*suomotu)*

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: *suomotu*, Environmental Clearance (EC), construction project, Consent to Establish, Consent to Operate, felling of trees/cutting of shrubs, environmental degradation

Application disposed of with directions

Dated: 30 January 2015

A news item in the "The Hindu" dated 21.11.2013 under the caption "Plan for stadium at Thirupathi raises eyebrows" was published. Taking cognizance of the above news item in the interest of protection of environment and ecology, the Tribunal thought it fit to take suomotu proceedings and notices were served to the respondent Nos. 1 to 8 to file their reply with regard to the news item. The 9th respondent, namely, the Registrar, Sri Venkateswara Univeristy (University), was added a party respondent to the above proceedings as the land in which the stadium is to come up belongs to the University.

The first respondent, namely the MoEF filed the reply which stated that as per the Notification issued on 14.09.2006 under the Environment (Protection) Act, 1986 construction of new projects or activities listed in the Schedule to the said Notification entailing capacity addition with change in the process and or technology shall be undertaken in any part of India only after prior Environmental Clearance (EC) from the Central Government, or the State Level Environment Impact Assessment Authority (SEIAA).

The 4th respondent, namely, the Principal Chief Conservator of Forests stated in reply that the area in which the proposed international cricket stadium is to be constructed is in an extent of 30.01 acres comprised in Sy.No. 588/A of Ullipatteda Village of Thirupathi Mandal and the said land belongs to the Tirumala Tirupathi Devasthanam (TTD). The TTD had given an extent of 924.08 acres on long lease for 99 years to the University in the year 1962. The extent of 807 acres out of the total extent of 924.08 acres lies in Sy.No. 588/A and 30.01 acres from this 807 acres was leased out to the Andhra Cricket Association by the University for a term of 30 years. At the time of survey of the land for the cricket stadium, the Forest Department officials objected to the lease as the land where the cricket stadium was to come formed a part of forest land.

The University requested permission from the Divisional Forest Officer, Wildlife Management Division, Tirupathi by a letter dated 29.05.2013 to clear the jungle growth in 30.01 acres in Sy.No.588/A and on reference to the Revenue Divisional Officer (RDO), Tirupathiit was found that the land was covered with thorny bushes

and red sander trees and it was not possible to count the red sander trees without removing the thorny bushes and the DFO issued instructions to the University by letter dated 19.10.2013 for removal of thorny bushes for the limited purpose of enumerating the red sander and other tree species located in that area. When a reference was made out to the University by the DFO regarding the felling of trees without approval of the competent authority in violation of the Andhra Pradesh Water, Land and Trees Act, 2002, the University replied that as the extent of 30.01 acres was leased out to the Andhra Pradesh Cricket Association, it was the lessee's obligation to obtain the clearances and it was responsible for the same.

As per the EIA Notification, 2006, any construction activity beyond 20,000 metre square required obtaining of prior EC before commencement of the activity or preparation of the land. However, the Project Proponent had informed the APPCB that the built up area of the stadium was still under planning and not yet finalized. The APPCB had, therefore, directed the 8th respondent to approach the APPCB after finalizing the plan of the proposed stadium and the 5th respondent would take appropriate action on the basis of the same.

The Andhra Cricket Association was under the impression that as the land belonged to the University, no permission from the Forest Department was required and only after the information from the DFO to remove the bushes, the Association made removal of bushes which could not be made without felling the trees in some places.

In pursuance of a requisition dated 12.01.2009 by the General Secretary/President, Andhra Cricket Association (Association) to the office of the Chief Minister, Andhra Pradesh for allotment of vacant land to an extent of 50 acres in Sy.No.588/A of Alipiri Village of Tirupathi for construction of a stadium, the Government of Andhra Pradesh in its letter dated 01.02.2013 requested the 9th respondent to examine the proposal to lease out an extent of 30 acres for the construction of the stadium and other complexes with the funds of the Association and also requested the University to place a proposal with full details before the Executive Council of the University. Accordingly, the proposal along with the draft lease agreement were prepared and placed before the Executive Council which approved the

It was averred by the 6th and 7th respondents that there was no bar for the 9th respondent University to execute sub lease. But, it was also averred that the sub lease had not yet been ratified by the Government.

By a letter dated 25.12.2013, the 8th respondent sent a communication stating about measures proposed to be taken for the protection of environment and ecology in reply to the notice dated 21.12.2013 of 5th respondent/APPCB. The environmental degradation due to the establishment of the Stadium had to be balanced judiciously on the principle of Sustainable Development. The proposal for the setting up of the Stadium should not be denied due to clearing of the shrubs, small plants and trees for

construction of stadium under the guise of environmental degradation ignoring the Sustainable Development. The learned counsel for the 8th respondent/Association concluded that what was proposed in the land was only for a good cause which would not lead to any environmental degradation or cause detrimental effect on ecology. Therefore, the Association must be permitted to proceed with the work.

The learned counsel appearing for the 6th and 7th respondents submitted that pursuant to the lease agreement entered into in1962 between the TTD and University, the TTD had parted with and put the University in possession in respect of 924.68 acres of land comprised in Sy.No.588/A on long lease. In so far as the proposal for the construction of the stadium, the TTD has no role to play at all and hence, the 6th and 7th respondents were not liable to answer to any one of the allegations made on the issues of the alleged environmental degradation.

In the result, this *suomotu* application was disposed of with the following directions:

1. A direction was issued to the 8th respondent/Andhra Cricket Association to apply and obtain Environmental Clearance from the 1st respondent/MoEF or from the State Level Environment Impact Assessment Authority (SEIAA), procedurally if warranted after finalization of all the details of the proposed International Cricket Stadium project.

2. The Andhra Cricket Association was directed to approach the 5th respondent/Andhra Pradesh State Pollution Control Board (APPCB) for Consent to Establish and Consent to Operate at appropriate stages and APPCB was also directed to consider the application as and when made by the Andhra Cricket Association and pass appropriate orders.

3. The 8th respondent was directed to pay a sum of Rs. 96,40,000 only towards the compensation for unauthorized cutting and felling of trees in 25 acres of land in Sy.No.588/A, Alipiri Village, TirupathiTaluk to the Tirumala-Tirupathi Devasthanam (TTD), Tirupathi within a period of 3 months and also the 8th respondent was further directed to plant 4000 saplings of different species as per the directions of the Forest Department, Government of Andhra Pradesh within a period of six months and the Forest Department, Government of Andhra Pradesh was directed to monitor and verify the compliance of this direction.

4. In so far as the remaining 5 acres out of the total leased out to the 8th respondent by the 9th respondent/Sri Venkateswara University (University), Tirupathi, the 8th respondent was restrained by way of an order of injunction not to cut or fell any tree in the said extent of 5 acres either directly or in the guise of removal of thorny bushes without necessary permission from the Forest Department, Government of Andhra Pradesh and while granting such permission, the Forest Department, Government of Andhra Pradesh was directed to impose among other conditions that the 8th respondent shall plant saplings 4 times of the number of trees cut in respect of which

permission was granted.

5. It was held that the 6th and 7th respondents representing the TTD and the 9th respondent were not liable in respect of the environmental degradation or damage to the ecology caused by the unauthorised cutting and felling of trees by the 8th respondent in 25 acres of land in Sy.No.588/A .

No cost.

Shri Subramani Vs. District Environmental Engineer, Tamil Nadu Pollution Control Board &Ors.

Application No. 62 of 2013 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: noise pollution, residential area, Consent for Establishment, Consent for Operation

Application disposed of with directions

Dated: 30 January 2015

This is application was filed by the applicant seeking a direction to the 1st respondent, Tamil Nadu Pollution Control Board (Board) to consider the applicant's representation dated 23.8.2012. The case of the applicant was that the 4th respondent after purchasing a piece of land in S.F. No.792/1 in Parancharvali Village at KangeyamTaluk commenced an industry in the name and style of SRP Engineering Industries in about 5 cents of land therein to carry on the repair of crusher machinery. After commencement, gradually the Unit Continued to function throughout the day, thereby causing heavy noise and emanating flashy light which affect people's eye sight and also cause other health hazards. The residents who could not reside peacefully made complaints to all the authorities but no action was taken. A suit was filed before the District Munsif Court, Kangeyam in O.S. No.226 of 2006 seeking permanent injunction which was decreed in the month of March 2012. But no appeal was preferred there from. Despite the decree, the 4th respondent had been carrying on the Unit. Hence as a final resort, the applicant made a representation to the respondents on 23rd August, 2012 to stop the illegal activities of the 4th respondent. But no action was taken.

Accordingly an inspection was made on 16.12.2013 and the report submitted by the Board showed the ambient noise level survey. The counsel for the applicant submitted that though the noise levels were within the prescribed limit, the Unit even as per the

Revenue Records was located in the residential area. If so, necessary Consent for Establishment of the Unit should have been obtained from the Board. But admittedly the Unit had not done so. Hence, the functioning of the Unit had got to be stayed.

The Tribunal was of the view that the reported values alone could not be taken as criteria for allowing the Unit to carry on its operation. Admittedly, the Unit was situate in a residential area and if so, necessary application should have been made before the Board and Consent for Establishment and Consent for Operation issued by the Board become necessary. Under the circumstances, the Tribunal had no hesitation to stop the 4th respondent Unit to carry on its operation. The counsel for the 4th respondent submitted that necessary application would be made before the Board for getting necessary Consent. On the request made by the counsel, the Tribunal felt it fit that liberty could be granted to the applicant to make necessary application therefore. The appraisement of the facts and circumstances warranted for injuncting the 4th respondent Unit from carrying on its operation till the Consent for Establishment and Consent for Operation were obtained from the 1st respondent Board as required by law. If and when the application for Consent to Establish and Operate were made by the 4th respondent, the 1st respondent was directed to consider the application and pass suitable orders thereon as required by law within a period of two months. With the above observation and direction, the application was disposed of. No cost.

Mr. Charudattm Pandurang Koli & Ors. Vs. M/s Sea Lord Containers Ltd. &Ors.

Application No. 40/2014(WZ)

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Chambur, Volatile Organics Emissions (VOCs), consent to operate, chemical storage tanks

Application disposed of with directions

Dated: 3 February 2015

The Applicants were resident of Ambapada and Mahul villages in Mumbai and had substantial issue of Volatile Organics Emissions causing health impacts on the surrounding population allegedly caused by Respondent Nos.1 and 2.

The Respondent No.1 had a terminal located at Ambapada and Mahulvillages which was in-operation since 2007. This terminal comprised of 5 units of 10,000 KL and 5 units of 5,000 KL capacity chemical storage tanks. All the storage tanks located at the terminal had close roof and 5 of these tanks were fitted with internal floating roofs.

The Applicants submitted that around 75,000 KL of hazardous chemical was being stored at any given time in 10 tanks of Respondent No.1 as per the consent to operate granted by MPCB to Respondent No.1 dated 11-10-2012. The Applicants claimed that the MPCB had renewed the permissions to Respondent-1 unit without considering the environmental impacts and consideration.

The Applicants raised concerns over the air pollution caused due to emissions of Volatile Organic Compounds (VOC) due to loading, storage and unloading of the chemicals by the Respondent No.1. Secondly, the pigging operation which was practiced for cleaning the inner sides of the chemical conveyance pipe line, through internal brushing action, conducted before every change of chemical which was stored in the storage tanks, also caused excessive emissions of remaining chemicals in the pipe line into the environment.

Applicants further stated that during the change of chemical which could be stored in a particular storage tank, the cleaning and purging operations resulted into Water and Air Pollution.

Applicants submitted that they had made regular complaints to the authorities and the KEM hospital conducted Respiratory Morbidity Survey and their report dated 18-07-2013 indicated that Respiratory Morbidity was significant in Mahul and Ambapada village. The Applicants further submit that based on this report, MCGM had listed the licence granted to Respondent No.1 in ‘not to renew’ list and accordingly, informed the other authorities. The Applicants claimed that though MPCB conducted inspection after the complaints, it did not inspect any of the 10 storage tanks; neither had it inspected the actual functioning and operation of the chemical storage and handling process to understand and assess the VOC emissions. The M.P.C.B. accordingly, gave a show cause notice on 24-12-2013 and further the S.D.O. also gave directions to the industry on 17-1- 2014 to install the scrubbers in 2 months. In spite of such directions, no initiatives had been taken by the Respondent No.1 to control VOC emissions. The Applicants also claimed that there was no buffer zone between the residential area and the Respondent No.1’s unit and therefore, in case of any fire or hazardous and excessive emissions, there was huge and grave danger to the large population staying

in surrounding and therefore, it was necessary that the Respondents should take suitable action in view of the above fact position.

The Respondent Nos.3 and 4 initially filed an Affidavit on 8th May 2014 and submitted that the Board was in discussion with the subject experts in this field for in depth study by constituting a Committee of Officers and based on the findings of the Committee necessary measures to be adopted by Respondent No.1 for control of VOCs arising from the tank forms area will be imposed on Respondent No.1.

The MPCB submitted final report of the said Committee vide Affidavit dated 21 May 2014. The Affidavit dealt with all the major industries in Mahul, Chambur area. As far as Respondent No.1 was concerned, the report indicated that the first consent to establish was granted to the industry on 9 July 1997 for storage and distribution activities of chemicals with capacity of 1,15,000 KL per month and 36 chemicals were listed in the consent. The Respondent No.1 also received environmental clearance from the environment department on 22-1-1997. The report also mentions that the 'isolated storage' was not covered under EIA Notification, 1994. The MPCB granted first consent to operate to the said unit on 25-5-2007 which was valid up to 31-5-2012 for storage of chemical with maximum capacity of 75,000 KL per month. The renewal of consent of the unit was issued on 11-10-2012 which was valid up to 31-5-2017, for storage and handling of chemicals to the maximum capacity of 75,000 KL at a time, in total 10 tanks. The report also suggested various corrections required in MPCB consent to operate. However, it was noticed that MPCB affidavits had not dealt with the specific grounds of the Application, particularly emissions of the VOCs from the Respondent No.1's industrial activities though such affidavit was filed on 8-5-2014.

The Respondent No.1 then gave elaborate description of their manufacturing activities and submitted that all their activities like pigging, tank cleaning; and emissions from the pressure valves and dispensers were properly managed by Respondent-1 Industry by provision of necessary air pollution and water pollution control arrangements. The Respondent No.1 also informed that they had installed scrubbers at the dispensers for control of VOCs as per the directions of MPCB. The Respondents also filed further Affidavit and claimed that the MPCB Expert Committee report clearly indicated that their activities are not contributing significantly to the VOC emissions. They claimed that MPCB had not found any wrong in operation of the facilities of Respondent No.1 and its processes. The Respondent No.1 also submitted that they were ready to implement any modifications/suggestions as recommended by MPCB if such modifications/suggestions were directed to all similar units in the state.

KEM was directed to make a comparative study of health hazards vis-a-vis observed air quality data and particular nature of stack and process emission and industrial emissions, in order to locate contributory sources, in view of their earlier report and its findings. The Tribunal was of the considered opinion that the issues related to

Respondent No.1 needed to be properly dealt with in the first instance and therefore, considering the submissions of MPCB, Institute of Chemical Technology, Matunga, was appointed to submit a report on the following issues :

1. The nature and composition of the VOC emissions from activities and unit processes at Respondent No.1 terminal

2. The nature of chemicals stored at Respondent No.1 and health impacts of the potential emissions on human health.

3. Adequacy and efficacy of the Pollution Control System at the Respondent No.1-Unit in terms of the operational standards adopted by Respondent No.1 for its processes and activities.

4. The potential impacts and change in the air and water emissions resulting from change in capacity from maximum 75,000 KL per month to 75,000 KL at a time and its environmental implications.

The Tribunal directed the Director ICT, Matunga- Mumbai to nominate Sr. Faculty Member/s to submit a Report within 6 weeks. The expenditure for such Report would have to be initially borne by MPCB, subject to further orders from the Tribunal and MPCB shall provide all the necessary assistance, including copy of the Application, and response of MPCB and Respondent No.1 and report of Committee to direct ICT, within 2 weeks. Respondent No.1 shall provide necessary assistance to the designated faculty members of ICT and their authorised team members for conducting the studies. The matter will be heard after receipt of such report from the ICT. The cost of study will be determined and liability will be fixed in the final order. The Director, KEM hospital was directed to expedite the study as ordered vide directions dated 23.9.2014 and submit the report in 6 weeks, without fail.

Stand over to 30 March 2015.

M/s Sripathi Paper & Boards (P) Ltd.Vs. Tamil Nadu Pollution Control Board Ors.

Application No. 32 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Municipal solid waste, hazardous waste, customs

Application disposed of with directions

Dated: 5 February 2015

This application was filed against the order dated 31.12.2013 passed by the 1st respondent, The Tamil Nadu Pollution Control Board (Board) by which the Board had directed the applicant to re-export the cargo of 10 containers said to contain "Municipal Solid Waste" and hazardous waste immediately. This order had been passed by the Board on the ground that the applicant has received 10 containers of assignment from France. In view of the fact that it could not be disposed of effectively in this country, the Indian customs confiscated the entire containers. Under the Customs Act there had been some proceedings wherein it was decided that the containers should be re-exported. It was submitted that the appeal was pending before the Customs, Excise and Service Tax Appellate Tribunal. On the other hand, the Counsel for the 3rd respondent submitted that the department had already taken decision to re-export and according to him the matter came under anti dumping rules and the materials should not be allowed in the country.

It was found from the impugned order that the order had been passed by the Board without giving an opportunity to the applicant and on that ground also the order was liable to be set aside. However, instead of setting aside the order and remitting back to the Board the Tribunal directed the Tamil Nadu Pollution Control Board and its Chairman to nominate a suitable scientific officer of the Board to inspect all the ten containers in the presence of the applicant after giving adequate notice to the Department of Customs and take a decision on the contents of the containers and also the way of disposal if possible. The Board was also to pass appropriate orders in the manner know to law and such orderswere to be made within a period of four weeks from the date of receipt of the copy of this order. With the above direction the application stood disposed of. No cost.

M/s B.S.M. Infra Private Limited Vs. Appellate Authority, Tamil Nadu Pollution Control Board & Ors.

Appeal No. 82 of 2014 (SZ)

And

Appeal No. 83 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: crushing unit, expansion, Consent to Operate, closure

Appeals dismissed

Dated: 5 February 2015

These two appeals were directed against the orders of the learned Appellate Authority in Appeal Nos. 58 & 59 of 2013 dated 19.9.2014 which had considered the orders of the Tamil Nadu Pollution Control Board dated 4.9.2013 passed both under the Water and Air Acts, rejecting the application filed by the appellant for the purpose of extension of their crushing unit from the originally sanctioned quantity under the consent to establish of 650 MTM to 5000 MTM. The learned Appellate Authority had taken the view that the plea of the appellant, that being an existing industry with the consent to establish for 650 MTM and subsequently permitted to operate for some period, when it applied for expansion in the same place for 5000 MTM, it was deemed to be a fresh unit and therefore the distance criteria as prescribed by the Board in the B.P.No.4, dated .2.7.2004 would apply in as much as the expansion is within the distance of 1 km. from the existing unit.

When it was found that the unit was operating without consent to operate, a closure order came to be passed by the Board on 17.8.2009. It was thereafter the unit was stated to have provided dust control measures and requested the Board to revoke the closure order by its letter dated 24.3.2010. Based on this letter the Board in the order dated 27.4.2010 suspended the closure order thereby permitting the appellant to operate subject to the condition that the unit shall take AAQ (Ambient Air Quality) Survey within 3 month’s time. According to the Board, the said survey had not been affected so far and therefore the Board passed an order of closure.

The learned counsel for the appellant submitted that as on date, there were no other metal crushing units situated within the prohibitive distance provided under B.P.No.4 since many of the units had been permanently closed and there was no impediment on the part of the appellant to proceed with his application for fresh consideration for 5000 MTM proposal. The Tribunal was of the opinion that if the unit was an existing unit, the distance criteria would not apply if the unit wanted to expand its capacity in the same space. In view of the above, the observation made regarding the existing units, the 1 km distance criteria will apply, was not proper.

The learned counsel had submitted that his application could be considered afresh as there were no other industries situated within the prohibitive distance. The Tribunal directed to remand the matter back to the Board to consider the application of the appellant afresh as a fresh unit for 5000 MTM and pass appropriate orders.

Accordingly, the impugned order of the Appellate Authority stood set aside to the limited extent as stated above and the matter stood restored to the Board for fresh consideration for passing appropriate orders within a period of four weeks from the date of receipt of the copy of this order. With the above direction, the appeals were dismissed. No cost.

M/s Thavamani & Company Vs. Assistant Engineer, TNEB & Ors.

Application No. 43 of 2015 (SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: electric service connection, water extraction, electric energy, Tamil Nadu Pollution Control Board

Application disposed of with directions

Dated: 5 February 2015

After looking into the averments and hearing the Counsel for the parties, the Tribunal felt it fit to dispose of the application in the following manner.

The Counsel for the applicant was to submit that the applicant's Unit which fell under over exploitation category of water extraction remains closed. In view of the fact that all the machinery and in particular the membranes had got to be preserved and if not done it would cause great prejudice and financial hardship to the applicant, a direction was issued to the 2nd respondent to reconnect the Electric Service Connection immediately to the applicant's Unit for consumption of electric energy for the purpose of maintaining the machinery and membranes in the Unit. It was also made clear that the applicant's Unit shall not do any commercial activity and the Tamil Nadu Pollution Control Board was directed to monitor the same. Accordingly the application was disposed of.

Mathialagan Vs. Union of India &Ors.

Appeal No. 42 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: SEIAA, Environmental Clearance (EC)

Appeal allowed

Dated: 5 February 2015

This appeal was directed against the impugned order of the State Environmental Impact Assessment Authority (SEIAA), Tamil Nadu dated 20.5.2013 by which the SEIAA granted an approval of Environmental Clearance (E.C.) for the proposal of the 6th respondent, project proponent for extracting quarry sand (Savudu) deposited at survey Nos. 138/1B1, 138/2A, Thillaivilagam Village, Thiruthuraipoondi Taluk, Thiruvarur District .

The main ground raised in the appeal was that on the date of grant of E.C., namely 20.5.2013, the SEIAA was not having jurisdiction to issue the same. According to the appellant, the Udayamarthandapuram bird sanctuary is situated within the prohibitive distance of 10 k.m. and on that day it was MoEF who was the competent authority to decide on the grant of E.C. It was admitted that the MoEF had issued Office Memorandum only on 24.6.2013 by which the quarrying of sand (Savudu, ordinary earth) was categorized under B-2 category. It was subsequently amended on 9.9.2013 and the Government stated that mining of such minor mineral in less than 5 hectares did not require any E.C. Even though the learned counsel for the project proponent contended that on the date of issuance of E.C. by SEIAA there was an authority conferred by MoEF in its O.M. Issued earlier on 18.5.2012, it remained a fact that as per the Judgment of the Supreme Court in Deepak Kumar and Others Vs. State of Haryana and others (2012) (4) Supreme Court Cases 629, the Supreme Court in the penultimate paragraph stated that till the State Government or Union Territories pass

appropriate orders by considering the Core Committee Report submitted to the Supreme Court, the issuance of 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.

The learned counsel for the 6th respondent submitted that by virtue of the subsequent O.M. as well as amendments he was better placed as on date and he had a chance of applying to the authority competent for the purpose of granting fresh E.C. This submission he had made due to the reason that even though it was the case of the appellant that there was a deliberate suppression in Form - 1 submitted by the 6th respondent which he denied, he was compelled to take the above said decision due to the reason that the 6th respondent by virtue of his conduct had not earned any benefit since he had not even started the business except filing cases in various Courts. He also submitted that by virtue of his decision to approach the proper authority for grant of fresh EC, the Writ Appeal filed by him before the High Court in respect of his plea for police protection became infructuous since the cause of action contained therein had ceased to be affective.

Considering that the SIEAA at least on the date when the E.C. was granted i.e., on 20.5.2013 ought to have considered the existence of the bird sanctuary in the light of the Judgment of the Apex Court stated above, the Tribunal was of the view that the SIEAA had no jurisdiction on the date of granting EC. It was only on that point that the impugned EC is to be set aside. Therefore, the Tribunal set aside the EC granted by the SIEAA and allow the appeal. If the 6th respondent had any right in law either applying for fresh EC or otherwise, it was for him to work out his remedy in the manner known to law. Since a decision was taken only on the above said ground, other contentions were left open. Appeal stood allowed, in the above terms. There will be no order as to cost.

M/s. Shanthi Gears Limited Vs. The Tamil Nadu Pollution Control Board &Ors.

Application No. 46 of 2015 (SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: electricity, industrial unit, non-application of mind

Application allowed

Dated: 5 February 2015

This application was filed against the order of the Tamil Nadu Pollution Control Board dated 30.1.2015 passed under section 31 (A) of the Air (Prevention and

Control of Pollution) Act, 1981 by which the power supply of the applicant unit situated at SF No.219, Kannampalayam Village, SulurTaluk, Coimbatore District had been directed to be stopped with immediate effect.

It was the case of the applicant that without even serving a copy of the impugned order, the electricity came to be cut to the industrial unit, and the matter came to be filed as application and not as an appeal.

On perusal, the impugned order showed a clear non-application of mind. There was absolutely no reason assigned in the impugned order as such except to say that the Board was entitled to invoke its power under Section 31 (A) of the Air Act. We have to ascertain the reason only by going back to the Show Cause Notice issued by the Board to the applicant on 24.6.2014. It was when the show cause notice was issued on the applicant, the Board had found certain fault in the operation of the applicant unit. As per the said show cause notice the following defects were found namely:-

1) The unit shall operate by adhering to all conditions as stipulated in the existing consent order.

(2) The unit shall totally eliminate CO2 moulding process and adopt resin sand molding process for which the unit shall provide Thermal sand reclamation plant so as to reclaim the entire quantity of sand and to reuse the same in the process within a period of six months.

M/s Sai Annapoorna Bio-Proteins Pvt. Ltd. Vs. Karnataka State Pollution Control Board &Ors.

Appeal No. 115 of 2013 (SZ)

And

M.A. Nos. 244 and 267 of 2013

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: ownership of property, renewal of consent, Karnataka State Pollution Control Board

Appeal disposed of with directions

Dated: 6 February 2015

The contention raised in the appeal was that the Karnataka State Pollution Control Board (Board) took note of the dispute between the appellant and his brother with regard to the ownership of the property and thus to run the unit and the application for renewal of consent had been rejected on that ground.

The learned counsel appearing for the appellant submitted that while it was true that there had been some dispute between the appellant and his brother, by virtue of an order passed by the competent court the dispute had been settled. According to him, a memo of compromise had been filed between the appellant and his brother and the competent court of law had also recorded the same and there was no dispute as on date. The appellant made it clear that he was entitled to run the unit even though the unit had been stopped and sealed as on date as per the order of the Board.

The Tribunal was of the view that the appellant should be permitted to file an affidavit within a period of one week on the above facts. On the appellant serving such a copy of the affidavit to the learned counsel for the Board, the appellant was entitled to proceed with the rectification of the defects pointed out by the Board and also any other condition stipulated by the Board. On completion of the rectification, it was open to the Board to make a physical verification and pass appropriate order in the manner known to law. With the above said direction, the impugned order stood set-aside and the matter was remanded back to the Board for passing an appropriate order in terms of the direction given above.

After filing of the affidavit stated above, the Board shall permit the appellant by handing over the key to him only for the purpose of carrying out the rectification and not for making any commercial production. With the above terms, the appeal was disposed of. The Miscellaneous Application. Nos. 244 and 267 of 2013 were also closed. No cost

Shri R. Murugesan Vs.Commissioner, Maraimalainagar Municipality &Ors.

Application No. 233 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: environmental hazard

Application disposed of with directions

Dated: 6 February 2015

The Counsel for the 1st and 2nd respondent was to take appropriate steps against the 3rd respondent in the event of causing any environmental hazard by its activities. The Counsel for the 1st respondent, Municipality submittedthat as on date the activities of the 3rd respondent did no cause any hazard. If and when any hazard was caused by the 3rd respondent, the 1st and 2nd respondents would take appropriate action against the 3rd respondent in accordance with law. With the above observation, the application was disposed of. No cost.

Vikrant Kumar Tongad Vs. Delhi Tourism and Transportation Corporation & Ors.

Original Application No. 137 of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. M. S. Nambiar, Dr. D. K. Agrawal, Prof. A. R. Yousuf

Keywords: Yamuna river, bridge, project, construction, Environmental Clearance (EC), Signature Bridge Project, SEIAA

Application disposed of with directions

Dated: 12 February 2015

The issue in question was 'Whether, constructing a 'bridge' across Yamuna is a 'project' or 'activity' that shall require prior Environmental Clearance from the Regulatory Authority, particularly with reference to Entry 8(a) and/or 8(b) of the Schedule to the Environment Clearance Regulations, 2006 ('Regulations of 2006')'?

The applicant filed the present application, challenging construction of a 'Signature Bridge' across River Yamuna at Wazirabad, Delhi. The challenge was primarily on the ground that the said construction had commenced and was being carried on without obtaining prior Environmental Clearance from the Regulatory Authority in terms of the provisions of the Regulations of 2006.

It was stated by the applicant that the Master Plan of NCT of Delhi, designated floodplains of River Yamuna in Zone 'O', expanding to an area bearing special characteristics in terms of being an eco-sensitive area. It was also averred that the whole expanse of the stretches were not to be used for development, therefore, need not be taken up under Section 8 (Zonal Development Plan) of Delhi Development Authority Act, 1957. According to the applicant, the construction of the bridge is likely to impact River Yamuna and river hydrology adversely. The applicant relies upon a report prepared by Environics Trust, New Delhi and Peace Institute Charitable Trust, Delhi, on 'Impact Assessment of Bridges and Barrages on River Yamuna', which was published in the year 2009. According to the applicant, considering this

Report, it was necessary and prudent to conduct Environmental Impact Assessment of the Signature Bridge Project and its impacts on River Yamuna and its hydrology. The applicant claimed that it was necessary for the Project Proponent to obtain prior Environmental Clearance before starting the project in terms of the Regulations of 2006.

In reply to these, Respondent No. 1 admitted that it had commenced construction of the Signature Bridge over River Yamuna without obtaining any Environmental Clearance from the MoEF/State Level Environment Impact Assessment Authority ('SEIAA'). According to the Respondent No. 1, since the existing two lane Bridge at Wazirabad was unable to bear increased volume of road traffic, the Government of NCT of Delhi decided to construct a new eight lane bridge for high moving traffic. Thus, the construction work of the bridge was assigned to Respondent No. 1 by Government of NCT of Delhi in terms of MoU dated 27 August 2004. An Environmental Impact Assessment (EIA) study was also conducted which summarized that there was likely to be no significant impact on the environment due to the proposed construction of the bridge. According to Respondent No. 1, Delhi Metro Rail Corporation gave 'No Objection' as per letter dated 1 December 2004, similarly, the Ministry of Defense gave 'No Objection' on 23 May 2006, the Technical Committee of the Delhi Development Authority gave 'No Objection' on 14 June, 2006 and the Archeological Survey of India gave 'No Objection' on 7 August 2006.

Respondent No. 1 did not pursue the matter any further and commenced the construction work. It was also averred by this Respondent that the Central Water and Power Research Station ('CWPRS'), Pune carried out further Hydraulic Studies and recommended the construction with certain technical parameters, which were duly adopted by Respondent No. 1 in order to take all precautionary measures in the interest of environment.

Respondent Nos. 2 & 4 had taken a stand that they were unable to say as to what was the proposed use of construction of this project in future. However, they also stated that "Bridge" was not covered under the Regulations of 2006. In their reply, they referred to Entry No. 7(f) i.e., 'Highways' – (both National Highways or State Highways) but have not made any specific averment as to whether the present project is covered under Entry 7(f) or not. MoEF, though, did not file any separate reply, but, they have taken a stand during the course of the arguments that, "Bridges" is an 'activity' or 'project' which is not covered under any of the Entries of the Schedule to the Regulations of 2006, and hence, does not require Environmental Clearance.

Regulations of 2006 had been issued by the Central Government in exercise of its statutory powers conferred under sub-section (1) and clause (v) of sub Section (2) of Section 3 of the Environmental Protection Act, 1986 (Act of 1986) read with clause (d) of sub-rule 3 of Rule 5 of the Environmental (Protection) Rules, 1986 (Rules of 1986).

Clause 2 of Regulations of 2006 declared that a ‘project’ or ‘activity’ shall require prior Environmental Clearance from the concerned Regulatory Authority under Category ‘A’ and ‘B’ as the case may be. This would equally apply to all new projects or activities, as well as expansion and modernization of existing projects or activities. It also made it obligatory upon the project proponent of any ‘project’ or ‘activity’ to take such Environmental Clearance before any construction work or preparation of land by the project management (except for securing the land), has started on the ‘project’ or ‘activity’. In other words, obtaining of prior Environmental Clearance is a condition precedent before taking any steps in relation to the project or activity in terms of Clause 2.

This certainly was an Area Development project falling within Entry 8(b) of Schedule to the Regulations of 2006. Admittedly, particularly according to the Project Proponent, various other departments had granted them clearances and/or have already issued No Objection Certificates for construction of the said project. MoEF vide its letter dated 14 March, 2007 had informed the Project Proponent that ‘bridges’ were not covered under the Regulations of 2006 and as such, no prior Environment Clearance was required for commencement of the project. It was in the backdrop of these circumstances that the construction of the project commenced in the year 2007.

The application was disposed of with the following directions:

1. Construction of a ‘bridge’ or similar activity covering a build up area ≥ 1,50,000 sq. mtrs. and/or covering an area of ≥ 50 hectares, would be covered under Entry 8(b) of the Schedule to the Regulations of 2006.

2. Respondent No. 1 was to obtain Environmental Clearance for the project in question. Such application would be submitted within a period of three weeks.

3. The SEIAA shall consider the said application as Category ‘B’ project and would dispose it of by passing appropriate orders in accordance with law upon submission of Environmental Impact Assessment Report not later than six months.

4. Though the major part of the project had already been completed, demolition was not to be done in public interest. However, SEIAA was directed to put such terms and conditions as may be necessary to ensure that there were no adverse impacts on environment, ecology, biodiversity and environmental flow of River Yamuna and its floodplain.

5. The SEIAA may impose conditions containing remedial measures to be taken by the Project Proponent to ensure that there is no environmental degradation.

6. MoEF was to comply with the directions issued by the Supreme Court in para 84 of the case of In Re: Construction of Park at NOIDA Near Okhla Bird Sanctuary v. Union of India (UOI) & Ors., (2011) 1 SCC 744. 40.

Amol S/o Ashokrao Raut

Vs.

The State of Maharashtra & Ors.

Application No. 121 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Revised Development Plan, Schedule I – National Green Tribunal Act, 2010

Application disposed in *limine*

Dated: 17 February 2015

The prayers in the Application were as follows:

A. This Application may kindly be allowed.

B. The Draft Revised Development Plan of Kaij Nagar Panchyat U/s. 26(1) of Maharashtra Regional and Town Planning Act, 1966 published in the daily Lokmat dated February 01, 2014 and the decision of the General Body of the Respondent No.4 Nagar Panchyat dated 21.07.2014 and the proposed Revised Development Plan published in Official Gazette on 24.07.2014 may kindly be quashed and set aside in the interest of green policy and environmental protection policy.

C.The directions may kindly be given to the Respondent Authorities to suitably modify the proposed Revised Development Plan published in Official Gazette on

24.07.2014 considering the objections/suggestions of the Applicant on 20.02.2014 and 20.09.2014 so as to adhere to green policy and in the interest of environmental protection.

D. Pending the hearing and final disposal of this Application, the Respondents may kindly be directed not to proceed with or act upon the proposed Revised Development Plan published in Official Gazette on 24.07.2014.

Considering the nature of prayers in the Application, it was manifest that the Applicant's challenge was to draft Notification regarding Town Planning (TP), as per communication dated 31 August 2009 etc.

The nature of dispute raised in the Application had no remote concern with any of the issues connected with seven enactments, named in the Schedule-I, of the National Green Tribunal Act, 2010 and, therefore, all the prayers were outside the realm of jurisdiction of this Tribunal.

At this juncture, learned counsel for the Applicant sought withdrawal of Application, which was not permitted, because she had urged persistently for adjournments, which was refused, and as reported she sought withdrawal when we pointed out that the Application fell within none of the provisions of any enactments covered by Schedule-I, of the NGT Act, 2010. Also, the Application did not raise any 'substantial dispute relating to environment', which could be considered under Section 14(1) of the NGT Act, 2010. The Tribunal pointed out that felling of trees situated in the agricultural lands, which were not acquired by the State Govt., was an activity covered not under the Maharashtra Urban Area (Protection and Preservation of Trees) Rules, 2009, which the Applicant had referred in the Application.

Thus the Application was disposed in *limine*.

Anurag Modi Vs. State of Madhya Pradesh & Ors.

Original Application No. 29/2014 (THC) (CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P. S. Rao

Keywords: illegal mining, mining lease, forest area

Application disposed of

Dated: 18 February 2015

In the writ petition the Petitioner stated that he was moving this as a PIL after having noticed large scale illegal mining and loss of revenue to the State of Madhya Pradesh. He contended that the Comptroller and Auditor General of India (CAG) in its audit reports consecutively for 7 successive years from 2002-2009 had reported loss of revenue to the exchequer amounting to Rs. 1594.59 Crores due to non-assessment of Royalty and dead rent, non/short realization of mineral area development cess, short payment of royalty etc. by the Mining Lease holders, and on account of various irregularities committed on the part of mining department of the State. He quoted certain reports made by State Revenue and Forest Departments officials pointing out the irregularities in granting mining leases as well as illegal mining activities going on in various districts in the State. He also contended that the State Government was violating the orders of the Apex Court given in the judgment dated 27.02.2012 in the case of Deepak Kumar Vs. State of Haryana and was granting/renewing the mining leases for the areas below 5 hectares without taking into consideration the environmental impact of such mining

Hence the Petitioner made a prayer before the High Court to direct the Respondents to take action on the reports of the CAG and file Action Taken Report before the High Court and also direct the State to initiate action on the reports of Sub Divisional Magistrate, Nasrullaganj, District Sehore, Addl. Collector, Sehore as well as reports submitted by the senior forest officials and on the news items published in various print media. The Petitioner also prayed that State may be directed to follow the directions issued by the Supreme Court in the case of Deepak Kumar Vs. State of Haryana (supra).

The Respondent Nos. 1, 2 & 3 filed a combined reply before the High Court on 27.06.2013 submitting that the CAG reports for the years from 2002 to 2009 had not been ignored by the State and in fact the objections/points raised by the CAG were examined by the concerned government departments and necessary explanation had been submitted to the Public Accounts Committee (PAC) of the Legislative Assembly of the State of MP. It was also stated that the State Government had already framed rules while implementing the guidelines of Union of India on mining activities in the State with regard to alleged illegal excavation of sand. As regards the report of the Sub Divisional Magistrate, Nasrullaganj, Dist. Sehore was concerned, it was stated that the matter was pending before the court of Sub Divisional Magistrate. It was further submitted no mining leases for major minerals had been sanctioned and the leases pertained only to minor minerals which were granted after due verification. Also, regular inspection and checking was being taken up by the concerned authorities and wherever irregularities were noticed action was initiated and penalty was imposed as per law against the defaulters. It was contended that newspaper reports quoted by the Petitioner could not be taken cognizance and could not be relied upon. With regard to environmental issues highlighted by the Petitioner, it was submitted that the same can be dealt with by the National Green Tribunal.

However, during the course of hearing of the case before this Tribunal only issues pertaining to the environment and forest and violation of environmental laws were examined as the Tribunal had no mandate to go into the other aspects of the violation of laws which did not fall under the Schedule-I of the National Green Tribunal Act, 2010. Accordingly the Respondent No. 2 filed a detailed reply highlighting the issues pertaining to the alleged illegal mining activities in Gwalior forest division and illegal mining activities in the forest areas in Katni-Satna-Rewa belt. It was replied that necessary teams were constituted to inspect and locate such illegal mining spots in forest areas and also assess and fix responsibility on the concerned officers. It was further contended that necessary action had been initiated against the concerned officers who were found indulging in activities leading to illegal mining activities in the forest areas and the State Government had adopted effective measures to curb and restrain the illegal mining activities in forest areas. Therefore, no specific grievance of the Petitioner had been left unattended and every possible action had been taken for stopping illegal mining in the forest areas and consequent damage to the environment in the State.

However, during the course of hearing the Petition highlighting the report on the alleged violation of the provisions of Forest (Conservation) Act, 1980 and Environmental Regulations in granting mining leases and illegal mining, the Respondent State of MP was directed to file an affidavit with full details so that the Tribunal could adjudicate the matter with regard to the averments made by the Petitioner on the alleged violation of environmental and forest laws and alleged damage caused to the environment and ecology.

Accordingly, the Respondent State of MP filed additional reply on 11.01.2015 on the issues of the alleged violation of M.P. Land Revenue Code, Forest (Conservation) Act, 1980, Indian Forest Act 1927, Environmental Regulations, MP Mines & Mineral Act, Sales Tax Act, Income tax; etc. It was submitted that the District Collector, Sehore had taken cognizance of the report submitted by ShriGirish Sharma, the then Joint Collector, Sehore and thereafter inspection of mining leases was carried out and penal action was initiated against the violators. It was finally concluded in the reply that Respondent State of MP had taken all necessary action against the offenders.

The Respondent No. 4 (MPPCB) in their reply stated that no relief had been sought by the Petitioner against the Board and the averments made in the petition had nothing to do with the Board and the Board had no role to play in the matter of formulation of mining plan or policy. It was further submitted that it was for the Respondent State of MP to take necessary action in curbing the illegal mining as per law as the MPPCB was concerned only with advisory functions pertaining to implementation of Air & Water Acts. The Respondent No. 5 submitted that it agreed with the stand taken by the Respondent No.1 State of MP.

With the above observations, the Tribunal felt that with regard to framing mining policy, taking necessary follow up action on the observations of the CAG in its annual reports and taking necessary legal action against the defaulting mining lease holders under Mines and Mineral (Concession) Rules, 1960 and MP Land Revenue Code etc. the Tribunal would not be able to issue any directions as they did not fall under the purview of the Tribunal. However the Petitioner was at liberty to approach appropriate forum for obtaining such relief.

This Original Application was accordingly disposed of.

Mr. Kashinath Laxman Dagale & Ors. Vs. Maharashtra Pollution Control Board &Ors.

Appeal No. 40/2014(WZ)

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: authorization, Municipal Solid Waste (Management and Handling) Rules, 2000, MSW facility, site selection

Appeal allowed

Dated: 18 February 2015

The Appellants filed the appeal under Section 16 of the National Green Tribunal Act, 2010, challenging order dated 9-12-2014 of (MPCB)- Respondent No.1 granting authorization, under Municipal Solid Waste (Management and Handling) Rules 2000, to Respondent No.2 for proposed Municipal Solid Waste Processing and Disposal Facility (MSW facility) at Gat No.49 of village Kojuli, TalukaTrimbakershwar, District Nashik.

The Appellants had challenged the resolution and decision of Respondent No.2 (TMC) for commencement of activity of MSW processing and disposal facility at Kajuli by filing PIL No.31/2009 before the High Court of Judicature at Mumbai. The High Court vide order dated 11 April 2014, while noting that the Municipal Council had not even made an application for obtaining the authorisation for the proposed site, disposed of the petition, recording that at that stage, it was not necessary to entertain the petition and the same was disposed of being premature. The High Court also gave liberty to the Petitioners to challenge the authorisation if so granted by MPCB while keeping all contentions of the parties open.

The Appellants submitted that there was a grazing land which was reserved and used by the villagers since long time at the proposed location of MSW facility. A part of the said property was acquired for the purpose of the MSW plant of TMC. Appellants alleged that the Kojuli site had been finalized without assessing the environmental

safety and risk aspects associated with the proposed location. The Appellants claimed that there was a major stream of Banganga river just adjoining to the said site and river Banganga was hardly 100m from the proposed site. The river-Banganga finally meets Vaitarana River, into upper Vaitarana dam. This entire catchment area of Vaitarana dam was classified as A-I zone by the River Regulation Policy of Government of Maharashtra. The Appellants submitted that any mismanagement or improper handling of the MSW at the site will result into contamination of Vaitarana dam which was the major source of drinking water for city of Mumbai.

The Appellants therefore, prayed for:

1) The “no objection order” (NOC) of Respondent No.1 authorizing the Respondent No.2 to set up and operate waste processing and waste disposal facility at Gat No.49, village Kojuli, TqlukaTrimbakeshwar, District : Nashik be quashed and set aside.

2) Be pleased to direct the Respondents to withdraw the project of garbage depot on the property bearing Gat No.49 at village Kojuli, TqlukaTrimbakeshwar, District Nashik.

Respondent No.1 stated that MPCB had granted authorization to the proposed MSW processing and disposal facility subsequent to the identification of the site by the selection committee comprising of representatives of various departments who visited various sites on 25-8-2007 and recommended the Kojuli site vide letter dated 29-8-2007. The specific grounds raised by the Appellants hadnot been addressed by the MPCB. The learned counsel for MPCB submitted that the MPCB had a very limited role in selection of the site as the selection of site was done by inter-departmental committee appointed by the Collector. He therefore contended that such a decision of selection of MSW facility site was a well informed decision. He also contended that the High Court’s order of disposing of the petition of Appellants had restricted the scope of Appeal only to the extent of authorisation and therefore the issue of selection of site cannot be agitated now.

The TMC submitted that the proposed site had been selected by inter-departmental Committee after assessing various sites for their environmental suitability. The TMC submitted that with the state of the art technology it had, it would be ensured that there is no water or air pollution due to the activities at the MSW facility and they had incorporated all the necessary environmental safeguards in the project proposal. The TMC further submittedthat as per the MSW rules, it was the responsibility of every Municipal Authority to provide MSW processing and disposal facility and even, High Court had passed several directions in this regard. The Respondent-2, therefore, submitted that it was the legal responsibility of the Respondents to provide the MSW facility to ensure the compliance of environmental laws. The TMC further submitted that the proposed site was near river Banganga which was not a notified river as per RRZ policy and therefore, the RRZ restrictions were not applicable at the proposed site.

The Tribunal found the following points to be resolved for final adjudication of the present Application.

1) Whether the Authorization issued under MSW Rules, 2000 includes approval for site of MSW processing and disposal facilities?

2) Whether the proposed site is located in western ghat area and affected by RRZ Policy?

3) Whether necessary environmental safeguards have been considered while issuing the authorization?

4) Whether the authorization is granted as per the provisions of the law or it is necessary to set aside or quash the same?

Point No.1: The counsel for Respondent Nos.1 and 2 argued that the Kojuli site was selected by inter-departmental committee and such selection of site does not form part process for grant/refusal of authorisation. They also claimed that the site had been selected in year 2007 and therefore the decision cannot be challenged now. However, such submission or objection has not been raised in reply affidavits.

Reading the relevant regulations in the MSW Rules, 2000 it was clear that the concerned environmental regulatory authority had the mandate of approving the site based on environmental considerations. It was further noted that the common MSW facilities had been covered under the EIA notification 2006 and the CPCB directions dated 4 June 2012 brought the MSW facilities in the consent regime of the state Boards. The State Board was therefore required to examine the proposal received from Municipal authority taking into consideration views of other agencies prior to issuing the authorisation. It was also submission of TMC that their site in TMC area had been rejected by MPCB which itself clearly established that the MPCB had a controlling regulatory role in approval of MSW facility site.

The Tribunal was, therefore, not inclined to accept the arguments of the learned counsel that the selection of site was not governed by the authorisation which was under challenge and that the Authorisation under MSW rules included approval to the proposed site of MSW facility. The Point No.1 was, therefore, answered in the Affirmative

Point No.2: According to MPCB as per the MoEF Notification notifying the Western Ghat area, none of the 3 villages were included in the notified area under the Western Ghats Notification where certain restrictions had been imposed. He therefore admitted that the proposed site was located in A-1 zone as classified by the RRZ Notification. The learned counsel also relied on Clause 12(c) of the RRZ Notification which gives an exemption for allowing the development of MSW facility 500m away from the river flood lines. Considering this exemption, it was MPCB’s stand that though the site was located within the RRZ notified area, however, the MSW facility was

allowed as per the exemption given in the Notification itself.

The Tribunal was of the opinion that no record had been placed before the Tribunal to show that the proposed site was located in western ghat area, where certain restrictions on development activities have been imposed under environmental regulations. The point No.2 was therefore, answered in the Negative.

Point No.3 and 4 : The learned counsel for Respondent No.1 and 2 argued that they had prepared the detail project report (DPR).The Tribunal identified 3 options for the treatment of MSW facility.

The COEP report recommended option ‘C’ (the third option) as it involved less dependency as far as transportation is concerned which reduced cost of entire project significantly. The report also mentioned that the TMC had already processed a case for permission of biomethanation plant in the existing site within TMC limits which may be developed ensuring zero discharge policy.The learned counsel for Respondent No.1 submitted that the MPCB has already refused their application for biomethanation and vermicomposting unit in the existing site at Trimbakeshwar as the same is within 100m from Godavari river and is not allowed as per RRZ Policy. Therefore, the TMC selected option ‘A’ in view of the provisions of RRZ policy.

MPCB mentioned that conditions had been laid down for standards of compost as well as the treated leachate. What could be interpreted from such conditions was that MPCB had allowed the TMC to choose its mode of disposal of leachate by just mentioning the disposal standards. This was not keeping in tune in principle of precautionary principle. It was also not stated in affidavits as to why the recommendations of CoEP for Option-‘C’ was circumvented and Option-‘A’ was selected and its environmental implications.

Thus the Tribunal was of the opinion that the authorisation to the proposed MSW site had been given by MPCB without proper examination of the facts and circumstances associated with the project, and also, without adequate environmental safeguards duly incorporated in the authorisation. Resultantly, the Appeal was allowed and the impugned authorisation given by MPCB was set aside. No costs.

Tulsi Ram Advani Vs. State of Rajasthan &Ors.

Original Application No. 87/2014 (THC) (CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P. S. Rao

Keywords: trading in charcoal, Vilayati Babul, forest produce

Application dismissed

Dated: 19 February 2015

The Applicant stated that he was carrying on the business of trading in charcoal made from the wood particularly from those trees which commonly grow in the State of Rajasthan. He further stated that the Respondent State Forest Department exempted forest produce of the following species from the purview of the Rajasthan Forest Produce (Transit) Rules, 1957 issued under the Rajasthan State Forest Act, 1953 vide Notification dated 19.01.1991. It had thus become convenient for the people to transport charcoal without permit and without any restrictions imposed within the State of Rajasthan and the trading was going on unhindered benefitting large number of poor people. However, in some cases due to interference of the authorities causing inconvenience to the people, the Principal Chief Conservator of Forests, Forest Department, Rajasthan vide order dated 22.02.2000 clarified that charcoal produced from the wood of Vilayati Babul did not require any permit for transportation within the limits of State of Rajasthan.

The Applicant contended that when such process of exemption of forest produce including the charcoal produced from the aforesaid tree species from the purview of the Rajasthan Forest Produce (Transit) Rules, 1957, the Respondents No. 1 & 3 issued orders dated 11.11.2009 and 18-11-2009 respectively under the Rajasthan Wasteland Development programme leading to harassment by the officials and interference in conducting their business. It was the contention of the Applicant that there were no compelling reasons and circumstances which warranted issuance of such orders by the Respondents No. 1 & 3. As per the Applicant the orders issued by the Respondents No. 1 and 3 were illegal and without any jurisdiction. Further, rule 24 EE of Rajasthan

Tenancy (Government) Rules, 1955 clearly provides for exemption from seeking permission for the removal/cutting of the trees of the aforesaid species. The Rajasthan Forest Produce (Transit) Rules, 1957 empower the State to prohibit/restrict movement of forest produce in the State. However, there is a provision under rule 2 of the aforesaid rules which empower the State Government to exempt forest produce of any species from the operation of these rules and allow its transport without transit pass/permit. Therefore, in exercise of these powers the State Government issued notification dated 19.01.1991 and subsequent clarification dated 22.02.2000.

The Applicant further plead that when such exemption given under the rules had been in force for more than 2 decades, there was absolutely no necessity and justification in withdrawing the exemption by way of issuance of executive orders dated 11.11.2009 and 18.11.2009. He further averred that authorities failed to appreciate that while under the process of preparation of charcoal from Vilayati Babul there is no question of uprooting/removal of entire plant which infact is not a tree but a large shrub and it is nothing but simply cutting and using the old branches in preparation of the charcoal. However, the Applicant agreed that it was true that if the entire plant was removed/uprooted it would certainly lead to soil erosion. Finally he concluded with a prayer to quash the order dated 11.11.2009 and consequential order dated 18.11.2009 issued by the Rural Development and Panchayati Raj Department and Bio-fuel Corporation, Jaipur respectively stating that they did not have any legal sanctity.

The Respondent State filed their reply to the Writ Petition stating that the Government of Rajasthan had constituted Wasteland Development Board and in the first meeting it was thoroughly discussed on the issue of large scale uprootal of the Vilayati Babul by the traders for making charcoal leading to soil erosion and severely affecting the planting programme. Therefore it was felt by the Members of the Board that it was necessary to stop such uncontrolled and extensive uprootal of Vilayati Babul for making of charcoal in the State of Rajasthan. However, keeping the interests of the general public in view, it was suggested that there should not be any restriction for making charcoal from the branch wood of the shrub Vilayati Babul. Therefore in compliance of the decision taken the Rural Development and Panchayati Raj Department issued executive orders dated 11.11.2009, 16.02.2010 & 22.03.2010 to control the uprooting of the entire Vilayati Babul plant and no prohibition was imposed either for cutting of the branches or making charcoal from the wood of such branches.

These orders of the Rural Development and Panchayati Raj Department of the State of Rajasthan could be enforced only at the time of cutting/removal of the plant Vilayati Babul for producing wood and converting it into charcoal and therefore one has to physically verify at the time of cutting the plant for producing the charcoal. But once the charcoal was made there was no bar to transport the produce.

With the above observations, the orders issued by the Respondent No. 1 & 3 were not

found to be contrary to the Rajasthan Forest Produce (Transit) Rules, 1957 and did not call for any interference by this Tribunal.

Gajanan Balaram Patil Vs. City and Industrial Development Corporation & Ors.

Application No. 35 of 2014

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: natural pond, construction project, irrigation, public housing

Application dismissed

Dated: 23 February 2015

By filing this Application the Applicant sought certain directions from this Tribunal. The directions were particularly relevant to construction over allegedly natural water body, which referred to be a water pond in the project land and alleged to be used for providing irrigation and drinking water facilities to nearby land users and the members of vicinity.

Respondent No.1 was carrying out certain construction project in Sector 36 (Plot No.2) and 37, at Kharghar, Navi-Mumbai, district Raigad. According to the Applicant, his family land bearing Survey No. 85, was the near subject matter of the construction, of the project which was going on in plot No.2, of Sector 36. His case was that the public housing scheme undertaken by CIDCO was likely to impair his right to draw water for irrigation and to cultivate his lands. His main contention was that there was a natural pond in Sector Nos.36 and 37, which were part of the housing schemes and both the housing schemes were likely to close down the natural pond by reclamation, on account of illegal construction. The farming of lands around the vicinity of project will be adversely affected due to loss of the natural pond.

Therefore, the Applicant sought the following reliefs:

14. Direct the Respondent No.1, to not to carry on any construction in the area of natural water pond on the project land till the hearing and disposal of this application;

15. Direct the Respondent No.1, to not to carry on any construction activity on the project land till it obtained the environmental clearance;

16. Direct the Respondent No.4, to not to carry on any construction on the project land till the hearing and disposal of this application;

17. Direct the Respondent No.2 to 5 to take appropriate legal action against the illegal construction, illegal filling up of natural water pond, illegal cut off, hauling, abandoning and diversion of the natural water streams by the Respondent No.1 in gross violation of environmental laws;

18. Direct the Respondent No. 2 to 5 to take appropriate legal action against the Respondent No.1 for committing violation of environmental laws and EIA Notification 2006 and submit report thereon to this Tribunal;

19. Direct the Respondent No.1 to restore the natural water pond by removing the construction carried out in the water pond area;

According to CIDCO, there never existed any natural pond in plot no.2, of sector 36 of the property situated at Kharghar. It was stated that the Application was devoid of merits, inasmuch as whatever is being described as 'natural pond' is only stagnation of water caused during rainy season in a ditch. It was further alleged that the ditch was caused due to construction activity, particularly, after excavation of material from the site, including debris, soil etc. and, thereafter, ditch was filled up due to rain water, which wrongly was being described as natural pond by the Applicant. According to CIDCO, the Applicant resides at village Rohinjan, Taluka Panvel, (district Raigad) on other side of the land of village Owe, and Taloja, which had been acquired and handed over to CIDCO for development. The Application, according to the pleadings of CIDCO, was ill-motivated, unfounded and liable to be dismissed.

Question of significance, was as follows:

"Whether there exists or existed at the relevant time of filing of the Application any natural pond at the site of construction project, in or within premises of plot No.2, Sector 36 of Kharghar, Navi Mumbai, which is being developed by CIDCO – (Respondent No.1)?"

The Applicant never appeared before the Tribunal since day one, except on one occasion during the proceedings. Initially, he filed certain photographs to indicate that

some work of filling in the pond and putting up certain iron bars for construction work, was being done at the first stage. The photographs, however, were placed on record along with the Google map. The Google map was said to be prepared on 11.12.2003, which did not show existence of pond at the place. Those photographs were taken in June, 2013 i.e. the rainy season.

The Applicant sought to place implicit reliance on communication issued by the Revenue Inspector on 17 October 2013. This communication also did not show in any manner that existence of natural pond was at the site. The communication indicated that there was water stagnation like ‘pond’. Thus, the Revenue Inspector did not take any risk of giving official certificate to the effect that it was natural pond. Also, issuance of such certificate does not come within his domain and he cannot exercise such powers.

Referring to the entries in 7x12 records, it was clearly indicatedthat there was no existence of natural pond, shown in the revenue record. Besides such public record, the Applicant had not placed on record affidavit of any other villager of which he is inhabitant, in order to probablize his case. Having regard to all the relevant aspects of the matter, according to the Tribunal, the Applicant had failed to make out any case, not only by failure in attending the matter, but by placing on record any scintilla to corroborate his case.

The Tribunalwas of the opinion that the question stated above deserved to be answered in Negative and the Application was without any substance. Therefore it was dismissed with no order as to costs.

Ram Swaroop Yadav Vs. State of Rajasthan &Ors.

Original Application No. 131/2014 (THC) (CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P. S. Rao

Keywords: stone crushing unit, Forest Land, Revenue Land

Application disposed of

Dated: 23 February 2015

This Original Application was registered after being received from the High Court of Rajasthan where originally DB Civil Writ Petition (PIL) 1000/2013 had been filed by the Applicant. The High Court under its order dated 23.09.2013 transferred the matter to this Tribunal in the light of the judgment of the Supreme Court in case of Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 326.

It was brought to the notice of the Tribunal from the reply of the Rajasthan State Pollution Control Board that 5 stone crushing units of Respondents No. 5 to 9 had been established and were operating over the land which was disputed to be forest land at Khasra No. 627, 628 and 630 in village Bhopiya, Tehsil Neem-ka-Thana, District Sikar, Rjasthan. In the reply of the District Collector, Sikar, it was however, mentioned that four of the above five units had been closed down and were not in operation and only one unit namely KuberKamna Marbles Pvt. Ltd. was functional and that too under interim order passed by the Civil Court in its favour.

The District Collector, Sikar was directed to produce before this Tribunal all relevant documents and records pertaining to the allotment of forest land to the private persons and manner in which objections filed by the Forest Department of the State Government for conversion of the ‘Forest Land’ to the ‘Revenue Land’ prior to allotment had been decided as it was alleged that the land in question had in fact been notified as ‘Protected Forest’ under the Rajasthan Forest Act, 1953 in the year 1964 and subsequently the same came to be allotted to various landless persons as alleged

by the Respondents No. 5 to 9 who purchased the same from the allottees after the land was de-notified from ‘Forest Land’ to the ‘Revenue Land’ prior to its allotment.

The State of Rajasthan in their reply however submitted that the allotment itself to various persons was bad and did not confer any right either on the allottees or the subsequent purchasers and as such establishment of the stone crushers by the Respondents No. 5 and 9 on the land in dispute was bad in the eye of law.

During the course of hearing, since the Respondents No. 5 to 9 alleged that the land had been allotted to them after it was de-notified in terms of the orders of the District Collector in 1971 to the allottees who were landless persons from whom such land was purchased by the Respondents No. 5 to 9 and their entire stakes were based upon the fact that upon being de-notified, the land ceased to be forest land and as such the provisions of the Forest (Conservation) Act, 1980 had no applicability to the land in dispute. Whereas the State Government in its reply had not only disputed the fact that the allotment itself was bad and could not have been made, the fact remains that the procedure for de-notification of the Protected Forest is required to be carried out in accordance with the procedure contained in Section 29 of the Rajasthan Forest Act, 1953 and more particularly in terms of Sub-Section (4) of the Section 29 of the said Act.

Learned Counsel appearing for Respondent No. 5 to 9 did not dispute the fact that no notification, as required under Sub Section (4) of Section 29 was published in the Official Gazette de-notifying the Protected Forest. The necessary inference therefore, was that without such notification and publication, the land could not cease to be Protected Forest covered under the provisions of Rajasthan Forest act, 1953 and therefore, such land was not available for allotment in the year 1971. However, in the light of the fact that no notification had been published and had not been produced by parties, the Tribunal was inclined to hold that the status of the land in dispute or for that matter any other such land covered under notification of 1964 continued to be a forest land (Protected Forest) for the purpose of Rajasthan Forest Act, 1953 till such time as procedure, as required under Sub- Section (4) of Section 29 of the Rajasthan Forest Act, 1953 was not followed.

In view of the above, the land in dispute continued to be a forest land and without being de-notified no non-forest activity could be permitted on such land and therefore, any such activities which may have been permitted or have been carried out by the Respondents No. 5 to 9 or any other person over the land in question were in violation of the provisions contained in the Forest (Conservation) Act, 1980. Accordingly, it was directed that such activities be immediately put to stop and the land be reverted back to the Forest Department and only such permissible activities as provided under the Rajasthan Forest Act, 1953 and the Forest (Conservation) Act, 1980 shall be allowed. The structures that had been erected by the Respondents No. 5 to 9 shall

remove the same and shall be permitted to do so by the officials of the Forest Department as well as District Administration. The aforesaid task was to be completed within three months. The Original Application No. 131 of 2013 accordingly stood disposed of. All the pending Misc. Applications filed by either parties also stood disposed of accordingly. No order as to costs.

News items published in The Hindu dated 22.10.2013 "Tribals Clear Forest Bushes in Tiger Reserve Area" Vs. Ministry of Environment and Forest &Ors.

Application No. 294 of 2013 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Suo motu, Tiger Reserve Forest Area, encroachment

Application disposed of

Dated: 24 February 2015

This application was taken on *suo motu* cognisance by the Tribunal on a News item dated 22.10.2013 that the Tiger Reserve Forest Area was encroached upon by the tribal people. Notice was ordered to the respondents. It was submitted by the Principal Chief Conservator of Forests concerned that an affidavit would be filed to the effect that all necessary measures were taken; criminal prosecution were laid against encroachers and thus the encroachments have been removed. Affidavit of the 3rd Respondent indicated that the tribal people attempted to occupy more area by clearing forests bushes around the settlement which was spotted by the forest staff. It was also made clear in the affidavit that no trees were cut and 25 criminal cases were laid against the wrong doers. However, respondents were directed to monitor in future that no such encroachment as they had taken place in the past to occur. With the above directions, the application was disposed of.

Mr. A. N. Kandasamy Vs. Tamil Nadu Pollution Control Board & Ors.

Application no. 85 of 2014 (SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: granite unit, renewal of license, Consent to Operate

Application disposed of with directions

Dated: 26 February 2015

It was brought to the notice of the Tribunal in the last hearing that the operation of the Granite unit of the 5th respondent was stopped on inspection made on 12.2.2014 and thereafter it was not in operation. The counsel for the applicant took time to get instructions from his client and report. This day, he filed a copy of the plaint filed by the Proprietor of the 5th respondent unit before the District Munsiff Court, Sankari for permanent injunction alleging that the applicant was interfering in the operation of the unit while he had got necessary licence and permission from the Tamil Nadu Pollution Control Board (Board) to carry on and thus it would be quite clear that he had been carrying on the unit. When a query was made, the counsel for the Board on verification of the factual situation from the concerned District Environmental Engineer submitted that an application for renewal of "Consent to Operate" was given till 30 September 2014 and thereafter it was neither applied for renewal nor granted. The counsel for the Board further adeded that the 5th respondent unit was not carrying on its operation and the same was recorded. The counsel for the applicant submitted that even without the licence or permission, the 5th respondent unit was being operated during night hours and hence it had got to be restrained.

The applicant had sought for the following relief in the application:-

1. Restraining the 2nd respondent by way of permanent injunction for granting consent

order to 5th respondent under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 and under Section 25 of Water (Prevention and Control of Pollution) Act, 1974;

2. Direct the respondents 1 to 4 to take action against the 5th respondent, who was conducting Industrial Operation and was causing pollution without obtaining proper permission from 2nd respondent after 31.3.2013.

From the submissions made, it was quite clear that the renewal was given to the 5th respondent unit till 30th September, 2014 and thereafter it had not been renewed. From the submissions made by the counsel for the 5th respondent, it could be seen that the renewal application for the period thereafter was filed and necessary fee therefore had also been remitted. But there was nothing to indicate that the renewal had been granted for the subsequent period. Hence, it became necessary to restrain the 5th respondent not to carry on its operational activities of the Granite unit without necessary renewal therefore. There was no impediment for the 5th respondent to commence its activities if and when the renewal was granted on the application made by the 5th respondent by the Board. The Board was also directed to consider the application of the 5th respondent and pass suitable order in accordance with law. It was also made clear that the District Environmental Engineer concerned had to monitor that the operational activities of the 5th respondent shall not be carried out without the necessary permission and licence from the Board therefor. With the above observations and directions, the application was disposed of.

Mrs. Libertina Fernandes Vs. Goa Coastal Zone Management & Anr.

R.A. No. 02 of 2015

IN

Appeal No. 106 of 2013

(M.A. No. 93 of 2015)

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Dr. Justice P. Jyothimani, Dr. D. K. Agrawal, Mr. B. S. Sajwan, Mr. RanjanChatterjee

Keywords: unauthorized construction, Coastal Regulation Zone (CRZ) area, demolition

Application dismissed

Dated: 26 February 2015

The appeal filed by the present Review Applicant came to be dismissed by a detailed judgment dated 13 January 2015. The applicant had filed the present Review Application under Section 19(4) (f) of the National Green Tribunal Act, 2010 read with Rule 22 of the National Green Tribunal (Practice and Procedure) Rules, 2011 praying for review of the above judgment.

The review was sought on the ground that material provisions of the Environmental Protection Act, 1986 and the NGT Act had not been brought to the notice of the Tribunal during the course of hearing, resulting in miscarriage of justice. It was also averred that the Review Petitioner stood constrained to change her advocate and file the present petition in view of the extreme emergency, as the respondents were proposing to demolish the structure. The ground for seeking review of this judgment was that Respondent no.1 had no jurisdiction to direct demolition of the property.

According to the Tribunal such a Review Application was not maintainable. was, in fact, praying for re-hearing of the matter, which was not permissible.

It was contended by the applicant that the grounds now pleaded, ought to have been raised and argued before the Tribunal when the appeal was being heard on merits. But the applicant, even at this stage had failed to even indicate, much less disclose or specifically state the facts that would show exercise of due diligence at the stage of hearing the appeal. Therefore, this could not be a valid ground for seeking review of the judgment on merits. Primarily, it was the change of counsel that had resulted in filing of the present review application. The learned counsel who was not the counsel when the matter was heard on merits would hardly be aware as to what was argued and what was not argued and what exactly transpired during the course of hearing in the main application. Filing of the review application upon change of counsel was not a practice that had found approval with the courts.

The principal argument as advanced was that the Goa Coastal Zone Management Authority had no jurisdiction to direct demolition of property which was admittedly constructed in the eco-sensitive area of Coastal Regulation Zone. It was contended that Section 5 of the Act of 1986 and the CRZ Notifications do not empower the Authority to pass such an order. The power to direct demolition cannot be exercised as an incidental or ancillary power. It was only the authorities which were vested with the powers of granting permission to construct, that can order such demolition.

The case of the applicant during the hearing of the appeal, as well as in this application was that, the construction of the building was done in furtherance to the permission to reconstruct as granted by the Gram Panchayat, vide letter dated 30 September 1986 and occupancy certificate which had been issued on 31 March 1987 and, thereafter, no construction had been done by the applicant. Section 66 of the Act of 1994 and the Rules framed thereunder had no relevancy to the matters in issue before us. The construction, according to the applicant, was raised in the year 1986-1987. At that time, this Act was not in force as it came into force w.e.f 20 April 1994. No construction was stated to have been done by the applicant under any permission granted or sanction accorded under the Act of 1994. The Government of Goa framed the Goa, Daman and Diu Village Panchayat (Regulation of Building) Rules, 1971. These Rules governed the scheme of submission of building plans the manner in which such plans would be sanctioned and the construction which is carried out strictly in terms of the sanctioned plan.

The most important rule for purpose of the present case was Rule 3(2)(b), which contemplates various restrictions in relation to construction or development. Significantly, the permission would be granted by the Gram Panchayat only if the cost of construction did not exceed Rs. 20,000/- and the cover area under construction did not exceed the total area of the plot. The construction had to be kaccha. The applicant did not produce the sanction plan which was granted by the Gram Panchayat on 30 September 1986.

The Ministry of Environment & Forestsissued a Notification dated 19 February 1991 which declared prohibited activities within the CRZ as well as activities which were

permissible subject to regulations.

On 6 January 2011, a Notification was issued by MoEF. This Notification prohibit as well as provide complete regulatory regime for permitting construction in CRZ, subject to the conditions stipulated in the permissions. No construction was permitted within the No Development Zone except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification including facilities essential for activities.

The applicant undisputedly satisfied none of the conditions postulated in the Notification. The Applicant admitted that the columns and the structures were of steel and concrete. Then the authority contended that the construction had been built over a sand-dune and the structure fell in the CRZ. This clearly demonstrated the extent of violation committed by the applicant. Admittedly, the applicants had taken no permission from any concerned authority under any law in force. All the Notifications at all relevant times prohibited construction in the CRZ, and the same was subject to restriction and construction could only be raised after taking permission of the concerned authority. The purpose was to ensure that no unauthorised activity is carried on in the CRZ and the CRZ is protected environmentally and ecologically.

Also, the applicant hadmade misrepresentation before the Tribunal and had failed to produce the most important document which ought to have been in his power and possession (the sanction of building plans by the Panchayat in the year 1986) and particularly when, inspection by the Members of the Respondent Authority and the photographs placed on record clearly showed that it was a large scale new construction where huge quantity of iron, concrete and cement had been used.

On the one hand, the applicant had failed to discharge the onus placed on her and on the other, she had taken incorrect and misleading pleas before the Tribunal. It was obligatory on her to take permission and consent from the concerned authorities before starting any construction.

For the afore-stated reasons, no merit was found in this application. The same was dismissed.

Smt. Parwati Ben Bhanabhai Patel & Ors. Vs. Union of India & Ors.

Application No. 91/2014(WZ)

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Res judicata, hazardous waste, Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF)

Application dismissed

Dated: 27 February 2015

By this Application filed under Section 14 and 15 of National Green Tribunal Act, 2010, the Applicants, who were the farmers and resident of village Karvad, District Valsad (Gujrat), approached the Tribunal seeking damages caused to their agriculture lands, eco-system and environment due to spillage of hazardous wastes from Vapi Common Hazardous Waste Treatment Storage and DisposalFacility (CHWTSDF) of Respondent Nos.3 and 4. The Applicants submit that on 17-7-2012, wall of the cell No.4 of the CHWTSDF collapsed and toxic waste contained therein spilled out to the surrounding area causing extensive environmental damage. The Applicants further submit that Gujarat Pollution Control Board (GPCB) and Central Pollution Control Board (CPCB) conducted the inspections and found that the overloading of waste disposed in the cell, entry of rain water into the cell and improper construction of retaining wall of the cell could be the reasons for such failure and these reasons clearly indicated negligence and lack of professional expertise of the concerned Respondent Nos. 3 and 4 in managing the CHWTSDF operations.

Some of the residents of village Karvad had filed similar Application No.87/2013 i.e. “Ramubhai Kariyabhai Patel and Others V/s. Union of India and others”. This matter was decided vide judgment dated 18-2-2014.

It was the contention of the Applicants that the assessment done by the Collector and District Magistrate on 22-5-2013, under the provisions of Gujarat Disaster Management Act, was highly underestimated and had been issued unilaterally without

proper consultation, assessment of damages caused to the Applicants and their properties. It was the contention of the Applicants that the inaction on the part of authorities and also, the Respondent Nos.3 and 4 was resulting in the entire process of remediation being delayed. The Applicants therefore, submitted this Application with following prayers:

1. Pass an order holding that Respondent Nos.3, 4 and 5 are liable and responsible for damage caused to the applicants, ecosystem and environment and liable for payment of damages for loss of property and livelihood and liable for restoration of the area.

2.Pass an order directing the Respondent Nos.3, 4 and 5 to pay the compensation and damage to the Applicants.

3.Pass an order directing the Respondents to restore the agricultural fields of the applicants and surrounding environment to its original position.

4.Pass an order directing the Respondent No.7 to not to renew the consolidated consent and authorization to the Respondent No.4 till the time they decontaminate and clean the site in question and comply with all the direction issued by GPCB, CPCB and the Tribunal.

Respondent No.7 filed an affidavit and resisted the Application. GPCB submitted that the Tribunal had already settled this issue by Judgment in Application No.87/2013 wherein the affected persons had been monetarily compensated. The learned counsel argued that this was a fit case where principle of res judicata was applicable.

In the opinion of the Tribunal, the issues raised in this Application, had already been dealt in the said judgment. The only limited concern which could be relevant was related to scale of monetary compensation, in view of the continuous loss of the agriculture. Even the loss of fertility and futuristic loss for a certain period had been dealt in the Judgment and therefore, no merit was found to consider this Application, as the issues raised in this Application had already been settled in the Judgment in Application No.87/2013. The Tribunal also accepted the arguments of learned counsel for the State as well as GPCB that the present Applicants could not claim that they were not aware of the earlier proceeding before this Tribunal.

Hence it was held that the present Application was barred by the principles of res-judicata and constructive res-judicata. The Application was, therefore dismissed with following directions:

1) The Collector was to send the cheque/Demand Draft towards the compensation ordered in Application No. 87 of 2013, by registered post to the Applicants and other claimants in next 2 weeks.

2) The Applicants were at liberty to approach the Tribunal, if any of the directions issued in the judgment of Application No.87/2013 were not complied with by the Respondents.

The application was accordingly disposed of. No costs.

Ramdas Janardan Koli Vs. Ministry of Environment and Forests & Ors.

Application No. 19/2013

Judicial and Expert Members: Mr. Justice V. R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: fishermen, project activity, Mangroves, compensation, rehabilitation, fishery rights

Application allowed

Dated: 27 February 2015

The fishermen were seeking compensation under Section 15 of the National Green Tribunal Act, 2010, for loss of livelihood due to project activities of the Respondents, as well as implementation of rehabilitation of their families, who were unsettled on account of the projects in question. They alleged that the families had been affected due to projects undertaken by the Respondents which allegedly adversely impaired regular tidal water exchanges, egress and ingress of fishermen boats to the sea area through creek near the Jawaharlal Nehru Port Trust (“ JNPT”) and, thus, deprive them of daily earnings due to deprivation of their traditional rights.

The case of Applicants was that, due to project of widening, deepening of the sea for 4^{th} additional berth at port of JNPT, inter-tidal sea water exchanges, flow of the sea water in Nhava creek would be substantially affected. Destruction of mangroves alongside beaches would cause loss to spawning and breeding grounds of fishes.

Hence, stock of grown fishery will be unavailable to them for earning their livelihood. The Applicants alleged that their right to fisheries was governed under The Mahul Creek (Extinguishment of Rights) Act, 1922. The Indian Fishery Act, 1897 also recognized their rights, but did not take away any right which was available earlier.

On behalf of the Respondent No.5, affidavit of Scientist-I, Shri. Ajay Fulmaliwas filed. His affidavit revealed that on 1 November 2013, inspection team Members along with the Applicants, visited the site at JNPT, and ONGC, underground pipeline at Govan for inspection. His affidavit revealed that Mangroves destruction was observed.

JNPT denied all the material averments, put forth by the Applicants. It was stated that Mahul Creek (Extinguishment of Rights) Act, 1922, was not applicable to the case of the Applicants, inasmuch as Section (2), of the said Act, was amended by repealed Act of 1927, whereby, the words 'tidal rights' were removed from the ambit of Section 2 of the said Act. Thus, only traditional rights of navigation of boats may be covered under Section (2), thereof. In other words, traditional fishermen had no right as such to claim legal right of fishing in the area within marine/coastal zones. The JNPT claimed that it was not bound to take any NOC for expansion of 4th berth of jetty. It was pointed out that the expansion was being taken after following due process with approval of MoEF, dated 29 July 2008 which was revalidated for further five years in 2013. On these premises, JNPT sought dismissal of the Application.

Respondent No.9, ONGC, resisted the Application and denied the report of MCZMA, regarding non-restoration of the Mangroves around underlying pipeline. The Respondent No.10, objected maintainability of the Application on the ground that it was barred by limitation. So also, due to the fact that the Applicants had been approaching the Govt. authorities including 'Lokayukta' etc. Thus, they were indulging in forum-shopping which be discouraged. In substance, CIDCO alleged that it owed no liability directly or indirectly to pay any compensation to the Applicants and did not come within domain of jurisdiction of the Tribunal.

- Whether instant Applicant is untenable, because the Applicants approached to the Collector, Raigad and other Authorities, including the Human Rights Commission and later on filed instant Application, which amounts to multiplicity of proceedings by way of "Forum Shopping" which can be termed as abuse of process of the National Green Tribunal?

On behalf of the Respondent Nos. 8 and 9, it was argued that the Application was abuse of process of law. Learned Counsel for both the Respondents pointed out that a Committee was appointed to determine questions raised by the Applicants and the Committee rendered an Award, whereby compensation was directed to be paid to the Applicants. According to them, the same issue cannot be again raised by the Applicants, when such Award was finalized by the Collector. It was also pointed out that the Applicant No.1 approached the Human Rights Commission for the same kind

of relief. They urged, therefore, to dismiss the Application.

The question was whether judicial process was really abused by the Applicants, by filing instant Application. Considering the different operative domain of jurisdiction, which Govt. Relief Committee, Human Rights Commission and the National Green Tribunal, can exercise, it was difficult to accept arguments of learned Advocate for the Respondent No.9, that the Application was unsustainable, being abuse of process of Law. There was no misuse or abuse of process of Law in filing of such Application by the Applicants, inasmuch as, substantial environmental dispute was raised in the Application.

- Whether the Application is barred by limitation and if it deserves dismissal?

Another argument advanced by learned ASG and learned Advocate for the Respondent No.9, was that the instant Application was barred by limitationas the Applicants were well aware about necessary permissions granted to the project and Environmental Clearance (EC) dated 10 May 2013. They also knew about CZMP dated 22 July 2005, which included the planning of development at JNPT. It was contended that the project was duly cleared after following procedure envisaged under the EIA Notification dated 14 September 2006. On basis of such submissions, it was argued that the Application was barred by limitation, as it had been filed after 6 months from the date of commencement of cause of action.

Since this was not an Appeal, limitation as available under Section 16 of the NGT Act, 2010, was not required to be taken into consideration. The instant-Application was mainly for relief of compensation, and restitution of environment referred to in Clauses (a) (b) and (c) of sub-section (1) of Section 15, which ought to be read together with Section 14(1) of the NGT Act, 2010. The Tribunal was of the opinion that the Applicants could have knowledge of the nature of initial EC granted in favour of the project Proponent. Hence it was within limitation. Both the issues were answered in the Negative.

- Whether the Applicants can claim customary rights for navigation and right to collect catch of fishes/fishery rights from the sea-water of Nhava-Sheva and as such have a right of route to navigate their traditional boats, through the creek?

Though the Applicants were claiming compensation on basis of such an extinguished enactment, the Mahul creek (Extinguishment of rights) Act, 1922, yet, there was no such legal right specifically available to them under the provision of said Act. The enactment provides grant of compensation to the victims, who had suffered loss or damage on account of such extinguishment of rights, likewise available under Section 7 of the Land Acquisition Act, 1894. However, it was essential to examine how such rights emerged and can become form of Law and provides any right to the Applicants.

- Whether the width of entrance area for passage of the Boats of traditional

fishermen inside the sea within Port area, near additional Berth No.4, of widening project, is likely to be reduced or substantially altered/bottlenecked due to reclamation activity/project activity of JNPT?

- Whether reclamation, cutting of Mangroves and other activities undertaken by JNPT and other respondents, did or would cause substantial environmental damage/degradation, which will result into loss of ecology, resulting into loss of natural spawning of fish species, breeding of fishes, availability of fish catch and species thereof?

JNPT placed on record that the port had about 800Ha area covered with planted trees and Mangroves, which were undisturbed, and port's activities absolutely confirmed to CRZ norms. JNPT claimed that the project of development of eastern shore of Mumbai harbour was under the Major Port-Trust Act, 1963, and since beginning the port did not give permission for fishing activity within boundaries of JNPT. Both these stands of JNPT were contradictory to each other.

The report received from committee of MCZMA was against the counter claim of the Respondent No.8. The report showed that there was Mangroves degradation at Gavhan–Nhava road. Thus, it was held that JNPT caused destruction of Mangroves and degraded the environment in the area of Port by reclamation of land as well as contemplated effect on tidal exchanges and obstruction in natural water navigation route available to the traditional fishermen.

- Whether ONGC, (Respondent No.9), has cleared off Mangroves cover around the underline pipeline, as directed by the concerned Authorities and restored ecology?

- Whether CIDCO through its land development activities have affected coastal system, in violation of CRZ Notification?

The apportionment of compensation amount payable to the Applicants from the Respondent Nos. 8 and 9, and 10 would be 10:70:20% having regard to their contribution to loss of Mangroves, loss of spawning grounds, loss of livelihood etc. Consequently, cost of Rs. 1lakh was imposed on MoEF and MCZMA which shall be paid to Collector Raigad, within 8 weeks who shall undertake environmental awareness and education activities in next 2 years from these funds. In the result, the Application was allowed in the following manner:

i) The Applicants to recover Rs.95,19,20,000/- which be distributed equally to 1630 affected and identified fishermen's families as per the Collector's Report, to the extent of Rs.5,84,000/- per family within 3 months by the Respondent Nos.7, 8 and 9 respectively, as per their shares mentioned above. In case, such amount is not paid then it will carry interest @ 12 % p.a. till it is realized by the concerned fishermen's families.

ii) The Respondent Nos. 7, 8 and 9, shall pay Rs. 50 lakh and restoration cost for environmental damage, as per above share within 8 months for activities of mangrove plantation, ensuring free passage of tidal currents etc. in consultation of MCZMA.

iii) The Respondent Nos.7, 8 and 9, to pay costs of Rs. 5 lakh as litigation costs to the Applicants and bear their own costs.

iv) A compliance Report in this behalf be submitted by the Collector, within 4 months to this Tribunal.

v) MCZMA shall submit the compliance of directions issued by them to the Respondents in 2 months.

Ambai Taluk Tamirabarani Vivasayigal Nala Sangam v. Union of India & Ors.

Applications No. 256, 259 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Granite Quarrying, Tiger Reserve, River Pollution

Applications dismissed.

Date: March 5, 2015

JUDGMENT

These Applications were originally filed as writ petitions before the Madras High Court, seeking *inter alia* quashing of mining lease granted to a company, and denial of permission to another company for granite quarrying in certain lands in Tirunelveli District, since the said lands were very close to the Kalakad-Mundandurai Tiger Reserve and just about situated in the Tamirabarani river bed. The reason cited for this was that the lands were situated within a 3.5 km radius of the Tiger Reserve, and

within a 500 m radius of the Tambarbarani river, and that the mining activities were therefore liable to cause damage to the ecology of the Tiger Reserve and the river.

According to the State Forest Department, its notification no. K1/19956/92 dated 07.04.1992 clearly stated that the Government of India had decided not to allow projects to come up in the area located within 10 km boundary of reserve forest, or designated ecologically sensitive areas within 25 km of the boundary of a National Park or Sanctuary without the concurrence of the Central Government. Moreover, the Government of Tamil Nadu had prohibited the establishment of any projects, excavations etc., within a radius of 1 km from the rivers Cauvery, Vaigai, Palar, Penaiyar and Tamirabarani to safeguard the river belt. Ecological damage to native plant and animal species, as well to the water sources (pipelines), dams and surrounding hillocks were cited by the Applicant as grounds for the prayer.

The Ministry of Environment and Forests (MoEF) stated that any mining project coming up within the boundary of 10 km of a national park or wildlife sanctuary should have also obtained clearance from the Standing Committee of the National Board for Wildlife as per the orders of the Hon'ble Supreme Court of India besides Environmental Clearance (EC) from the MoEF under the EIA Notification, 2006. Further, it stated that the subject of grant of mining lease lies within the domain of the Ministry of Mines and the respective State Governments.

The Tribunal examined the pleadings and arguments of the parties, and observed that the Government, while granting the quarry lease, only after the approved mining plan (which is an essential requirement under the Granite Conservation and Development Rules, 1999) was examined. The environmental management plan in respect of the area to be granted on quarry lease was a part of the mining plan submitted before the Commissioner of Geology and Mining for approval, and only after the approval of the mining plan did the Government grant the quarry lease. The Tribunal found that all aspects relating protection of the environment and ecology of the area had been incorporated in the approved mining plan. It further found that the quarrying operations were being carried out in a systematic and scientific manner by using the state of art quarry techniques, such as diamond wire saw machines, and by employing experienced mining personnel in extracting the blocks without causing any pollution.

Moreover, the Tribunal found that the Granite Conservation and Development Rules (GCDR) were a specific body of legislation governing the issue, and therefore excluded the application of the more general provisions of the Environment Protection Act and the EIA Notification, 2006. It also found that the Tamil Nadu

Minor Mineral Concession Rules, 1959 were framed in accordance with the requirements of the Mines and Minerals (Development and Regulation) Act, and were not *ultra vires* the powers of the state legislature. In view of the requirements under the GCDR having been complied with by the concerned Respondents, the applications were accordingly dismissed as devoid of merits.

Dharam Raj v. State of Maharashtra & Ors.

Application No. 118/2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Abattoir, Effluent Treatment Plant

Application disposed of with directions.

Date: March 9, 2015

JUDGMENT

Respondent No.4 i.e. Bhivandi- Nijampur City Municipal Corporation (BNCMC), ran an abattoir at the site near Idgah Maidan. Undisputedly, there was no proper Effluent Treatment Plant (ETP), and proper arrangement for treatment of effluents discharged after slaughtering of animals at that site. BNCMC attempts to incinerate some of part of the animals' remains, which are found after slaughtering at the place, but it was an undeniable fact that the slaughterhouse was not in order as per norms of Pollution Control Board.

The Applicant submitted that unscientific slaughtering at the site in question causes environmental hazard, adverse impact on environment, health hazard and spreads foul smell in the entire vicinity around the slaughterhouse. He requested concerned officials of the BNCMC to install proper, modernized mechanized slaughterhouse, but the complaints remained unheeded. Hence, he filed the present Application and sought following reliefs:

A. The Respondent No.4 be directed to immediately shut down the Idgah slaughterhouse.
B. The Respondent Nos. 1, 2 and 3 be directed to initiate immediate legal action against Respondent No.4.
C. As the violation of law is continuing willfully and voluntarily, a heavy cost may be levied on Respondent 4.

D. The Tribunal may direct the Respondent Nos. 1 and 2 to initiate inquiry as to why no strict and immediate action was taken by the officers of Respondent Nos.2 and 3 as the illegal slaughterhouse continued to operate for more than 7 months and may pass appropriate orders as it deems fit.

The Commissioner of BNCMC filed affidavit along with affidavit of Mr. Latif Gaiban. Their affidavits showed that Mr. Latif Gaiban undertook to complete the work of ETP within 6 months and entire work of mechanized slaughterhouse within period of one year. In case, he would be unable to execute the work, his bank guarantee would be forfeited by the Corporation and work may be assigned to another Agency at his cost and he would be held responsible to pay escalation cost to another Agency.

The affidavit of Municipal Commissioner, BNCMC, revealed affirmative action, as he undertook personal responsibility to face the consequences if work was not completed within given timeframe. It was directed that as far as possible the work shall be carried out in accordance with in timeframe mentioned in the affidavit of the Municipal Commissioner and no further occasion for issuing directions should be given and the work shall be monitored by MPCB on monthly basis of which report is to be submitted to the Tribunal. With these directions, the Original Application was disposed of.

Mr. Jagannath Pandurang Sinnari v. State of Maharashtra & Ors.

Appeal No. 27 of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande

Keywords: Environmental Clearance, Principle of Natural Justice

Appeal allowed.

Date: March 12, 2015

JUDGMENT

In the present Appeal, the Appellant impugned the communication dated May 26th, 2014, of Deputy Secretary, Environment Department, Mantralaya, Mumbai, whereby, his Application for grant of Environment Clearance (EC), was refused to be considered.

Appellant was running a stone quarry on year to year lease/permit basis, which had expired in September 2012. He submitted an Application to the Collector for renewal of the transit pass, and an Application dated 2nd August, 2013 for EC to the Collector. The latter was then forwarded to Respondent No.1 on 10th December, 2013 for EC.

The Appellant alleged that the fate of his Application was not informed to him. Eventually, he submitted the representation to SEIAA on 23rd March, 2014. In pursuance of such representation, he received impugned communication by way of reply, which rejected his request on two grounds, namely; i) The area was within domain of Eco sensitive area of Western Ghats, as per the directions under Section 5 of the Environment (Protection) Act, 1986, issued by the MoEF and draft Notification

on Western Ghats issued by MoEF dated 10.3.2014; ii) The Application was received after cutoff date i.e. 13th April, 2014.

The material issues that required determination were:

i) Whether the impugned communication issued by the Deputy Secretary, is in accordance with the principles of natural justice and, therefore, can be considered to be legal and valid even otherwise, if it is permissible under the Enactments/Rules?

ii) Whether the impugned communication on dual grounds stated therein, is sustainable under framework of the Law, particularly, when Notification pertaining to Western Ghats, as identified by the High Level Working Group of the Committee, placed before the authority was only draft Notification at the relevant time and could not be deemed as final without approval of MoEF, in this behalf?

The Court noted the fact that the Applicant paid an amount of royalty along with his first Application dated August 2, 2013, in respect of royalty as usual, which was not refunded to him immediately by any of the competent authorities. The Court held that the rejection of his Application straightway, after hearing him, is different thing, than acceptance of royalty and subsequently, sitting over his Application without any communication of either rejection or grant of his Application. It held no dispute over the fact that the Appellant was deprived of a fair opportunity to be heard and to explain his case to the Authority concerned prior to issuance of impugned communication. So far as the ground in respect of ecological sensitive area in Western Ghat was concerned, the Court deemed it necessary to give him hearing.

Learned Advocate for the Appellant submitted that the recommendation of the EAC Appraisal Committee in respect of explanation of eco-sensitive area and categorization of the areas, are still under consideration before the Committee. Thus, the Court held that the draft Notification relied upon for the impugned communication is not stamped as final and approved by the MoEF. Thus, the impugned communication was deemed as faulty, erroneous and unsustainable due to violation of principles of natural justice. The Principle ‘audi alteram paratem’ was breached in the present case and, as such, impugned communication was set aside on this ground.

For the question as to whether the Appellant was required to apply to the Deputy Secretary, Environment Department or to Environment Department itself, or to SEAC/SEIAA for activity, the Hon’ble Court took into consideration the fact that said

O.M. is issued by the MoEF, by way of guidelines in order to explain provisions of the Environment (Protection) Act/Rules, so as to clarify legal provisions to be followed by the authorities, in order to have uniformity of procedure and to ensure that there shall be no confusion in following the rules or Judgments of the Apex Court. For the same, it was held that the Applicant has to go through the proper process of making the Application to the concerned Authority i.e. SEIAA, which may direct the Applicant to submit rapid Environment Impact Report (EIA) and thereafter forward the same with recommendation or otherwise, for grant/refusal of request for EC to MoEF. The decision making authority, of course, will be the MoEF, in such a case, if area of lease will be below 5ha for minor minerals. However, the Deputy Secretary, cannot be authority to deal with the subject and environment department cannot practically without considering the subject in any kind of meeting and deliberations or without asking the Project Proponent to go through proper procedure, refuse to consider the Application. Hence, the Impugned communication was held to be arbitrary, unreasonable and unsustainable in the eye of Law.

The Misc. Application was, thus, disposed of and the Appeal to set aside the impugned communication was allowed.

A. Gothandaraman v. Commissioner, Nagercoil Municipality & Ors.

Applications No. 173, 175 of 2013 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Sewage pumping station, Sewage treatment plant

Applications disposed of with directions.

Date: March 17, 2015

JUDGMENT

These Applications were filed by a resident of Nagercoil, praying for the authorities concerned to refrain from constructing a sewage pumping station (SPS) and a sewage treatment plant (STP) at Nagercoil. The Respondents had allegedly commenced construction without obtaining Consent to Establish. Moreover, the proposed SPS was to be built on land which belongs to a school. Since the area was low lying, there was a high chance of flooding of sewage during monsoons. It was estimated that the pumping of sewage would not be able to compensate for its inflow, given the pressure of water at that depth. Various representations were made to the authorities about the harms of constructing the SPS, but none of these were considered. Construction of the STP was contended to endanger the environment and residents of the area, by changing the residential nature of the area. Chlorine gas was to be stored in the STP, which could cause injury in the event of its escape. Moreover, there was no area to build a buffer zone around the STP – its exhaust gases (aerosols, methane etc.) would be breathed in by the local population. The STP was also in violation of certain siting norms prescribed by the Tamil Nadu Pollution Control Board (TNPCB), and was located within 500 m of the nearest house. Moreover, the land in question belonged to an old primary school which had been demolished illegally.

It was further contended that such SPS/STP construction was in violation of Articles 14 and 21 of the Constitution, by not taking into consideration the effects of pollution likely to be caused by these in a thickly populated area. As per information obtained through RTI applications, the power required for these projects would be more than the permissible limit.

Respondent no. 1 – the Commissioner, Nagercoil Municipality – contended that the STP was being constructed in accordance with law, with proper advice from the Tamil Nadu Water Supply and Drainage Board (TWADB). Based on orders passed by the District Court in a related litigation, the STP was being set up in an eco-friendly manner. Moreover, when NOC was sought from the TNPCB, it directed the Municipality to declare the area within a 100 m radius of the STP as a no-

development zone. It denied the commencement of construction activities, as the consent for establishment (CFE) was awaited from the TNPCB.

The 2nd Respondent, the District Collector, stated in his reply that the SPS was to be constructed in a scientific manner, in accordance with the Central Public Health Environmental Engineering Organisation norms. A diesel generator with acoustic enclosure would be provided by the CPCB to ensure there was no noise pollution either. It was further submitted by him that sewage collection and treatment could not be equated with an industry, since it was in the nature of a public utility. The SPS was not treating the sewage, and hence – as submitted by him – did not require TNPCB consent. Since there were no industrial establishments in the area, the sewage scheme was 100% domestic and therefore required no EC from the SEIAA.

The TNPCB in its reply stated that the NOC for the STP was only issued after proper inspection of the area and alternate sites, and with certain conditions – such as the provision of a no-development zone, submission of design and drawings for the STP and commencement of construction only after obtaining the CFE. Further, the applications were forwarded to the Zonal Level Consent Clearance Committee (ZLCCC), along with certain additional conditions added for the issuance of CFE – including avoidance of the usage of chlorine. The ZLCCC agreed to grant the CFE subject to the foregoing, and certain additional, conditions as well – provision for storm water drains around the project site, to avoid water logging, and the adoption of safe and environment-friendly practices within the premises.

The Tribunal then framed the following major question(s) and proceeded to decide accordingly:

Whether the Applicant was entitled to a direction restraining the Respondents from constructing the STP/SPS; and whether the Applicant was entitled to a direction for remedying the damage caused at the sites by taking suitable measures:

The Tribunal, on examination of the evidence placed before it, concluded that the town of Nagercoil was in urgent need of an underground sewage scheme for scientific disposal of wastewater. It was unable to accede to the Applicant’s prayer fin this regard, as the siting was done after proper inspections, a report of which was placed before the ZLCCC. The Tribunal, in an interim order in these Applications had allowed the TNPCB to process the applications for CFE on merit and in accordance

with law. It considered the low-lying site of the STP and found this to be scientifically sound. Moreover, it was undertaken by the proponents to have the pipes and hydraulic pressure checked by an agency nominated by the Government of India, to ensure there was no chance of leakage. All the apprehensions of the Applicant – flooding, chlorine leakage – were safeguarded against in the conditions imposed on the grant of the CFE.

It agreed with the argument that the projects were in the nature of a public utility and could not be looked at solely as an industry. It applied the same reasoning as it had on an earlier occasion in *Kehar Singh* v. *State of Haryana*, where it held that an STP should ideally get EC at the threshold, after due application of mind, since its ultimate purpose is the betterment of environment (and not commercial profits, like most industries). Keeping the EC pending until the establishment of the plant may be counterproductive, if it is set up with public funds and is unable to fulfil its intended purpose. Thus, EC was required to be obtained in the present case as well, and a comprehensive study of the effect of the projects was necessary. Thus, the 1st Respondent was directed to apply for an EC (although this was ordinarily required to be obtained prior to application for CFE), and the SEIAA was to dispose of the application within 2 months of it being made.

Significantly, the project proponents were allowed to complete the ancillary civil works (pipelines, manholes etc.) but not allowed to commence construction of the SPS/STP until EC was obtained. Applying the principle of sustainable development, the Tribunal, while disposing of the Applications, said' "*Considering the enormous environmental and health benefits that would be bestowed on the region in question on completion, and effective functioning, of the STP, minor physical damage that might occur is insignificant and deserves to be ignored*."

A. Arjunan & Anr. v. State of Tamil Nadu & Ors.

Application No. 11 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Limitation

Application dismissed

Date: March 18, 2015

JUDGMENT

The Applicant challenged the order of the Tamil Nadu Pollution Control Board (TNPCB, 2nd Respondent) dated November 19, 2011 that granted consent to establish in favour of Sivagangai Municipality (3rd Respondent) for a Sewage Treatment Plant (STP). The Applicant filed an Application seeking to quash the order. Pending the proceedings, when a renewal Application was filed, the same was extended till January 5, 2017 and status quo was ordered.

The Tribunal was of the opinion that the Application was liable to get dismissed on the ground that the Applicants had approached a Tribunal to file an Application instead of filing an Appeal before the Appellate Authority- Tamil Nadu Pollution Control and that too, on February 15, 2014 which was time barred according to the provision of the National Green Tribunal Act. The Tribunal stated that an Appeal should have been preferred within the prescribed time, only before the Appellate Authority since during the relevant time, the Appellate Authority was functional.

The Application was dismissed with no orders as to cost since it had not been filed before the appropriate forum and by filing it before the Tribunal, the Applicants had tried to bypass the statutory remedy prescribed to complainants.

Shri Vishwas More v. Krishi Utpanna Bazar Samitee, Pimpalgaon Baswant & Ors.

Application No. 38 of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Sewage Treatment Plant, Market Yard, Water Pollution, Waste Management

Application partly allowed.

Date: March 18, 2015

JUDGMENT

Pimpagaon-Basvant is a big market yard in Nashik district that started operation in the midst of September, 2013. A large number of farmers are required to stay overnight within premises of the market yard, while awaiting their transactions to be completed. The market yard has, thus, constructed 25 sheds for shelter of such agriculturist's need for overnight stay in the premises.

By this Application, the Applicant raised various environmental issues of substantial nature pertaining to Sewage Treatment Plant (STP) to deal with sewage on account of use of sheds by the farmers for storage, sale and auctioning of tomatoes in the area of market yard of Respondent No.1 – Krishi Utpanna Bazar Samiti, Pimpalgaon Basvant, as well as absence of arrangements for shifting of sewage without proper arrangement, allowing it on other nearby farms, causing damage to the land, crops, contamination of groundwater, well water and other environmental adverse impacts. The claim put forth by him, was that the market yard had not obtained Environmental Clearance (EC) from the State Environmental Impact Assessment Authority (SEIAA), and the construction of shelters in the market yard area are excessive of 20,000sq.mtrs area and, therefore, approval of competent authority, as per MoEF Notification dated

14th September, 2006, as amended on 4.4.2011, is essential, which the Respondent No.1 desires to bypass.

The Applicant, thus, prayed for the termination of operations of Respondent No.1 till effective STP and proper drainage arrangement has been provided, and the EC is obtained. He also prayed for the appointment of experts to assess the damage to crop, groundwater, well water, farms and farmland. Further, the Maharashtra Pollution Control Board (MPCB) was prayed to take appropriate action against the violations of the provisions of Water (Prevention & Control of Pollution) Act, 1974, to ensure the compliance of required norms for providing STP, and to restore the damage to environment. The Applicant prayed for a compensation of Rs.50, 000/- for the expenses of litigation, and for payment of compensation for the damage to his property.

Respondent No.1 – Agricultural Produce Market Committee (APMC) resisted the Application by contending that the temporary shades situated in its premises are to protect the vegetables during harvesting season, and mere putting of shades will not attract entry No. 8(a) or 8(b), Schedule 8 of EIA Notification dated 14th September, 2006, and the activity is within legal framework of the Environmental Laws. Thus, there is no need to seek EC from the competent Authority, because construction area does not cross outer limit of 20,000sq.mtrs. It further added that the Applicant's allegations are on account of political rivalry and ill-intention, as along with the issues raised by him in Writ Petition No.11221 of 2013, he has included additional issues only to bring colour to his application.

As per Respondent No. 6, there was no discharge of uncontrolled water from the premises of Respondent No.1, one STP was installed for wastewater treatment within the premises and the work for one more STP was in progress. Well water of the Applicant was found to be contaminated due to previous discharge by the Respondent Nos. 1 to 3. Such a statement by Respondent 6 was held to be illogical and unconvincing by the Court. The Inspection Reports filed by MPCB also showed that COD value of the samples collected of well water of the Applicant was very high.

The points which arose for determination were as follows:

i) Whether the project activity, inclusive of temporary sheds require any EC, in view of entry No.8 (a) of Schedule 8, appended to EIA Notification dated 14th September, 2006, or amended thereafter in 2011, is over and above 20,000sq.mtrs?

ii) Whether Respondent No. 1 has failed to install required number of STPs and thereby caused adverse environmental adverse effect in its premises, with the result that surrounding area and agricultural lands in the vicinity are adversely affected?

iii) Whether Respondent No.1, discharged untreated effluents in the land of Applicant, which contaminated his well water and thereby caused loss to his agricultural crops?

iv) What precautionary measures are necessary to be taken by Respondent No.1 to effectively manage affairs of the market yard?

On issue (i): Upon perusal of the pleadings in Writ Petition filed by the Applicant, the Court found it indicative that the Applicant mainly relied upon inadequacy on part of Respondent No. 1 on account of uncontrolled waste management. He had never contented that the temporary structures ought to have been taken into consideration for conducting EIA study or that EC was necessary for the project. Thus, the Applicant invented a new ground while filing the present Application. The plea which was given up previously was, thus, held as abandoned, in view of the provisions of Order 2, Rule 2 of the Code of Civil Procedure, 1908, as the Applicant failed to explain as to why no such plea was taken in the course of such proceedings.

Further, upon perusal of entry 8(a) and 8(b), it was held that the project of Respondent No. 1 does not fall under either of category, because the temporary sheds are permitted to be erected during season of crops, which are likely to get damaged, if such protection is unavailable. Thus, the objection raised in Issue No.1 was answered in the Negative.

On issue (ii): Affidavits from MPCB officers showed that water of well of the Applicant was contaminated due to discharge of waste effluents by Respondent Nos.1 to 3. The visit of MPCB dated 21.4.2014, also revealed that there are 25 Bathrooms in the market yard which were closed while only one Toilet and one STP were found in operation. The capacity of STPs was held to be inadequate to deal with sewage and waste management, including the waste caused on account of loss of vegetables. Further, after consideration of communication dated 1.9.2014, issued by the Chief Manager, in accordance with the authority under Regulation 12(1) under the byelaws of APMC Rules, it was held that the sheds can only be erected during rainy season, and not at any other time of the year. Further, the Market Committee cannot take shelter under the guise that such temporary sheds are erected by the traders and not by Respondent No.1.

The Court held that for 100 persons, one Septic tank is required and at least 25 Toilets are required, as per National Building Code (NBC). Thus, the APMC was directed to provide sufficient toilets, urinals and STPs. It was further held that MPCB needs to conduct a special audit to assess effluent generation and effluent disposal

arrangement. Further, the Court also criticized the MPCB for failing to assess the effluent generation load, and to verify the data of water used to arrive at some estimation of pollution load. Considering these aspects, Issue No.(ii) was answered in the Affirmative.

On issues (iii) & (iv): Upon perusal of all produced records, the Court admitted that the water of the Applicant's well is contaminated due to drifting of untreated effluent through drainage of Respondent No.1. He was, therefore, entitled to compensation of Rs.5Lakhs from Respondent No.1. On account of failure on part of MPCB to substantiate their submissions that the built up area of the project is not covered under the consent management, the Court found merit in the argument of the Applicant and observed it necessary for MPCB in "stricto senso" to adhere to the provisions of Ss. 25 and 26 of the Water Act while regulating water polluting sources and activities.

It was argued on behalf of Respondent No.1 that all the arrangements of STPs and Toilets etc. including number of closed drainage will be done as per direction of this Tribunal within time frame, but that there is no intentional error committed by Respondent No.1. The Court followed the 'Precautionary Principle' under Section 20 of the NGT Act, 2010 and provided due directions to protect environment in the area so that no such continuity of wrong should recur.

The Application was partly allowed. Along with the payment of compensation of Rs. 5 lakhs to the Applicant, the Respondent No.1 was directed to provide sufficient number of Toilets and STPs effectively, to treat effluent properly and to provide solid waste management and disposal plant within next 3 months. MPCB was directed to regulate activities of the Respondent No.1, in view of effluent generation load in next 2 months and conduct environmental audit of Respondent No.1's activities in next 2 months, and improve upon any shortcomings within 3 months. MPCB was also directed to ensure compliance of above the directions.

Variya Gandabhai v. Union of India

Appeal No. 27 of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A.Deshpande

Keywords: Limitation, Environmental Clearance, Effluent Treatment Plant

Appeal dismissed.

Date: March 20, 2015

JUDGMENT

Ahmedabad Municipal Corporation (AMC), acquired 500 acres of land to operate sewage and effluent treatment in the Industrial Zone area by installing a Central Effluent Treatment Plant (CETP) to reduce the load of already existing STP, and using modern technology to avoid pollution. Following the prescribed procedure, Respondent No. 6, i.e. the Project Proponent (PP) submitted an Application to MoEF for grant of EC for the said project. His Application was processed by the MoEF as per procedure laid down under the EIA Notification, 2006, by following relevant norms, namely; (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal. Thereafter, the impugned Environment Clearance (EC) was granted.

This Appeal challenged the order of EC, passed by MoEF on December 16, 2013, and by Application No. 147/2014, the Appellants sought condonation of delay caused in filing of Appeal No. 27 of 2014. In this Application, the Court expressed its concern only with the preliminary issue of limitation for the Appeal, and if it was filed within a period of 30 days as prescribed under Section 16 (1) of the National Green Tribunal Act, 2010.

The Appellants contended that they were not aware of the impugned EC until the same was informed to them by their Advocate during pendency of Writ Petition bearing Writ Petition No.177 of 2014, on June 12, 2014. They submitted that the Appeal was filed well within 90 days after obtaining knowledge of EC, and therefore, the delay should be condoned, as it was unintentional and well justified. On the other hand, Respondent No.6 alleged that the Appellants had full knowledge of the impugned EC, due to the fact that publication of grant of EC was duly made in two newspapers on January 2, 2014, as required by procedure. It was further submitted that since Appellant Nos. 1, 2 and 4 had participated in the public hearing, they had knowledge about the ongoing process for the grant of EC and, therefore, they could have vigilantly pursued the matter to ensure whether EC is granted or refused. He further contended that the project is in the interest of public at large, and such an

Appeal was being brought by the Appellants with a view to delay the project in question.

It was held that the knowledge of Appellants by any 3 modes like a) information from website of MoEF, or b) information through newspaper report or c) publication made by the public authority, would be triggering point that will start running of limitation. The Court observed the clarity in the fact that the Appellants first came to know about the impugned EC during course of hearing of the Writ Petition by the Advocate of Respondent No.6, on May 22, 2014. However it was held that, Appellant No. 4, being a party to the said Writ Petition, could have knowledge of the said EC on May 22, 2014, as the documents were filed by the Respondent No.6 through his Advocate, during course of first hearing of the Writ Petition. Said knowledge could have been further shared by Appellant No. 4 with other Appellants. Therefore, limitation is to be triggered on that date for all the Appellants who got knowledge of the EC, as they have come together in the instant action.

Thus, the Court held that the Appeal ought to have been filed within 30 days from May 22, 2014, which the Appellants did not. That apart, even assuming that first point of knowledge to the Appellants triggered from date of order passed by the High Court of Gujarat on May 22, 2014, even then the period of 30 days expired on June 21, 2014. Further, if the limitation is assumed to have been started when the EC was put on website on 23rd May, 2014, even then the period of limitation of 30 days is over on 22nd June, 2014 and period of ninety 90 days is over on 21st August, 2014. The Court further held that grace period could also not be availed by the Appellants as they had failed to show any kind of ‘sufficient cause’ to explain their delay after 30 days from first day of knowledge. Thus, the Appellants could not seek extension as a matter of right.

The Application was, therefore, dismissed, while the Appeal was disposed of as a consequence.

V. Sundar v. Union of India & Ors.

Appeal No. 95 of 2014 (SZ)

Coram: Justice M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Environmental Clearance, Joinder of Causes of Action, Limitation

Appeal dismissed

Date: March 25, 2015

JUDGMENT

This Appeal was filed to challenge the Environmental Clearance (EC) dated July 15, 2014, that had been granted by the 3rd Respondent, State Level Environmental Impact Assessment Authority (SEIAA), in favour of the 10th Respondent, M/s. Vicoans Infrastructure and Environmental Engineering Private Ltd., Chennai for construction of a building at Lattice Bridge Road, Adyar, Chennai.

The case of the Appellant was that he had continued the business of manufacturing and marketing chemicals under the name of Chemicals India which originally belonged to the his late father on a portion of a property taken on lease. Apart from this property at No. 15, Lattice Bridge Road, the lessee owned another property, No. 19, Lattice Bridge Road. In December 2001, the lessee Mrs. Dawson died abroad and all her properties in India, including the property in which the Appellant had been carrying out his business, devolved on her heirs intestate. In order to secure his rights and interest over the property, the Appellant along with other tenants of the property at that time, formed an association and took all necessary steps including collecting/accumulating the rents payable by the respective tenants in respect of the property in their respective occupation in a separate account opened by the association.

In 2007, after the demise of the Appellant's father, the Appellant started managing the business through his uncle. The expiry of the uncle led to temporary suspension of the business of Chemicals India. Seizing the opportunity, Respondents 10 and 11 (M/s Vicoans Infrastructure and Environmental Engineering Private Ltd. and M/s True Value Homes) who were carrying on some activity in the adjacent property illegally trespassed into the property in possession of the Appellant and removed the signboard of Chemicals India, bottles and raw materials that were stored outside the building, and destroyed the bore-well as well as the hand-pump in the property. The access road to the property was obstructed and they started using the property temporarily for their building construction work that they had undertaken in the adjacent site bearing Door No.19, Lattice Bridge Road.

The Appellant filed for an interim injunction before the High Court of Madras, to restrain Respondents No. 10 and 11 from interfering with the appellant's peaceful possession and enjoyment of the property in question. The High Court allowed only partial relief, against which he filed an appeal. During the pendency of the appeal, the Appellant filed Appeal no. 1383 of 2014 seeking amendment of the relief sought for in the previous appeal and adding that the sale deed document in favour of the 10th respondent be declared null and void.

The appellants contended that the construction undertaken by the respondents 10 and 11 was in violation of various environmental laws like the Air (Prevention and Control of Pollution) Act, 1981 the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986 and the EIA (Environmental Impact Assessment) Notification, 2006 and therefore, the environmental clearance (EC) dated July 15, 2014 was liable to be set aside. As alleged, under the EIA Notification 2006, building projects which are beyond 20,000 sq.m. such as the one that was under question in the present case necessarily have to obtain prior EC from the 3rd Respondent. The Respondents No. 10 and 11 had commenced the construction of the building project at the site in question in disregard and violation of the EIA Notification 2006 and continued with the same and constructed about 14 floors without obtaining the mandated prior EC. Moreover, the State Level Expert Appraisal Committee (SEAC) approved grant of the EC to the project of the 10th respondent without proper appraisal and without assigning any reasons and without following the procedure as contemplated under EIA Notification, 2006.

Since the decision of the 3rd respondent for grant of the EC is to be based upon the recommendations of the SEAC as per paragraph 4 (iii) of the EIA Notification, 2006 and the recommendations in the present case had been made without assigning reasons, the decision was liable to be set aside. Moreover, other necessary and

important requirements that needed to be fulfilled before the EC was supposed to be granted had not been followed. For instance, SEAC failed to make any kind of site inspections; it was not clear whether the 10th Respondent had submitted any details regarding impact of project on the environment; respondents 10 and 11 were in involved in pollution of environment, violation of Public Health Act and were unable to comply with the requirement of allotting 15% of the project area for developing and maintaining a green belt. Moreover, the construction by the 10th respondents had been continuing without obtaining consent to establish.

Apart from this, proper infrastructure for the labourers had not been provided by the Respondents No. 10 and 11, for example, facilities to dispose wastewater, solid wastes were absent which was causing health hazards to the appellant and the public living in the vicinity. The construction activities were not even complying with the conditions that had been expressly mentioned in the EC dated July 15, 2014, for example, the construction debris was to be disposed of in such a manner that it did not have any adverse impact on the neighbouring communities; the vehicles employed for the construction activities were to be operated only during non-peak hours and were to conform to the air and noise emission standards.

Therefore, it was prayed that the building be demolished and the Respondents No. 10 and 11 be held liable for causing damage to the property of the Appellant and be directed for restitution of damages and injury caused by them to the appellants. On the other hand, the Respondents No. 10 and 11 contended that the appeal itself was not maintainable since it was barred by limitation apart from the ground that the Appellant had asked for plural remedies on two different causes of action and thus the Appeal had to be dismissed in view of the bar under Rule 14 of the National Green Tribunal (Practices and Procedure) Rules, 2011. These were the issues that were considered by the Tribunal: maintainability on grounds of limitation or in view of the joinder of two different causes of action seeking plural remedies.

Regarding the question of limitation, the Appellant contended that the communication was complete only on November 22, 2014 and not prior to that date. The period of limitation could not have been reckoned from November 17, 2014 or any day prior to November 22, 2014 since from the perusal of the letter dated September 2, 2014 the appellant had only learnt that the 10th Respondent had been granted EC but the said letter was devoid of the details regarding the grant of the EC. The Appellant was neither aware of the grant of EC nor had been provided with the copy of the EC and was completely unaware about the terms on which the said EC had been granted by the authorities to the 10^{th} Respondent.

Regarding the second question, the Appellant pointed out rule 14 of the NGT Rules, 2011,and submitted that it provided for plural remedies in a proceeding before the Tribunal and that the words found in rule 14 ‘consequential to one another’ were not to be equated with ‘consequential reliefs’. The consequential relief is a relief which flows directly as a natural sequence from and incidental to the main and substantive relief. It is not something that is claimed independently as a substantive relief. It is wholly connected to the main or substantive relief and therefore arises from the same cause of action which gives rise to the substantive relief. On the other hand, the words ‘consequential to one another’ mean that each of the reliefs may be a main and substantive relief which need not flow from the other and which may be based on different causes of action, but which are connected or linked and claiming of one necessarily involves or requires claiming of the other or vice versa. The second part of rule 14 permits reliefs based on more than one cause of action being claimed in an application or appeal provided they are so connected that seeking of one requires seeking of the other either as of necessity or on account of a statutory mandate. The Appellant sought for a stay of and for striking down the 2012 Office Memorandum only out of abundant caution. The rule 14 does not in any manner restrict the joinder of causes of action. It only restricts to one or more reliefs sought for in the application or appeal filed before the NGT.

The Respondents contended that the EC was granted by the SEIAA on July 15, 2014 and proper publication was made by the project proponent of the EC. The time gap between the date of publication of EC and the date of filing was 74 days. The Tribunal has the power to condone the delay of 30 days from the date of order and beyond 60 days it cannot be condoned. Thus, it was outside the time limit of the period of limitation as prescribed by the NGT Act, 2010.

With regard to the second question, the Respondents submitted that as per the NGT Rules, 2011, an application or appeal is to be based upon a single cause of action and may seek one or more reliefs provided they are consequential to one another and thus there cannot be joinder of causes of action. In the present case, the appellant sought to set aside the EC and also asked for the relief to set aside the Office Memorandum dated December 12, 2012. Thus, it was clear that the first prayer invoked the appellate jurisdiction of the Tribunal while the relief in the second prayer was claimed in the original jurisdiction of the Tribunal. The appeal and application coming on two different causes of action could not be combined together in view of the bar under rule 14 of the NGT Rules, 2011 and therefore, the remedies were alleged to be plural remedies.

The Tribunal concluded that the newspapers contained clear notices to the public at large regarding grant of EC to the project. The details provided in the advertisement were immaterial but the fact that the grant had been communicated by way of notices, the period of limitation had to be reckoned from September 5, 2014, i.e., the date of publication made by the 10th and 11th Respondents. The Tribunal also observed that as indicated by means of many evidences and material, it was clear that the Appellant had filed a number of proceedings in respect of the site in question and had witnessed the construction activities of the Respondents for years. Therefore, he could not be allowed to state that he came to know about the grant of EC only on November 22, 2014 that too in the face of the publication of the grant of EC in public domain.

Apropos the second question, the Tribunal upheld the contentions of Respondents No. 10 and 11, and stated that the cause of action for the relief clause claimed under first prayer was the EC granted by the 3rd Respondent dated July 15, 2014 while the cause of action for second prayer was the issuance of an Office Memorandum of the MoEF. Thus, it was clear that these reliefs sought for on two distinct and different causes of action were in violation of rule 14 of the NGT Rules, 2011. Therefore, the Tribunal dismissed the Appeal on both grounds.

P.S. Vajiravel v. Chairman, Tamil Nadu Pollution Control Board & Ors.

Appeal No. 3 of 2015 (SZ)

Coram: Justice M. Chockalingam, Mr. P.S. Rao

Keywords: Effluent Treatment Plant, Zero Liquid Discharge, Sewage Effluent Pump

Appeal allowed

Date: March 26, 2015

JUDGMENT

In the present application, the Appellant had challenged the closure order of the Tamil Nadu Pollution Control Board (TNPCB) against the Appellant's dyeing unit for cotton yarn. The Appellant had obtained consent to operate on October 21, 1999 under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 from TNPCB after complying with all the conditions imposed upon them. The unit was in operation without any complaint and consent to operate was being renewed periodically. The appellant also made sure that all norms and conditions prescribed by the TNPCB and other statutory authorities were complied with from time to time.

The unit of the Appellant comprised of a factory and an effluent treatment plant (ETP). The land on which the ETP had been built had been obtained on lease, and was sold without notice in 2007. Consequently, the Appellant was asked to vacate the land immediately. The Appellant filed a suit for permanent injunction against the buyer of the land, who filed a counter-suit of eviction against the appellant. The Appellant contended that during this time, the buyer, using his influential background influenced the TNPCB to cancel the license of the appellant and issue a closure order in the year 2012 overlooking all mandatory procedures and in gross violation of the principles of natural justice. The appellant approached the Tribunal, whereby it set aside the closure order of the Board and renewed the consent to operate till June 30, 2015.

It was further alleged that later in November, 2014, an officer in charge of the office of the Respondent visited the unit without any prior notice during the night hours while there were no managers or supervisors present in the premises. The officer made an inspection without asking for any questions or explanations and left without an inspection report. The Appellant received a closure order dated December 9, 2014 which was possibly based on the inspection made in November, 2014. The inspection report mentioned about several violations of conditions prescribed under the Water Act. The appellant alleged that closure order had been served without any show cause notice and that order for immediate closure under S. 33 A of the Water Act had not given any opportunity to the appellants to explain their case.

According to the Respondents, the following defects and violations of the consent order had been noted during the inspection that had led them to issue the order for immediate closure:

1. The unit was under operation and all the components of Effluent Treatment Plant (ETP) and Zero Liquid Discharge (ZLD) system were not under operation.
2. The log book for ETP and ZLD systems had not been maintained since November 16, 2014.
3. No Mixed Liquor Suspended Solids (MLSS) were noticed in the aeration tank.
4. The unit had installed two Jumbo Jiggers of 300 kg and 150 kg each and a Jigger of 80 kg which had led to excess production than the consented quantity, thereby generating more quantity of trade effluent than consented to.
5. The hazardous sludge from the ETP had not been collected or stored properly.
6. High Density Poly-Ethylene (HDPE) geo membrane sheet had not been laid over the Sewage Effluent Pump (SEP) to prevent seepage of Nano reject.
7. The solar evaporation pans were filled with effluent for 2 feet depth with a Total Dissolved Solids (TDS) of 2700 ppm which included that the unit was disposing the untreated and hence, there was a possibility of bypassing the effluent in the nearby drain which finally reached the confluence of the River Cauvery.

The Tribunal was of the opinion that the impugned order had to be set aside without going into the merits of the compliance or non-compliance as stated by the authorities in the order of closure. The failure on the part of the TNPCB to serve the inspection report or any show cause notice prior to serving the closure order was indicative of blatant violation of principles of natural justice. Therefore, the closure order was set aside. However, since this was a case of alleged violation of conditions attached to the consent order, the TNPCB was allowed to make an inspection afresh by following the procedure and to pass orders that were in accordance with the law. The Appeal was thus allowed.

Sarang Yadvadkar & Anr. v. State of Maharashtra

Appeal No. 25 of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: River Regulation Zone, Detailed Project Report, Precautionary Principle

Appeal disposed of.

Date: March 27, 2015

JUDGMENT

In the present Appeal, the State of Maharashtra through its Water Resources Department placed on record a Government Resolution (GR) dated March 2, 2015 which amended a previous resolution dated August 8, 2014, removing ambiguity and vagueness regarding certain words that gave leverage for construction of any kind or any such activity within the area in issue near the embankment of the river and for the implementation of the River Regulation Zone (RRZ) policy. The new resolution also showed that a 'blue line' had to be drawn by the Irrigation Department on demands made by the Collector of any department in the city/village/taluka where there was high possibility of danger of flood near the river zone.

The resolution stated that a Detailed Project Report (DPR) was required to be prepared by the Chief Engineer of the Irrigation Department and was to be put in public domain of the Government of Maharashtra but the condition that it was to be prepared on demand and that too by the irrigation department was held to be improper by the Tribunal on the ground that it was against the Precautionary Principle enumerated in S. 20 of the National Green Tribunal Act, 2010. It was clear that the resolution purported to avoid possible damage from flood and illegal constructions within the No Development Zone (NDZ) area. The Tribunal came to the conclusion that the GR was also a means to avoid extra influence on the State Exchequer that had

been incurring heavy expenditure on account of demolition and dismantling of illegal constructions.

As a result, following directions were given by the Tribunal-

1. The Collector or other authority, on noticing danger to human life and property on account of possibility of floods, hailstorms, heavy rains, etc. was directed to report to the Irrigation Department; the Irrigation Department was directed to prepare Detailed Project Reports (DPR) on its own for flood-prone areas irrespective of whether a report from the Collector was received or not.
2. The Irrigation Department was permitted to call for information by e-mail from all the Collector offices particularly from those situated on the coastal stretches where heavy rains were likely to occur within a period of 2 weeks.
3. The Irrigation Department was directed to identify flood-prone areas including the cities like Pune, Mumbai, Lonawala, Nashik, etc. which were known for heavy rain fall and river flows.
4. The geo-mapping of rivers that were likely to endanger environment by causing floods was directed to be carried out within reasonable period and through authentic agencies. However, this work was not to detain the Irrigation Department from preparing the DPR on time and on priority basis.
5. The authentic sketch of the ‘blue line’ and DPR was to be submitted to the Divisional Commissioner of each region on priority basis. No construction was to be permitted by the authorities from at least 50 metres from such blue line within the NDZ area.
6. The DPR and ‘blue line’ were directed to be prepared within a period of twelve weeks from the date of the order and were to be indicated at on the website of Govt. Environment Department or Irrigation Department.

With the above directions, the appeal was disposed of.

The Goa Foundation v. Goa Coastal Zone Management Authority & Ors.

Appeal No. 31 of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Limitation, Coastal Regulation Zone

Appeal dismissed.

Date: March 27, 2015

JUDGMENT

Goa State Infrastructure Development Corporation, which dealt with the construction activities and development within the state of Goa, had decided to construct a bridge across Tiracoal and Keri. The Appellant had challenged the order issued by Goa Coastal Zone Management Authority allowing the construction, and also urged for restoration of beach at Querim to its original condition on the following grounds:

- The work of bridge in question was being done in the No Development Zone (NDZ) zone, which falls within the CRZ-I as per the approved Coastal Zone Management Plan and CRZ Notification. Respondent No.2 had not obtained approval of the MoEF as required under the CRZ notification, 2011, and the permission granted by Respondent No.1 for construction work in the eco-sensitive area was illegal.
- Though the Application was not strictly within the time set out in the NGT Act, the Appellant maintained that it was still within limitation of the knowledge of the work that had commenced. Hence, he also sought condonation of delay in filing of the appeal.

Preliminary objections were raised by Respondent No.1 and Respondent No.2 on the ground that the appeal is barred by limitation as it was filed after 30 days, and therefore, did not come within the ambit of Section 16 of NGT Act. They argued that the Appellant had knowledge of the project in question since the very beginning when the issue was discussed during a meeting held on 2.1.2012, and also via mention in the Chief Minister's speech of May, 2012. The Appellant argued that he came to know about the illegal construction only on 13.6.2014, and that he had lodged the complaint the next day itself. He asserted that although the application filed was strictly not within the time set out in the NGT Act, it was still within limitation of his awareness.

The Tribunal observed that, despite an outer limit of 90 days provided by Section 16 of NGT Act for filing of the appeal, the present appeal could not be allowed for delay condonation as the Appellant had not given any "sufficient cause" for the delay. Thus, the objections raised by the respondents were legal and valid, and the period of limitation could not be extended beyond the prescribed period.

On the issue of permission from the competent authority, the Appellant, in this appeal, challenged the CRZ permission dated 22.10.2013, with the case that Respondent No.2 did not approach MOEF and a mere CRZ Clearance was not sufficient. He further alleged that Respondent No.2 by-passed the important stages of scoping, public consultation, screening and appraisal, which are essential for decision making by the MOEF, and that it purposefully avoided public hearing, in order to deprive the Appellant and public members to raise objections to the project. The Appellant also sought the restoration of land as it would come within the ambit of Section 14 (1) of the NGT Act, 2010.

The Affidavit of Member Secretary of GCZMA (Respondent 1) showed that the construction of bridge did not involve environmental degradation, and was exempted under the EIA Notification from procedure to seek permission. Moreover, the CRZ Notification gives authority to the GCZMA and the Notification itself exempts the construction activities of the bridge from the CRZ Clearance. The regularity authority prima-facie has the powers to deny the permission if the Application does not satisfy parameters required for a particular regulations, in the present case CRZ norms or the EIA norms.

The Court took prima facie review of the CRZ notification, and held that there may not be such ill-intention of the Respondent No.2 to avoid public hearing while applying for permission from the CRZ authority. The Court further held that the Appellant did not raise any "substantial question" relating to enforcement of any "legal right relating to environment" as contemplated under Sub Section (1) of Section 14 in the appeal-memo. The Appellant simply submitted that the impugned

order passed by the GCZMA is illegal, incorrect and improper, and did not raise any particular dispute relating to environment of legal right. The Court again pointed out the delay on part of the Appellant for filing of the appeal within 30 days despite due knowledge, and held the appeal barred by limitation.

Thus, the preliminary objection of the respondents was upheld and the appeal was accordingly dismissed. The Court, nonetheless, granted liberty to the Applicant to file Application or any petition as may be permissible under the law to challenge the impugned project/ CRZ order non-compliance and continued the *status quo* for two weeks for the same purpose.

Harubai Jagganath Sable & Ors. v. Shradha Stone Crusher & Ors.

Application No. 38 of 2014 (WZ)

Coram: Justice V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Quarrying, Excessive Mining, Air Pollution

Application partly allowed.

Date: March 27, 2015

JUDGMENT

By this Application filed under Section 14(1) of the National Green Tribunal Act, 2010, the Applicant raised the dispute that Respondent No.2 had extracted excessive minor minerals from land though he had been granted permission for excavation of a much smaller area, by the District Collector, Pune. Excessive stone mining by the

Respondent No.2, thus, caused environmental degradation and adverse impact on the agricultural lands.

The Applicant contented that the District Collector, Pune granted permission to Respondent No.2 on 18.10.2005 and renewed it on 18.10.2010, despite complaint filed by the Applicant about the excessive mining. He further added that the stone mining business of Respondent No. 2 was not only operating illegally since 2011 for excessive mining, but also does not comply with the conditions envisaged in the permission granted to him and causes air pollution. An RTI Application indicated that the Respondent No.1 had applied for consent to operate on 22nd April, 2013, but prior to that it was being operated without consent, for which the MPCB had issued warning notices to the Respondent No.1 for its violations. In spite of illegalities noticed earlier, consent letter was still issued to Respondent No. 1 by the Joint Director of MPCB, Mumbai. The Application was thus filed not only due to excessive mineral extraction by Respondent Nos. 1 and 2, but also for causing serious environmental damage, including violations of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981. The Applicant thus argued for the cancellation of permissions granted to Respondent Nos.1 and 2, in view of such lapses.

The District Mining Officer (DMO) contended that permission was granted to the Respondent No.2, under provisions of the Bombay Minor Mineral Extraction Rules, 1955, only for extraction of minor minerals from area of 1 Ha, 20Aars for 5 years period, which had completed on 17.10.2010. The permission was extended for further period of 5 years, which lapsed on 27.12.2015. He states that the Respondent No.2, was operating the crusher without due care, had extracted excessive minor mineral material and had caused environmental damage. Respondent No.5 also submitted that additional stone mining was done by Respondent No.1 prior to grant of EC, for which they had already taken action under Bombay Minor Mineral Extraction Rules.

Respondent Nos. 1 and 2 filed common reply affidavits and submitted that they did not excavate more mineral than the permission granted them, and that the order dated 26.9.2014 passed by the Tehsildar Haveli is against the principles of natural justice. They argued that the measurement of Panchnama carried out at the site was done without authority, and that it is possible that during the course of site inspection and measurement of Panchnama, the area was excessively measured from an adjoining quarry due to confusion.

The MPCB supported the case of Respondent No.1. After a site visit, the MPCB noted the running of crusher activity without following conditions of consent, for which a

Show-cause Notice was issued. Air monitoring done on 29.4.2014 and on 14.5.2014 indicated that results were not abnormal, as it was neither in the vicinity of any residential area or agricultural land, nor had any public member made a complaint regarding air pollution. According to them, the project activity was found to be well equipped with water sprinkling system, arrangement for breaking the wind flow, enclosed system covering stone crusher etc.

In its decision, the Tribunal took into consideration the Notice given by MPCB on 2.8.2013 to the Respondent No.2 informing him of the operation of mine without consent, to which Respondent No. 2 had given no response. It also took into account the deficiencies reflected through the Site Inspection dated 14.9.2013, whereby the Stone Crusher was being used without construction of road, there was no greenbelt, the ambient air quality monitoring was not carried out and the unit had no proper metallic road. The photographs attached with the Application also showed a big ditch on the site caused due to excessive excavation of stones.

The Tribunal held that, for at least 2 years, the Respondent No.1 extracted stones in excess of permissible limits, without consent to operate. It noted the result on ambient air quality monitoring to be not satisfactory, the RSPM not as per the standard, and the SPM to be above the standard required. Thus, the dust spread out due to M/s Shradha Stone Crusher was likely to cause environmental adverse impact. The Court held no substance in 2nd Respondent's contention that he had complied with the said conditions, as he ought to have confined himself to the area of 1Ha, 20Aars. Further, it criticized the MPCB and the Mining Officer for granting permission to Respondent No.1 - M/s Shradha Stone Crusher, without ensuring provision of adequate air pollution control arrangements.

Since Respondent No.5 had already initiated action under the Bombay Minor Mineral Extraction Rules, 1955 for the unauthorized excessive mining, the Court issued directions towards restitution and restoration only. It applied the 'Precautionary Principle', as required under Section 20 of the NGT Act, 2010, and directed the cancellation/revocation of the impugned order immediately. It also directed an amount of Rs. 2 lakh to be recovered from Respondent No.1, through the operator i.e. the Respondent Nos.1 and 2 by Collector, Pune, within period of four 4 months for remedial measures like filling up the ditch and afforestation/plantation etc. Respondent No. 1 was also directed to pay costs to the Applicant.

The Application was, thus, partly allowed and accordingly disposed of.

Mathur Grama Kudiyiruppor Podu Nala Sangam v. District Collector, Thiruvallur & Ors.

Application No. 283 of 2013 (SZ)

Coram: Justice M. Chockalingam, Mr. P.S. Rao

Keywords: Ground water, Illegal extraction

Application dismissed

Date: March 31, 2015

JUDGMENT

This Application was filed before the Tribunal seeking for directions to:

i) Respondents No. 1 and 2 (District Collector, Thiruvallur and the Tamil Nadu Pollution Control Board (TNPCB) to take necessary action to stop illegal extraction of ground water that was being made by Respondents No. 3-6 and 8.
ii) Restrain these respondents from extracting ground water for commercial consumption in the aforementioned villages.
iii) Direct respondents 1 and 2 to remedy the harm that had been caused to the environment due to over-exploitation of groundwater.
iv) Direct respondents 1 and 2 to impose penalties and take suitable legal action against those who had been found indulging in such illegal groundwater extraction.

The Applicant, an association formed to preserve natural resources of the Mathur village and for its welfare, filed an application before the Tribunal alleging that the Respondents 3, 4, 5, 6 and 8 had been indulging in extraction of ground water, illegally digging bore wells and also transporting the extracted water outside the area

which had resulted into scarcity of water for the people living in the villages of Mathur and Manjaambakkam.

The Respondents, some water packaging units in the area, denied the case that had been pleaded by the Applicant contending that though they had constructed bore wells in the area, those had been sealed by the Revenue Divisional Officer (RDO), Ambattur and that they had never extracted water from the wells but had been fetching water from an outside source by transportation.

The Tribunal directed the District Environmental Engineer (DEE) to inspect the water packaging units and submit a report. The reports supported the contentions of the respondents that the bore wells had been sealed and had not been used for extraction of groundwater. The Tribunal pointed out that the applicants had not contended that the seal had been broken or unsealed for the purpose of using the bore wells and that their contentions did not stand true. Accordingly, the Application was dismissed. However, the District Environmental Engineer, the TNPCB and the Chief Engineer of the Department were directed by the Tribunal to monitor the Respondent water packaging units in order to ensure that they do not extract water from the sealed bore wells in the future.

Quilon Education Trust Vs State of Kerala and Ors.

Application No. 232 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Coastal Zone Management Plan, Coastal Regulation Zone II (CRZ II), public hearing.

Application disposed of

Dated: 1 April 2015

This Application was filed by the Applicant with the prayer that the Tribunal directs the Respondents to prepare a new Coastal Zone

Management plan in respect of the land in question in Adichanellore Village, Kerala state; categorize the submerged land and its nearby areas under Coastal Regulation Zone II (areas close to the shoreline and falling within municipal limits) and send the same for approval from the Ministry of Environment and Forest (MoEF).

The counsel appearing for MoEF clearly stated that the Ministry had not received any coastal zone management plan from the Coastal Zone Management Authority as regards the land in question and that as soon as such draft application is received, the proceedings under the Coastal Regulation Zone Notification would be followed including the public hearing prior to the issuance of the final notification.

The Tribunal accepted the fact that the application was premature given that no draft notification regarding the plan was sent to MoEF for approval but also ordered that before passing the appropriate final Notification, the objections raised the public during the public hearing should be considered by the Ministry in a way that protects their interests. In view of the above, application no. 232 0f 2014 was disposed of.

M/s. Eugene Rent Vs Karnataka State Pollution Control Board & Ors.

Application No. 188 of 2013 (SZ)

Judicial and Expert Members: Justice M. Chockalingam, Shri P.S. Rao.

Keywords: Consent to Operate, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

Application disposed of

Dated: 7 April 2015

The application was filed before the Tribunal to grant permanent injunction against the respondent which would prevent them from running any industry at the premises in question and to direct the State Pollution Control Board to initiate proper proceedings against the respondent for violating provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

In the present case, the applicant had filed this application challenging the Consent to Operate that was granted in favor of the respondent. The applicant had submitted that the application was filed before the Consent to Operate was granted in order to run any industry in violation of the aforementioned legislations. The Tribunal agreed that though the application seeking Consent to Operate was filed before the filing of this application, in view of the request made in the application, the applicant was given the opportunity to appropriate forum, that is, the Appellate Authority- Karnataka State Pollution Control Board for appropriate relief. In view of the above, application no. 188 of 2013 was disposed of.

M/s. Shree Ramachandra Aqua Products Vs The Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 71 of 2015 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Shri P.S. Rao

Keywords: Pollution Control Board, Packaged Drinking Water Unit, Consent to Operate

Application disposed of

Dated: 7 April 2015

The Applicant had filed this application against the State Pollution Control Board seeking from the Tribunal an order directing the Board to grant Consent to Operate in favor of the Applicant. The Applicant had set up a new packaged drinking water manufacturing unit. The application to establish was granted by the Respondent Board and is valid for two years. The Applicant had also successfully obtained a license from the Tamil Nadu Food Safety and Drug Administration Department which again is valid for two years. Also, the Public Works Department (PWD) granted a No Objection Certificate (NOC) to the Applicant's unit.

Such an NOC was a mandatory requirement because the unit is located in an 'Over-exploited, safe area'. The certificate allowed the Applicant to get water for the unit from outside by transportation because the bore-well in the premises of the Unit had been closed down on the suggestion made by the PWD and the Board. Following this, the Applicants filed for Consent to Operate before the Board but it was not considered. The applicant contended that a huge amount of money has been invested in the establishment of the Unit and that the delay would not only cause hardship but also financial loss.

The Tribunal found that the statements made by the Applicant were true but the Respondent Board cannot be directed to issue Consent to Operate. Instead, the Tribunal directed the Board to application filed by the Applicant in accordance with the law, taking into their consideration all the material facts and circumstances. In view of the above, application no. 71 of 2015 was disposed of.

M/s. Sivakumar Blue Metal and Ors. Vs The Appellate Authority, Tamil Nadu Pollution Control Board and Anr.

Appeal No. 3 to 14, 24 to 38 and 41 of 2013 (SZ)

Judicial and Expert Members: JusticeShri M. Chockalingam, Shri P.S. Rao

Keywords: Order of Closure, Consent to Operate, Appellate Authority- Tamil Nadu Pollution Control Board, Interim Order.

Application disposed of

Dated: 8 April 2015

The Appellants in all these appeals are different stone crushing units. In appeals 3 to 14, the Appellants have challenged the closure order served upon them. These units had also filed appeals on rejection of their applications for obtaining Consent to Operate before the Appellate Authority, Tamil Nadu Pollution Control Board. Therefore, these former appeals before the Tribunal had been filed when the decision on the latter appeals was still pending. The Tribunal found that it has been clearly established that closure orders served on these units cannot be challenged before the Tribunal but before the Appellate Authority. Hence, the Tribunal held that the Appellants could not be allowed to challenge the orders in this manner. Hence these appeals were disposed of with permission to approach the Appellate Authority for appropriate relief.

Similarly, appeal nos. 24 to 38 and 41 were also filed challenging the order of closure by the Tamil Nadu Pollution Control Board

alleging violation of certain statutory provisions. These appeals were also filed without consideration to the statutory remedy available of Appellate Authority being the appropriate forum of appeal against such orders by the Board. Therefore, these appeals were disposed of with permission to approach the Appellate Authority, Tamil Nadu for appropriate relief.

Another issue that needed consideration was that an interim order granted by the Tribunal to the units to continue work. If this order was not continued, then the Board was going to take immediate action against the units to stop the work. So, the Appellant pleaded for continuation of the interim order. The Tribunal accepted the prayer and gave a time period of two months to the Appellate Authority, Tamil Nadu Pollution Control Board to hear and dispose of all these appeals during which period, the interim order was to be in force. In view of the above, the appeal nos. 3 to 14, 24 to 38 and 41 of 2013 were disposed of.

Shri Satish Kamalakant Navelkar and Ors. Vs State of Goa and Anr.
Appeal No. 45 of 2013 (WZ)

Judicial and Expert Members: Justice Mr. VS R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Agricultural tenants, mining reject disposal, silt accumulation, restitution of agricultural land.

Application disposed of

Dated: 8 April 2015

The Applicants in this case are the farmers and agricultural tenants of the property in dispute. They had filed an application before the Tribunal under Section 18 (1) read with sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 alleging that the one of the Respondents was a mining industry which had damaged the agricultural land and the nearby environment dumping of mining waste and discharge of untreated waste water generated in the mining operations.

The Applicants contended that they had approached many government authorities and it was only in 2008 when the Mamlatdar or the executive officer in charge of the Taluka issued certain compensation to the Applicant. However, no such compensation was actually paid. Following this, in 2009-11, polluted water containing huge amount of silt was discharged in the disputed property and by 2011-12 the property was badly damaged. The Tribunal directed the Collector to visit the site and make inspection on the following points:

(i) Whether the waste discharge from the mines had been disposed of in a way that it entered the boundary limits of the land of the Applicants?

(ii) Whether the untreated water from the mines was being discharged in the paddy fields of Applicant?

(iii) Whether the traditional water source in the perennial stream had been obstructed or interfered with due to such mining activities?

(iv) Whether the water retention capacity of the agricultural property of the Applicant had been impaired due to silt deposited from the mining activities of the Respondent?

(v) Whether any loss had been caused to the property in dispute and if yes, then to what extent?

(vi) Whether such loss caused can be quantified in terms of compensation and if so, what would be the amount?

The Respondents on the other hand contended that the Applicants had no *locus standi* or ground to file the application because they had no legal right over the suit property. They submitted that the ancestors of the Applicants had entered into an agreement with the mining industry whereby they had surrendered their rights over the disputed property; they had not been doing any factual cultivation over the disputed land since 1980. Moreover, the Respondents further state that they had deposited a cheque of Rs. 10075/- with the concerned executive office who had ordered the compensation but the amount was returned to them since the Applicants had refused to accept that amount.

Another contention made by the Respondent is that no waste had been disposed of in any part of the disputed property of the Applicants since 1980 which was later included in the mining plan approved by the competent authorities. Also, the water from the mining operation was being pumped out into settling ponds constructed for the purpose with filter beds in between them. Therefore, there is no question of the waste water from the mining operation spoiling the land of the Applicants. One other submission made by mining industry was that the application was barred by limitation becauseaccording to the allegations made by the Applicants, the dumping of the waste had started from 2000 onwards.

The Respondent, Goa State Pollution Control Board contended that there was no specific allegation against them. The report submitted by the officials of the Board stated that the processing plant of the mining industry was partly located within the lease and partly outside. It was also indicated that no surface dumping was being carried out in the mine. The Report mentioned certain voluntary measures taken by the unit in order to minimize the run off from the

mine like establishment of settling ponds for surface run-off during monsoons; construction of an arrestor wall to hold the wash-off from the mines; constructing a garland trench to divert surface run-off into the mining pits during monsoon; and installing concrete filter beds into the mining lease.

The Tribunal drew up the following as the relevant questions in the present case:

a) Whether the Applicants have any *locus standi*?

b) Whether the Application is barred by limitation?

c) Whether the mining and related activities degraded the quality of the agricultural land?

d) If yes, whether the Applicants are entitled to any compensation for the damages or restitution of property?

a) Whether the Applicants have any *locus standi*?

The Tribunal answered the question in the affirmative, stating that the Applicants had *locus standi* to file this application before the Tribunal because most of their prayers were related to restitution of the damaged land, restoration of the environment and compensation for such agricultural loss. These prayers are covered under S. 15 of the National Green Tribunal Act which empowers the Tribunal to provide relief and compensation to victims of any kind of environmental degradation, restitution of damaged property and restitution of the environment for the area. Regarding the contention of the Respondents wherein they alleged that the ancestors of the Applicants had surrendered their lease in favor of the mining industry back in 1980 was rendered immaterial by the Tribunal because it was not a matter that was to be decided by the Tribunal. The only question they needed to determine was whether agricultural activities were being undertaken in the disputed land. Since the land was under cultivation, the Tribunal decided that the Applicants had *locus standi.*

b) Whether the Application is barred by limitation?

The Respondent mining industry had contended that the dumping of the mine rejects had initiated somewhere in the 1980s and the Applicants knew about it which is proved by affidavits and compliant applications filed by the Applicant since 2000. The Applicants rebutted that S. 14 and S. 16 of the NGT Act have a clear mention that the words first cause of action needs to be read with the term 'such disputes' while determining compensation and relief. Therefore, in the present case, the cause of action needs to be reckoned from the year 2010-11 because the unauthorized discharge of untreated water containing significant quantity of silt started from about the same time. Section 15 states that such an application should be filed within five years from the date of which the cause for such compensation or relief arose.

The Tribunal held that the Application was well within the period of five years because the claims of the Respondents were not supported by any evidence and that any references made to the damages caused to the land prior to this period will not be considered. The Tribunal upheld the contention of the Applicants that the complete loss of agriculture was first reported in 2012 and the cause for such damages was claimed to be only after 2010.

c) Whether the activities of the Respondent degraded the agricultural quality of the Applicant's land and what would be the appropriate compensation and relief for the applicants in such a case?

The Tribunal referred to the report of the Collector in order to determine this issue. The report confirmed that the Respondent had disposed of certain waste material from the mining activity outside the boundaries and particularly in the area of the paddy fields. The report also indicated that since the mining had stopped, it could not be ascertained whether waste water containing silt is still being discharged or not. The nallah as well as the natural storage tank that was used to irrigate the paddy fields was however found to be filled up with mining rejection silt. Such high concentration of silt

increases density of the soil and makes it non-porous, thereby rendering it unfit for cultivation.

The report had also quantified the amount of compensation payable to the applicants which was challenged by the Applicants stating that the cost of cultivation was higher than that computed by the report. The Respondents challenged the report itself, stating that there was no scientific analysis and no procedure followed in order to reach to such a conclusion. The Tribunal came to the conclusion that there were no glaring inaccuracies in the report made by the collector. The Tribunal relied on the case of *AP Pollution Control Board Vs Prof. MV Nayudu and ors.* wherein it was held that the uncertainties in environmental matters need to be accepted based on the precautionary principle. Therefore, the findings in the report of the Collector were upheld. Only some changes were made in the assessment of the amount of damages. The loss of agriculture was held to be considered in a holistic manner involving remediation measures, additional requirement of fertilizers to bring the agricultural land back to its original status and also adequate drainage of the agricultural lands. The compliance report was directed to be submitted by the collector within three months. In view of the above, appeal no. 45 of 2013 was disposed of.

Cavelossim Villagers Forum and Ors. Vs Village Panchayat of Cavelossim and Anr.

Miscellaneous Application no. 17 of 2015 in

Application no. 61 of 2014 (WZ)

Judicial and Expert Members: Justice Shri VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Goa Irrigation Act of 1993, Water (Prevention and Control of Pollution) Act of 1974, No Development Zone (NDZ) and Coastal Regulation Zone (CRZ).

Application disposed of.

Dated: 8 April 2015

The present application was an object petition filed by one of the original respondents in the Application no. 51 of 2014. In the original application, the applicants had reported that due to the activities of the original respondents, the course of the water bodies like fishing ponds, channels and nullahs was being changed. An inspection revealed that the complaint was trua and that such irregularities were taking place. The respondents were directed to stop their work by the authorities but they paid no attention. Therefore, the continuation of the work was in total violation of provisions of Goa Irrigation Act, 1993 and Water (Prevention and Control of Pollution) Act, 1974. Moreover, the site under construction fell under the No Development Zone (NDZ) and was in violation of the Coastal Regulation Zone (CRZ) Notifications thereby causing loss of natural biodiversity.

Consequently, the original applicant had filed an application for restoration of damaged properties and to settle the other environmental issues that arose in this issue. This object petition was filed by the respondent according to whom the cause of action first arose in December 2010 when the construction activity began. If not then, it definitely arose when the original applicant had first made a complaint to the Village Panchayat about the illegalities in the construction back in 2013. Under S. 14 (3) of the National Green Tribunal Act 2010, an application cannot be filed beyond a period of six months from the date of the cause of action for such dispute. Another 60 days delay would be acceptable only when the applicant

successfully establishes sufficient cause for the delay. Computing the maximum limitation period that would be allowed, the application should have been filed by March 2014. Since it was filed in May, 2014, it was barred by limitation. It was also pointed out that the wife of president of the applicant forum was a member of the Village Panchayat and therefore, her knowledge could easily be shared with the applicant.

The Original applicants submitted that mere knowledge of construction activity would not give rise to cause of action. Moreover, cause of action will not arise until and unless there is existence of 'substantial environmental dispute'. Therefore, proper verification of the illegalities observed by the applicant forum was necessary before an application was filed. The applicant filed this application only when they received information on account of an RTI application filed in April 2014, wherein it was provided that change in the course of the water bodies was done without any permission from the concerned authorities. Though the construction started in 2010, it was not before April 2014 when the applicant could establish substantial loss to the environment.

The Tribunal held that mere violation of some municipal laws or some very minor irregularity due to a large scale project would not be substantial environmental dispute. The contentions of the original applicant were upheld stating that cause of action arose only when the applicant became sure of the illegality and of the environmental damage being caused to the biodiversity. The application was within the limitation period. The Tribunal also relied on some case laws like *Aradhana Bhargav Vs MoEF* wherein it was held that the concept of continuous cause of action is outside the scope of the National Green Tribunal Act; and *Kehar Singh Vs State of Haryana* wherein it was held that condoning the delay beyond 60 days was not covered under the jurisdiction of the Tribunal. In view of the above, the miscellaneous application 17 of 2015 in the original application was disposed of.

Arvind VS Aswal and Ors. Vs Arihant Realtors and Anr.
Appeal No. 77 of 2013 (WZ)

Judicial and Expert Members: Justice Shri VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Environmental Clearance (EC), RG area, Slum Rehabilitation Authorities (SRA), Sewage Treatment Plant (STP), Green belt, National Building Control (NBC) rules.

Application disposed of

Dated: 8 April 2015

The appellants in this appeal had requested the Tribunal to declare the Environmental Clearance granted by the Environment Department of State of Maharashtra in favor of the respondents for construction of residential-cum-commercial project under Slum Rehabilitation Authorities (SRA) scheme as void. The appellants were dwellers in the slum area in question. The EC was challenged on the ground that construction activity had commenced even before the clearance was granted and that the respondents had violated many conditions of the clearance and had caused environmental damage. The work was directed to be stopped but the respondents did not pay any head to it.

Moreover, the parking area that was allotted to them originally had been reduced by the respondents. The open spaces around the

buildings, i.e., the RG area is not contiguous and has led to non-availability of fresh air and passage of light. Moreover, providing a sewage treatment plant and a green belt in the area was also mandatory. For the purpose of remodeling the project when the respondents first took over, they began the construction work without complying with the National Building Construction (NBC) Norms and completed it up to the plinth level even when the EC had not been granted. Even the discussion with the state Environmental Impact Assessment Authority (SEIAA) did not yield fruitful result because the EIAA did not apply any deduction, permutation or combination of its own but accepted whatever the respondent had to say. The parking issue was also not discussed.

The appellant also contended that though the EC did not provide for a parking area, it was obligatory for the respondent to follow the Development Control (DC) Rules. Moreover, failure to provide STPs, septic tanks and soak pits and maintain them would amount to environmental degradation.

The main contentions of the respondent were that these buildings were initially taken up by another builder till 2009 and that the respondent had taken over the project at a later stage in 2013. Moreover, according to the respondent, parking was not provided for. Out of the five buildings, buildings B, C and D were transit accommodations and that there was no legal obligation to provide any parking for these buildings. The RG area had already been planned by the previous developer and approved by the competent authorities. Hence, the respondent could not be made liable to provide more RG area. The prayers of the appellants if fulfilled would cause financial loss to the respondents as well as to the poor people who are the beneficiaries of the scheme.

The Tribunal had appointed two Court Commissioners in the present case who noted that buildings B, D and E were complete and that A and E were scheduled to get over in 2015. Thereafter, occupants of B, C and D would be shifted to A and E and the three evacuated

buildings would be handed over to the government for use of PAP. Also, the revised EC did not contain any provision regarding parking slots in accordance to NBC norms. The sewage in the buildings B, C and D was found to be partly treated in septic tank and the rest collected by the Municipal Corporation for final disposal. The respondents had assured the commissioners a fully commissioned sewage treatment plant (STP) would be installed in a short span. Moreover, the RG area was found to be less than that originally provided for. This had taken away the recreational right that the residents of any locality acquire along with endangering the environment. The Tribunal held that it would not entertain any objection regarding the capability if the two court commissioners.

The Tribunal ultimately held that the respondent cannot take shelter under the argument that he had taken over the work at a later stage from some other developer. He was supposed to take over the scheme with liabilities as well as with benefits as per the Transfer of Property Act and other common law principles. Therefore, the defense set up by the respondent was rejected. Moreover, the EC was declared to be improper and without application of mind because it did not provide for any parking area, an STP or a green belt and provided for only a small RG area. However, since the buildings were ready for occupation and would be against the principles of natural justice to those who did not get the opportunity of being heard, it would be hard to quash and set aside the EC.

The parking was held to be provided for those claiming it at stilt and first floor. The respondent was directed to provide RG area, an STP and a green belt once the EC was revised. The construction work was stayed for three months so that the EC could be revised. Further EC was not allowed to be granted unless the aforementioned conditions are satisfied. The RG area would also include facilities like community hall, library, gym, etc. In this manner, the appeal was partly allowed and in view of the above, the appeal no. 77 of 2013 was disposed of.

D.VS Girish and Ors. Vs Secretary to Government (Environment and Ecology) and Anr.

Application no. 154 of 2014 (SZ) and

Miscellaneous Application no. 284 of 2014 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: Global Biodiversity Hotspot, Ecologically Sensitive Zone, Environment Impact Assessment, Buffer Zone.

Application disposed of

Dated: 9 April 2015

The applicants in application no. 154 are environmental activists in the State of Karnataka and they had filed this application seeking direction against the respondents/ administrative authorities to take appropriate action with regard to encroachment and illegal constructions being made in Bababudangiri and Mullayanagiri hill areas in Karnataka. These hills are located within 10 km boundary of

the Bhadra Tiger Reserve and have been declared a global biodiversity hotspot being located in an Ecologically Sensitive Zone. These mountains are home to a number of endangered and rare species of fauna and are an important catchment area for several perennial streams.

The case of the applicants was that a number of unauthorized and illegal constructions were being carried out in these hills affecting the biological nature and the environment. These constructions blocked streams or diverted their course in a way that the slope was destabilized. These complaints and representations when sent to the respondents were neither considered nor replied to. Another application was filed by one of the original applicants to cancel the permit granted to the construction companies before the Secretary of the Revenue Department. This application got transferred to the Member Secretary of the Karnataka Pollution Control Board and the Board gave an order against the applicant. The aforesaid order was appealed against before the Tribunal in the form of Appeal no. 5 of 2015.

A miscellaneous application was filed in the original application to change the wordings of the prayer that was made in the original application. The prayer was changed from “…restrain…from further proceedings with the construction of resorts…” to “…take appropriate action… with regard to the encroachment and illegal constructions…” Another review application no. 1 of 2015 was filed in the appeal no. 5 of 2015 by the Respondents. The issues as determined by the Tribunal boiled down to the following:

i) Whether the applicants are entitled for a direction to the respondents to consider their representation as regards the encroachment and illegal constructions within a time frame?

ii) Whether the application seeking an amendment to the prayer in the original application be allowed?

iii) Whether the appeal no. 5 of 2015 and the subsequent review application no. 1 of 2015 maintainable?

i) The only grievance of the applicants under this application was that their representation and objections sent to the respondents were not considered as regards the encroachment and illegal construction in the two aforementioned mountains and had sought for a direction to the respondents to take proper action. The applicants had submitted the same contentions that have been mentioned earlier and stated that it is necessary to protect the sensitive and fragile Western Ghat ecosystem. The respondents were alleged to be in violation of the Forest Act and many other laws and regulations since they had been carrying out the construction work without any proper license or without obtaining any permits from the appropriate authority.

The respondents contended that the application should be dismissed since it was barred by limitation according to S. 14 (3) of the National Green Tribunal Act. They stated that the land under construction was earlier a coffee plantation. Permission to convert it was taken from the appropriate authority. The Karnataka State Pollution Control Board had granted Consent to Establish and the executive engineer had granted sanction for electric power connection. The Pollution Control Board had granted consent to expand and the concerned development officer had granted business license to the respondents. The resort was being constructed on private land and was in conformity with the Environmental Impact Assessment Notification. Moreover, the location has been approved by all the competent authorities as not being within the buffer zone of the tiger reserve and that ecotourism is a regulated activity and not a prohibited one. Since the respondents had abided by all the statutory requirements, have

adduced evidence to prove the same and had undertaken to adhere to all the conditions imposed in future.

They added further that the applicants had failed to raise any substantial question on environment or made any specific violation of any environmental law or norm by the respondents. Though allegations had been made that the construction was illegal, unauthorized and by encroachment within the tiger reserve, no evidence was produced to support the allegations. On the other hand, the respondents had produced evidences of all permits and licenses that had been obtained in the course of undertaking the construction.

The Tribunal stated that the averments made by the applicants were very generic. No specific allegation or complaint was made nor any specific incidence of violation of any law pointed out. Regarding the question of the application being barred by limitation, the application was filed long beyond the limitation period in 2012. The applicants contended that the application could still be maintained since no action had been taken and therefore the cause of action would continue. The tribunal reiterated its findings and held that the concept of continuous cause of action is not recognized in such cases.

ii) Herein, the respondents contended that once it was made clear that they had taken all steps to ensure that the construction work was not encroaching on the tiger reserve or was in any way illegal or unauthorized, it became necessary for the applicants to change the relief prayed for to restrain the respondents from proceeding further with the construction of the resorts. The application could not be allowed since no specific allegation was made and no evidence was adduced to support the generic accusations. Moreover, the amendment sought for was for substitution in the relief clause of the prayer and on an altogether different cause of action. This cannot be allowed according to S. 16

(7) of the NGT (Practices and Procedure) Rules, 2011. Therefore, the miscellaneous application was dismissed.

iii) Clauses (a) to (j) of S. 16 of the NGT Act list down orders against which an appeal can be preferred before the Tribunal. The said order that had been appealed against was not among one of the orders enumerated under the section. Therefore, the Tribunal held that the appeal no. 5 was beyond scope, powers and jurisdiction of the Tribunal and hence not maintainable. Similarly, the review application no. 1 was disposed of accordingly. In view of the above, application no. 154 of 2014 and the miscellaneous application no. 284 of 2014 were disposed of.

M/s. GJ Multiclave Pvt. Ltd. and Ors. Vs M/s. Roma Industries and Anr.

Miscellaneous Application Nos. 164, 167 and 168 of 2014 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Shri P.S. Rao

Keywords: Consent to Establish Common Biomedical Waste Treatment Facility, Condonation of Delay, Leave to Appeal, and Production of Judgment.

Application disposed of

Dated: 13 April 2015

M/s Varuna Bio Products and Ors. Vs The Chairman, Tamil Nadu Pollution Control Board and Anr.

Appeal No. 84 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Consent to Establish, Consent to Operate, Seaweed Dry Processing Unit, Polluters Pays Principle.

Application disposed of

Dated: 15 April 2015

The Appellant had filed this appeal challenging the order passed by the Board by invoking its power under S. 33 A of the Water (Prevention and Control of Pollution) Act, 1974 wherein the Board had ordered closure of the Appellant unit as well as disconnection of water supply with immediate effect. The Appellants had obtained Consent to Establish from the Board under the name of M/s. Gomathi Ram Chemicals in 1997 for the purpose of carrying business in seaweed dry processing unit. However, no Consent to Operate was obtained from the Board. The Respondent had contended that the Appellants had been carrying on the industrial activities without obtaining any such consent since 2008.

The Board stated that though the process of fermentation of the seaweed by pulverizing sodium alginate in a dry state such that it becomes a semi solid jelly generated no effluent yet, the activity had been going on without the consent to operate from the State Control Board and hence cannot be allowed to continue without paying any compensation for the same. It was also brought into light that the Appellants had filed a fresh application to obtain consent to establish and the same was pending.

The Tribunal held that because of the unauthorized activity from 2008 to 2014, the Appellant was liable to pay under the ‘polluter pays’ principle. Since no effluent was released and the quantity of production of this small scale industry was very meager, the Tribunal directed payment of a token amount of Rs. 25000/- within one week. The Board was directed that in the event of the amount being paid by the Appellant, the Electricity Board was to be directed by the

Board to restore electricity supply of the Appellants. With the above directions by the Tribunal, the appeal was disposed of.

Hindustan Engineering and Industries Limited and Ors. Vs Gujarat Pollution Control Board and Anr.

Miscellaneous Application Nos. 31, 32 and 40 of 2015

Appeal No. 7 of 2015 (WZ)

Judicial and Expert Members: Justice Shri VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Effluent Discharge, Water (Prevention and Control of Pollution) Act, Effluent Treatment Plant.

Application disposed of

Dated: 16 April 2015

The Appellant industry in this appeal had challenged the order passed by the Gujarat Pollution Control Board wherein it had invoked its power under S. 33 A of the Water (Prevention and Control of Pollution) Act, 1974. Under this section, the Board had a power to order closure of an industry if it is found that hazardous effluents are being discharged by the industry. the Board had received a number of complaints from inhabitants of localities surrounding the industry stating that waste water discharged from the industry was resulting into pollution and causing problem to the health of members of the nearby residential area.

The Tribunal found that the order was passed by the Board without giving an opportunity to the Appellant to present its case. Moreover, a copy of the judgment was not served upon the appellants which would have given them an opportunity to make a representation within a period of 15 days as provided under S. 33 A of the

aforementioned act. It was held that the Board had acted merely upon the grievances of the residents without analyzing or verifying the actual quality, quantity and standard of effluents that were being discharged. The norms of load of pollution discharge, the type of pollutants so discharged, water quality, the presence of hazardous elements in the water and other factors ought to have been mentioned in the closure order or shown in the Report of the Technical Expert Committee.

Therefore, the Tribunal decided to quash the order of the Board and allow the appeal. The industry was directed: to furnish a bank guarantee following which the order to restart had to be issued; to make necessary pollution control arrangements including the installation of an Effluent Treatment Plant (ETP) and be made functional within eight months and this was to be verified by Board through its Regional Officer; to bear the costs of such inspection; and to submit a time bound action plan with clear milestones to be achieved every month in order to comply with the directions issued by the Tribunal. The Tribunal also directed that either of the parties had to submit monthly compliance report before the Tribunal. In view of the above, the miscellaneous application nos. 31, 32 and 40 of 2015 and appeal no. 7 of 2015 were disposed of.

Mr. Sunil Shetye Vs M/s. Leading Hotel Ltd. and Ors.

Miscellaneous Application Nos. 185 of 2014 in

Application No. 97 of 2014 (WZ)

Judicial and Expert Members: Justice Shri VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Environmental Impact Assessment (EIA), Coastal Regulation Zone (CRZ), Environmental Clearance (EC), No Development Zone (NDZ).

Application disposed of

Dated: 16 April 2015

The Applicant had challenged the project of the Respondent of the establishment of “M/s. Leading Hotel Ltd.” on the ground that it is in violation of a number of environmental norms, regulations and notifications. An Environmental Impact Assessment Notification dated September 14, 2006 provides that all such projects located within 10 km from the common boundary of two states or within 10 km of Protected, Eco-Sensitive or Critically Polluted Areas as notified by the Central Pollution Control Board under the Wildlife (Protection) Act of 1972 would be considered to be category ‘A’ projects. The Mandrem Beach and the areas of Sindhudurg Talukas have been notified as eco-sensitive areas and the project fell within 10 km of both these places.

Despite the construction activity at such a site being illegal, the Goa State Environmental Impact Assessment Authority recommended

the grant of Environmental Clearance (EC) to the project. Moreover, the project had not received Coastal Regulation Zone (CRZ) clearance and yet the construction work had begun. Therefore, the application had been filed. The project proponent/ Respondent contended that the application had been filed without indication of any public interest and that the Applicant had resorted to black-mailing the project proponent.

The Respondent also contends that the application was barred by limitation because the remedy available under S. 16 (h) of the National Green Tribunal Act, 2010 was not resorted to wherein the Tribunal has been granted the power to grant environmental clearance subject to the provisions of the Environment (Protection) Act, 1986. Also, the application was alleged to be barred under S. 14 (3) NGT Act wherein the application is required to be made within six months from the date on which the cause of action first arose and that the notification regarding environmental clearance was first published in 2013. It was also contended that since the Wildlife (Protection) Act was not covered under the seven enactments listed under the NGT Act, the Tribunal cannot look into this issue.

The Tribunal held that it was not possible to decide the appeal in entirety since the Tribunal could not determine whether the project fell within the No Development Zone (NDZ) as prescribed under the Coastal Regulation Zone, 2011. The Tribunal ultimately decided that the clearance cannot be treated as legal and valid unless the conditions appended to the EC could be shown to be complied with. One condition was obtaining CRZ clearance and second one was that the project should not be located within 10 km of the National Parks, Sanctuaries, and Migratory Corridors of Wild Animals, etc.

The Tribunal rejected the contention of the Respondent and held that just because Wildlife (Protection) Act was not one of the enactments covered under NGT Act; this does not mean that the Tribunal cannot look into it. Moreover, the Applicant’s contention was accepted that the project did fall under the category ‘A’ and

had not received CRZ permission, the project activity could not be started. However, the appeal was declared to be premature and the Appellant was directed to elect proper remedy only after the CRZ permission is granted. In view of the above, the application no. 97 of 2014 was disposed of.

M/s. Champ Energy Ventures Pvt. Ltd. Vs Central Pollution Control Board and Ors.

Miscellaneous Application no. 160 of 2014

Appeal no. 30 of 2014 (WZ)

Judicial and Expert Members: Justice Mr. VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Environment Protection Act (EPA), Type Approval, Duel Fuel Generator Set, Ministry of Environment and Forest (MoEF) Notification.

Application disposed of

Dated: 16 April 2015

The appellant was a manufacturer of petrol and LPG driven generator sets. The case of the appellants was that the Officers of the respondent, CPCB visited the industrial premises of the appellant on account of investigation a complaint received against the industry for verification of compliance of environmental norms. Subsequently, the Chairman of CPCB directed the appellant to stop the manufacture and sale of the gen-sets under S. 5 of the Environment Protection Act (EPA). This order was challenged by the appellant before the Tribunal wherein the appellant was allowed to

continue with the manufacture and sale while the Board directed to reconsider the order of closure.

At a later date, CPCB informed the appellant to recall the non-type approval generator sets already sold in the market within six months with a submission of a Bank Guarantee of Rs. 2 crores. The Ministry of Environment and Forests (MoEF) has notified standards of air and noise emissions for specified types of generator sets wherein certain restrictions have been placed on manufacturing or assembling or import or sale of diesel, petrol and kerosene driven generators by placing a mechanism of obtaining Type Approval from one of the specified testing agency. The notification also designated the CPCB to be the nodal agency in the matter.

The stand of the appellant is that they have the type approval of the sets that are exclusively run on petrol and kerosene but they did not obtain a type approval for duel fuel generator sets like petrol start/LPG run generator sets which were being manufactured by the appellant. The appellant also challenged the power of the Board to issue pecuniary penalty for non-compliance with the notification. Therefore, the issues before the Tribunal were-

1. Whether the gen-sets manufactured by the appellant were covered within the ambit of the notification by MoEF?
2. Whether CPCB had correctly concluded that the gen-sets were mainly petrol duel gen-sets and required the type approval?
3. Whether the CPCB was entitled to issue directions for recall of gen-sets and to seek bank guarantee in lieu thereof?
4. Whether the directions by the CPCB stand the test of legality, correctness and propriety?

Issues 1 and 2-

The appellant submitted that the gen-sets that had been directed to be recalled by the CPCB were in fact, bi-fuel i.e. petrol start and LPG run type of generator sets. The appellant submitted that there were no standards or restrictions or any impediment for manufacture and

sale of such gen-sets. Appellant further submitted that the other products were LPG start and LPG run gen-sets which were also outside the purview of the said notification. The appellant contended that the Automotive Research Association of India (ARAI) had been approached seeking type approval for such gen-sets. But, they were told that the approval was not prescribed for such bio-fuel gen-set. That is the reason why they went ahead with the manufacture and sale of the sets.

The appellant hinted towards high handedness on the part of the officers of the Board and a sense of vindictiveness in the order passed by the Board itself. Moreover, certain internal inquiry had been initiated against the concerned officers by the Chairman of the CPCB, though neither the final findings of such inquiry were placed on record nor the concerned officers were dissociated from handling the matter at subsequent stage. Therefore the continuation of such officers in handling the matter would be against the principles of natural justice.

It was also submitted that the concluding report by CPCB was not a result of scientific or analytical findings by the Board but of apprehensions of the officers. Even such report was not made available to the appellant industry. The respondents relied on photographic evidence stating that the fuel tanks were such that they could be used to store both LPG and petrol thereby making it necessary for appellant to obtain the type approval for petrol operation. However, the appellants contended that the CPCB should have inspected the final product and objectively evaluated the gen-sets on various technical grounds such as fuel tank capacity, switching over of the fuel, etc. CPCB had not even considered it necessary to evaluate whether such gen-sets were actually causing the pollution or not by checking emission levels in terms of the notification to prove their point.

The Tribunal came to the conclusion that according to the notification, any model without the type approval shall be prohibited from use in India. The two essentials of the notification are having a type approval and complying with emission or noise norms. The Tribunal found that though CPCB had failed to establish that the identified gen-sets sold by the appellant were covered under the restrictions imposed by the above notification and therefore, required the type approval; the findings of joint visit by ARAI-CPCB established on scientific evaluation that the classified gen-sets could be operated independently on either petrol or LPG and hence would be covered under the notification. Regarding the second criteria of compliance with emission and noise norms, even after the specific directions of the Tribunal, related to evaluation of identified gen-sets, the CPCB had not carried out the emission or noise norms compliance tests.

Issues 3 and 4-

The CPCB had issued directions to recall all the non-type approved gen-sets which had been sold in the market immediately within six (6) months with a submission of Bank guarantee of Rs. 2 crores. The Tribunal held that Section 5 of Environment Protection Act is very explicit which even empowers the CPCB to close, prohibit or regulate any industrial operation or processes or even order disconnection of electricity and power. On the other hand, S. 15 of the EPA contemplates penalty for contravention of the provisions of this act. Therefore, a plain reading of S. 5 does not give power to the authority to take any penal action nor does it confer any power to levy any penalty. Only Courts can take cognizance of offences under the Act and levy penalty whether by way of imprisonment or fine.

The Tribunal held that the power to issue directions do not confer the authority on CPCB to take disciplinary action without approaching the Courts/Tribunal, on ‘polluter pays principle’. Therefore it was found that the directions to issue recall for the

machines and taking a Bank guarantee from the appellant could not be sustained in the eye of Law. The appellant industry was directed to obtain a type approval from the competent authority and the CPCB was given the power to issue specific directions if the gen-sets were found to be causing pollution or in violation of the notification. In view of the above, miscellaneous application no. 160/ 2014 and appeal no. 30/ 2014 were disposed of.

R. Parameswaran Vs Amrish Pal Singh Narak and Ors.

Application No. 50 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Effluent Treatment Plant (ETP), Reverse Osmosis (RO), Solar Evaporation Pans, Encroachment.

Application disposed of

Dated: 17 April 2015

In this application filed before the Tribunal against the operation of the Respondent in handling, storing and transporting the sludge/ treated effluents/ toxic chemicals in a reserve forest, the Respondent contended that a writ petition was filed by another person before the High Court of Madras on the exact similar issue and that this application and the petition were filed with mala fide intentions. The Respondent had brought this to light that the petitioner and the applicant were associated with each other and that there had been a police complaint and investigation followed by

the arrest of the applicant on account of damaging the respondent's compound wall.

The petition was disposed of by the High Court and the following observations were made:

a) The unit was carrying out wet operation;

b) All units of the Effluent Treatment Plant (ETP), Reverse Osmosis (RO) system and solar evaporation pans were in operation;

c) The ETP sludge had been stored in a closed shed, on an impervious platform;

d) The reject from processes was made to evaporate through accelerated solar evaporation pans;

e) No discharge of trade effluents was being done outside the industry's premises; and

f) A log book had been maintained regarding all operations.

The High Court, therefore, dismissed the petition on the grounds that there was no instance of violation of any of the directions issued by the pollution control board.

The Tamil Nadu Pollution Control Board filed a similar report after further inspection before the Tribunal. The Applicant on the other hand contended that the Respondent had encroached upon various portions of the reserve forest which was causing environmental hazard.

The Tribunal held that encroachment does not fall within the domain and jurisdiction of the Tribunal. As regards environment-related aspects of the application, the Tribunal did not find any reason to conclude that the respondent is causing environment degradation because there is no evidence of any kind of effluent discharge from the industry. The applicant was held to be not entitled to any relief in the application no. 50 of 2013 and accordingly, it was disposed of.

P. Dhakshinamoorthi Vs District Collector, Villupuram and Ors.
Application No. 58 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Restraining Order, Paramboke Land.

Application disposed of.

Dated: 20 April 2015

The applicant had filed this application for obtaining a restraining order against the respondents from cutting the trees in the disputed property. Though the land is a government Paramboke land, the applicant contends that he had planted and grown the existing trees of coconut, mango, guava, etc. and that he had installed a drip irrigation system using his own fund. A restraining order was requested since the applicant apprehended that the respondent intended to cut down the trees in order to construct a hostel for backward class students.

The respondent contended that they did intend to construct such a building but it was because there was no adequate alternate place other than the disputed land available near the private school. Though there is another land available but since it is far away from the school and the government cannot spend money on transportation, that land is not suited for the purpose. The applicant also filed an affidavit stating that the land did not belong to him and that he cannot assert his right over any part of the land.

The Tribunal held that the application and the affidavit when read together had no meaning. However, since the practice of constructing hostels for students in all such private schools was not being followed by the state government, the Tribunal directed that neither the government, nor any private individual was allowed to cut any standing trees in the land. Therefore, the application was allowed and the respondents were restrained from cutting any trees. In view of the above, application no. 58 of 2013 was disposed of.

Oil and Natural Gas Corporation Vs Ramdas Kohli and Ors.
Review Application No. 5 of 2015

In Original Application no. 19 of 2013 (WS)

Judicial and Expert Members: Justice Shri VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: ‘Interim Order’, Mahul Creek (Extinguishment of Right) Act of 1922, ‘Coercive Action’, ‘Disbursement to affected families of fishermen’.

Application disposed of

Dated: 21 April 2015

The appellant had filed a review application before the Tribunal, seeking to review an interim order made by the Tribunal for the appellant, ONGC and for NGPT to deposit a sum of Rs. 10 crore and Rs. 20 crore respectively. The appellant brought into light the interim order passed by the High Court wherein it had been stated that the State had power to award compensation for any threat that is being caused to the coastal areas. In the present case, there was a potent threat to environment due to expansion of port activities of JNPT and other development activities by ONGC. This power has been given under S. 3 (2) of the Mahul Creek (Extinguishment of Right) Act, 1922 whereby the Collector can determine the compensation in accordance to the Land Acquisition Act, 1894. However, the collector did not exercise the right. The High Court directed the State Government to initiate any appropriate proceeding in this regard provided no coercive action is taken.

Therefore, the case was brought before the Tribunal whereby the Tribunal granted interim relief, directing ONGC and NGPT to deposit the aforementioned sums of money for disbursement to the families of fishermen. The order was challenged by the appellant before the Supreme Court wherein the court held that since both- ONGC and NGPT had undertaken to make the deposit in terms of the final order, the order of the Tribunal was set aside, and the Tribunal was further directed to give the final order regarding the matter.

The Tribunal, therefore, held that there was no need to ask ONGC and NGPT to furnish an interim payment or to ask for a Bank Guarantee when the appellant had agreed to deposit the amount if so directed. However, on account of the undertaking, the appellant could not shy away from the liability once such an order was made. In view of the above, review application no. 5 of 2015 was disposed of.

Jawaharlal Nehru Port Trust Vs Ramdas Kohli and Ors.
Review Application No. 6 of 2015

In Original Application no. 19 of 2013 (WS)

Judicial and Expert Members: Justice Shri VSR. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: 'Interim Order', Mahul Creek (Extinguishment of Right) Act of 1922, Coercive Action,
Application disposed of

Dated: 21 April 2015

The appellant had filed a review application before the Tribunal, seeking to review an interim order made by the Tribunal for the appellants, JNPT and for ONGC to deposit a sum of Rs. 20 crore and Rs. 10 crore respectively. The appellants brought into light the interim order passed by the High Court wherein it had been stated that the State had power to award compensation for any threat that is being caused to the coastal areas. In the present case, there was

a potent threat to environment due to expansion of port activities of JNPT and other development activities by ONGC. This power has been given under S. 3 (2) of the Mahul Creek (Extinguishment of Right) Act, 1922 whereby the Collector can determine the compensation in accordance to the Land Acquisition Act, 1894. However, the collector did not exercise the right. The High Court directed the State Government to initiate any appropriate proceeding in this regard provided no coercive action is taken.

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The Tribunal, therefore, held that there was no need to ask NGPT and ONGC to furnish an interim payment or to ask for a Bank Guarantee when the appellant had agreed to deposit the amount if so directed. However, on account of the undertaking, the appellant could not shy away from the liability once such an order was made. In view of the above, review application no. 6 of 2015 was disposed of.

K.G. Mohanaraman Vs Tamil Nadu Pollution Control Board and Ors.

Application no. 33 of 2014 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran

Keywords: High Tension Transmission Lines (HTTL), Poromboke land, Patta land, Reserve forest, Maintainability, Sustainable Development.

Application disposed of

Dated: 22 April 2015

The present application had been filed by the applicant seeking an order from the Tribunal to restrain the M/s. Gammon India Private Ltd. from laying high transmission lines through the agricultural lands of the applicant and other agriculturists in the village thereby destroying the ecological balance of the village. The scheme involved lying down of Super High Tension Transmission Lines (HTTL)

passing through Vembedu and Kayar without informing the people of the locality or the respective village Panchayats. Four 20 feet foundation pits ahd been proposed to construct towers for the purpose of the scheme which was to be covered with concrete and which would obstruct and cause damage to underground water streams. Even the shallow percolation wells that serve as source of irrigation would dry up. Moreover, no notice had been given to those farmers whose lands were being encroached.

The applicants also submitted that the respondent was duty bound to study the environmental impact caused by the project and should have taken steps to ensure that the impact was minimum. But it was found that no such assessment was done and no steps taken. Also, an alternate route to connect the two villages was also available through poromboke and government land thereby avoiding the patta land and the private land. The scheme was alleged to be against the national policy and principles of the State Government whose aim is to safeguard the poor farmers of the State and also to maintain the ecological balance by safeguarding agricultural lands.

The respondent, i.e., the Pollution Control Board submitted that the project was awarded after only after inspection of the site by the Board officials. Moreover, the erection of High Tension Transmission lines to transmit electricity does not come under the provision of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the Air (Prevention and Control of Pollution) Act, 1981(Air Act) and hence it does not require consent from the Board under the provisions of the said Acts. Therefore, the issue would not fall within the jurisdiction of the Tribunal since it is not enlisted as one of the ten orders against which an appeal can be made under S. 16 of NGT Act. It was also submitted that this scheme was widely published in the Tamil Nadu Government Gazette and local newspapers in November, 2011 under the provisions of Electricity Act, 1948. The application would not be maintainable according to S. 14 of the National Green Tribunal Act since the project was challenged after a

delay of over two and half years when it should have been within six months.Also, no notice was required to be given to the owners before laying the poles nor any consent required from them, as empowered by the Electricity Supply Act and Indian Telegraph Act, 1885. So, the action of the 4th respondent was not illegal.

It was also contended that the towers will not be a hindrance for the free flow of water and that there won't be any environmental impact or degradation by implementing this project. Instead, it would be beneficial to the public. The alternative route that was suggested by the applicant could not be considered since it passes through the reserve forest. The entire project was proposed and approved by the government on account of the deficit in electricity. The long growing trees would only be cut to maintain electrical clearance and the respondents assured that necessary crop compensation would be paid to the farmers.

On the pleadings put forth by the parties, the following questions were formulated for decision by the Tribunal:

1. Whether the application was maintainable since it is barred by Limitation?
2. Whether the application was maintainable since it is outside the jurisdiction and powers of the Tribunal?
3. Whether the applicant was entitled to get an order restraining the respondents for laying a HTTL as sought for by him?
4. To what relief the applicant was entitled to?

The Tribunal established that before an application is filed, two criteria should be met- first, that a substantial question arises out of implementation of the acts that are covered under the NGT Act and second, that it should be filed within 6 months from the date when cause of action first arose. The Tribunal agreed with the respondent on the point that the application was brought after two and a half years from issue of notification in the newspaper but still it was held to be maintainable since the name of the Vembedu village was not mentioned in the notification, the cause of action would arise only

when the residents of that village came to know about the scheme. As regards the other question on maintainability on grounds of the project falling in the ambit of the Electricity Act and the Indian Telegraph Act which are not covered under any of the statutes mentioned in schedule 1 of the NGT Act, the Tribunal held that the notifications were not challenged. The applicant was seeking directions to restrain the respondents from laying the HTTL.

The applicant had specifically pleaded that the interest of poor farmers had to be safeguarded and also the ecological balance had to be maintained by safeguarding the agricultural lands. Specific averments were made in the application that if the project was allowed to be carried out it would have an adverse impact on the agricultural lands and plantations by loss of surface soil fertility, water depletion, loss of ecology, fire hazards, electric shock and safety and economic insurgency. The Tribunal upheld the contentions of the applicant that the factual situation would attract the provisions of E P Act, 1986 which is an enactment that finds place in Schedule I of the NGT Act, 2010. The application was held to be maintainable before the Tribunal.

The Tribunal ordered the district collectors of both the villages to conduct a joint inspection whereby it was found that out of the location of the proposed 14 towers, 12 were found vacant. Only a few were found with paddy crop or vegetables. More than 80% of the lands in aggregate in both the villages of Kayar and Vembedu were found vacant. Moreover, cultivation could be carried out even after erection of towers as opposed to what the applicants contended. The Tribunal stated that one has to strike a balance between the larger public interest and the interest of smaller number taking into consideration the concept of Sustainable Development and the other circumstances when a project is proposed.

The Tribunal finally held that held that the application made by the applicant though within the jurisdiction of the NGT under the

provisions of the NGT Act, 2010 and it also not barred by time; it was devoid of any merits since there is nothing in the project that would cause degradation to environment and damage to ecology. In view of the above, application no. 33 of 2014 was disposed of.

Shahpura Jan Jagran Evam Vs Shri Santosh Jain and Ors.

Original Application nos. 19 and 25 of 2015 (CZ)

Judicial and Expert Members: Justice Mr. Dalip Singh, Mr. Ranjan Chatterjee

Keywords: Indiscriminate cutting, Noise pollution, Jan Bhagidari Yojna, Unauthorized use of park.

Application disposed of

Dated: 22 April 2015

The two applications had been filed before the Tribunal alleging that Parshvanath Digambar Jain Committee in the colony was to organize a function at the park in the colony. For that purpose, it was alleged that the committee had indulged in indiscriminate cutting of trees in the park without any prior permission and were intending to use loudspeakers for religious enchantments and sermons thereby causing noise pollution and disturbance to students in the locality. Therefore, the applicants prayed that the respondents be directed not to organize the said function and also be made liable on account of cutting down the trees.

The Respondents submitted that in order to allow easy movement for those who would be attending the function, they had taken permission from the municipal authority and trimmed down the branches under the surveillance of the authority. They contended

that the other residents of the colony had no objection with the function and it was only on account of the applicants using the park to store the material used in tent business that the application was filed.

It was brought to light that once the permission to organize the function in the park was granted, the residents sent in their complaints and requests to revoke the permission. The respondents were sent a show cause notice but they did not reply within the given time. Once the reply was sent in, the Sub Divisional Magistrate (SDM) granted conditional permission thereby restricting decibel levels and timings of use of the loudspeakers and directed that the entire function be monitored. The Tehsildar was also directed to conduct an enquiry and submit a report on whether the trees in the park were actually damaged due to the negligence of the organizers or not. It was found by way of the report and by looking at various photographs that many of the trees were damaged and that the park was in a dire state and needed renovation and betterment.

At a later stage, the organizers decided not to hold the function at the park and hence, directions regulating the organization of the function were declared to be infructuous. However, the trees were damaged by the indiscriminate pruning and cutting of the branches by the respondents, and the park still remained in a bad state and needed improvement, following directions were passed by the Tribunal:

a) The park was being used by the applicant for storage of tent material for the last 15 years without any permission from the appropriate authority, he was held liable to deposit Rs. 5 lakh with the Municipal Corporation towards the unauthorized use and occupation by way of damages to the park;

b) The organizing committee had to be made liable for causing damage to the trees in the park and therefore, with a view to

improve the present condition of the park, they were directed to deposit an amount of Rs. 2.5 lakh;

c) Other residents of the colony were directed to pay and amount of Rs. 2.5 lakh for the betterment of the park because such open spaces and parks are deemed to be lungs of a colony and that they are for the recreational benefit of the residents themselves;

d) As per the Jan Bhagidari Yojna of the Municipal Corporation, wherein the corporation gives an equal amount if the residents are contributing towards the improvement of a park in a colony, the Corporation was directed to deposit an amount of Rs. 10 lakh for the improvement of the said park.

This amount of Rs. 20 lakh was directed to be used by the Municipal Corporation in improving the park by fencing it properly; planting trees, shrubs and flower beds; catering to the needs of children by installing swings and slides; installing a tube well as a source of water and providing electricity in the park. The Commissioner of the corporation was directed to carry out the order and secure the aforementioned amount to complete the development of the park. In view of the above, the application nos. 19 and 25 were disposed of.

K. Mari v. Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 23 of 2014 and

Miscellaneous Application No. 21 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Rent control proceedings, sealed premises

Application disposed of.

Dated: 22 April 2015

The application was filed by K. Mari along with other residents of the area where the concerned industrial unit is situated in order to oppose the activities of the 4th respondent that were reportedly causing pollution and damage to the environment. It was found that the generator that was used by the 4th respondent had been removed from the premises in August, 2014 and out of the three entrances, two had been sealed as per the directions of the Tribunal. One was kept unsealed for purpose of use by the 4th respondent for his office activities which too was subsequently sealed. It was not possible to carry in or out heavy generators or other machinery through the small space available. It was also found that power supply of the unit had also been disconnected.

The 4th respondent contended that the premises had been leased to him by the 3rd respondent in order to carry out the industrial activity. It was contended that the landlord had initiated certain rent control proceedings and that all the other tenants except the 4th respondent had been vacated. The Tribunal held that since entries to the premises had been sealed, no industrial work could be conducted by the respondent. Therefore, there was no reason to continue the case. Issues regarding rent control proceedings were to be dealt by the concerned authority. However, if an application was filed in the future by the respondent to obtain consent to operate, the Tribunal directed the State Pollution Control Board to inspect the unit and check whether all pollution related norms were satisfied. Till then, the Board was directed to ensure that the premises were not used by the 4th respondent unless a special request was made and the Board consented to the request. In view of the above, the application no. 23 of 2014 and miscellaneous application no. 21 of 2014 were disposed of.

Mr. Rajaram Vs The Commissioner, Corporation of Chennai and Ors.

Application no. 59 of 2015 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Shri P.S. Rao

Keywords: Pipe line diversion, Residential area.

Application disposed of

Dated: 27 April 2015

The application was filed by the applicant to request the Tribunal to direct the respondents to divert the laying of the pipe line from their residential area and to the Government barren land. The respondents contended that work had already started in this regard even before the application was filed. They had assured the Tribunal that the work would be complete within ten days and that the water drain pipe lines would be covered and would not cause any hardship. As contended, the work was finished within the stipulated time frame. Photographs to this effect were also produced and affidavits submitted by the respondent.

The applicant submitted that there was a damage that had been caused to the compound wall belonging to the applicant but was not visible in the photographs. The Tribunal held that since the respondent had complied with the time frame and had submitted in this regard, the application did not survive for further consideration. And as regards the damage to the wall, the applicant was directed to approach the proper forum in this regard since it did not require any consideration from the Tribunal.

M.P. Muhammed Kunhi and Ors. Vs State of Kerala and Anr.

Miscellaneous Application no. 102 of 2015 in

Application no. 440 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Sand mining, Environmental Clearance, Kerala Protection of River Banks and Regulation of Sand Act of 2001 and State Environmental Impact Assessment Authority.

Application disposed of

Dated: 27 April 2015

The application had been filed to request the Tribunal to take appropriate action against the respondents to ensure that large scale removal of sand in and around Pamburuthi Island be stopped and safety of the island and that of its inhabitants. On coming to know that the respondents lacked environmental clearance (EC) and were yet indulged in illegal removal of sand from the coast like issuing passes to mine the sand, the Tribunal issued an injunction against the activity. Despite the restraint order, the respondents did not take any action to curb the illegal activities of sand mining. In fact, it was brought to light that the District Collector issued passes facilitating mining of river sand on February 25, 2015 and March 7, 2015. Therefore, it was submitted that the District Collector had blatantly and willfully disobeyed the Tribunal's order and hence was liable for action under S. 26 and S. 28 of the National Green Tribunal Act, 2010.

In his affidavit, the District Collector has tendered his apology and stated that the order of the Tribunal did not reach him before February 25, 2015 and that all mining activities had been stopped from February 27, 2015. It was also stated that all river sand mining was done in accordance to the Kerala Protection of River Banks and Regulation of Sand Act, 2001. According to the Act, an online system

of pass distribution is followed wherein, 85 % of the san available is distributed to individual house holders and 15 % distributed through Panchayat quota. It was further contended that the pass issued on 25th February was done before the order of the Tribunal reached the District Collector and the one issued on March 7 was not issued by the Collector but under the 15% Panchayat Quota. Moreover, it was cancelled later.

Therefore, the respondent submitted that there was no willful disobedience of the Tribunal's order because the temporary environmental clearance (EC) for sand mining granted by the Environment Impact Assessment Authority (EISAA) which was ending in November, 2014 was extended for three months till March, 2015 by way of a Government Order when scarcity of sand was realized.

The Tribunal held that though it was clear through the affidavit submitted by the District Collector that there was no willful disobedience of the order of the Tribunal, but there was sufficient evidence to prove that some negligence had been present on account of the Collector. Merely because the passes were not issued by him but by the Panchayat, he cannot be exonerated from the liability since he was the authority to issue such passes. It was directed that such a slackening attitude was to be avoided in the future and that any such violation was to be reported to the Tribunal immediately. In view of the above, the Miscellaneous Application no. 102 of 2015 was disposed of.

Mr. Prashanth Gururaj Yavagal v. Principle Secretary, Forests, Ecology and Environment and Ors.

Miscellaneous Application No. 10 of 2015 and

Application No. 279 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Shri P.S. Rao

Keywords: Stage I Forest Clearance, Stage II Forest Clearance.

Application disposed of.

Dated: 28 April 2015

The main application filed by the applicant related to the challenging of grant of Stage I Forest Clearance to the respondent. In a miscellaneous application, it was required that the Ministry of Environment and Forests (MoEF) had granted Stage II Forest Clearance as well. The State Government was directed to pass appropriate order regarding Stage II Forest Clearance.

Since the orders were passed by the government subsequently, the Tribunal held that the application no. 279 of 2014 and the miscellaneous application no. 10 of 2015 did not survive and were dismissed as withdrawn.

Mr. K. Murugesan v. Tamil Nadu Pollution Control Board and Ors.

Application No. 302 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Shri P.S. Rao

Keywords: Water Service Station, District Environment Engineer, Show cause Notice, Consent to Operate.

Application disposed of.

Dated: 28 April 2015

The application was filed by the applicant contending that the 5th respondent, a Water Service Station had been issued a show cause notice by the Municipality of Dharmapauri stating that the station could not be run without obtaining permission from the Municipality as well as the State Pollution Control Board and without paying the necessary license fees on the ground that it was not in the interest of the public. The 5th respondent neither replied nor appeared for the proceedings before the Tribunal.

The Tribunal held that the Water Service Station was being run illegally without any permission. Therefore, the Tribunal directed the District Environment Engineer to effectively implement the immediate closure of the unit and not to grant consent to operate unless the necessary permissions were obtained. In view of the above, application no. 302 of 2014 was disposed of.

Shri N. Selvaraj v. District Collector, Kanyakumari District and Ors.

Application No. 156 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Wet Scrubber, Consent to Establish, Consent to Operate, Oil Separation Tank and Settling Tank, Polluter Pays Principle.

Application disposed of

Dated: 28 April 2015

The facts of the case are that one Baba Cashew Company had filed for consent to manufacture roasted cashew nuts on large scale for export before the State Pollution Control Board in 2002. The Board required the company to provide for a wet scrubber in the unit before the application was considered. Subsequently, it was taken over by the fifth respondent in the case in around 2009 while a complaint was lodged that the unit was running without any consent to establish or operate. A show cause notice was issued but the respondent did not reply. When the Board recommended a closure order for the unit, the respondents wrote that they had installed a wet scrubber.

On inspection, it was revealed that a wet scrubber had not been installed. Instead, only a temporary arrangement had been made without any provision for collection and treatment of scrubbing effluent, its disposal, etc. However, the fifth respondent was again taken over by one SreePadmanabha Cashew after this application was filed. A show cause notice was issued to the unit stating that it was running in violation of Water (Prevention and control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981. On inspection, it was observed that-

i) The 5th respondent was operating in the name of SreePadmanabha Cashew and carrying out roasting process;
ii) A wet scrubber had been provided in the unit;
iii) An oil separation tank followed by a percolation tank and settling tanks had been installed for the treatment and disposal of waste water;
iv) However, no application to obtain consent had been filed before the Board.

The application was filed against the 5th respondent requesting to order the closure of the unit, complaining about the functioning of the unit on the grounds that it was causing air pollution stating that the workers in the unit were suffering from many occupational diseases and that it was also affecting the health of the residents in the nearby locality.

The Tribunal held that though unit had complied with various requirements that are essential to obtain consent from the Board, the 5th respondent would be held liable for not filing for consent and hence not following the provisions of the law. The project proponent agreed that the manufacturing activity had been carried on since 2002 and that all the three units were one and the same. The Tribunal decided to apply the Polluter Pays Principle and imposed an amount of Rs. 5 lakh to be deposited within two weeks. Since the unit was functional, the Tribunal directed it to be closed down immediately till the consent was granted by the Board. The Application for consent could be filed only when the amount of Rs. 5 lakh was deposited and till then the unit could not operate. In view of the above, application no. 156 of 2013 was disposed of.

M/s. Balmer Lawrie & Co. Ltd. V Chairman, Tamil Nadu Pollution Control Board and Ors.
Application No. 172 and 173 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Total Dissolved Solids (TDS), Effluent Treatment Plant (ETP), Sewage Effluent Pumps (SEPs) and Central Leather Research Institute (CLRI).

Application disposed of.

Dated: 29 April 2015

The application was filed by the applicant, a manufacturer of leather chemicals and having Government undertaking supplying to the leather chemical division which manufactures chemicals required for leather industry. The application challenged the closure order of the Tamil Nadu Pollution Control Board under S. 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 and S. 31(A) Air (Prevention and Control of Pollution) Act, 1981 wherein power has been granted to the Board to issue appropriate orders in case it is found that an establishment is against any of the provisions of the two acts.

The respondents contended that the levels of total dissolved solids (TDS) in water bodies located near the industrial unit had been very high. Though it had reduced when inspection was done the second time, but since water was not absolutely free from TDS, the respondents contended that the requirement had not been met. Other defects found after inspection were:

i) Increase in the production quantity more than the consented quantity.
ii) Unit had provided combined ETP (Effluent treatment plant) for the leather Chemicals Division and Grease division.
iii) ETP was not in operational condition due to high TDS in the effluent.
iv) Unit had not revamped the ETP for the treatment of low TDS and high TDS effluent.
v) Entire trade effluent from the collection tank was being disposed through SEPs (Sewage Effluent Pumps) which were inadequate and in dilapidated condition paving way for seepage into the ground.
vi) Unit had not provided for high TDS effluent treatment system with modernized evaporation technologies, so as to achieve zero discharge of trade effluent.

The applicant contended that they had approached the Central Leather Research Institute (CLRI) in order to be informed of the methods to be followed for

remediation and reclamation for the damages that had been caused because of high levels of TDS. Moreover, it was for the rectification of the aforementioned defects in the unit that the applicants shifted from Solar Evaporation Process to Mechanical Evaporation Process and it had been proved from inspection reports that the level of TDS had decreased. It was also submitted that as far as both these approaches are concerned, it would take some time to implement these in a practical manner. Therefore, the applicant should have been given reasonable time instead of an immediate closure order. Assurances were also given that the applicant would comply with all the suggestions of the Board that they may provide from time to time on inspection.

The Tribunal held that there definitely was an improvement in the mechanism adopted by the applicant industry and therefore, directions were given to the industry to restore its functioning subject to the condition that the CLRI recommendations as well as the requirements pointed out by the Pollution Control Board were followed. in case of non-compliance, the Board was directed to give reasonable time to the applicant to rectify the defect and if the defect persisted, the Board was granted leave to pass any order in the manner allowed by the law. In view of the above, application no. 172 & 173 were disposed of.

Mr. S. Manoharan v. Secretary to Government of India, Ministry of Environment and Forest and Ors.

Application No. 184 of 2015 (SZ) (THC)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Shri P.S. Rao

Keywords:

Application disposed of.

Dated: 30 April 2015

The applicant had filed the application challenging the running of a marriage hall adjacent to his house stating that marriage ceremonies organized in the hall were causing noise pollution, thereby affecting his peace and quiet. Moreover, food waste generated from the hall was thrown into the vacant land in the backyard of his house which produced bad smell and caused pollution. Apart from this, activities in the marriage hall also caused water pollution and since the street in which the hall and the

house of the complainant are located was a very narrow one, the road became congested due to parking whenever a marriage took place in the hall. The respondent contended that when applications for consent were filed before the State Pollution Control Board, they had been directed to dispose the solid waste properly and prevent the use of cone-type speakers during ceremonies. Since these conditions were complied with, the consent was granted till September 2012.

Application for renewal of consent was filed in May, 2014 but because of the present pending application, the Board was not able to process it. The respondents contended that there was a dispute between the applicant and respondent regarding the land and that was the reason why such an application was filed in order to harass the respondent. The Tribunal disposed of the application no. 184 of 2015 stating that the State Pollution Control Board should process the application to renew the consent in accordance with law and unless such application was not granted, the respondent was directed not to carry on any kind of activity in the hall.

M. Manickam v. Chairman, Tamil Nadu Pollution Control Board and Ors.

Application No. 132 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Effluent Treatment Plant (ETP), Soak Pit/ Dispersion Pit, Septic Tank.

Application disposed of.

Dated: May 5, 2015

The application was filed challenging the closure order passed by the Tamil Nadu Pollution Control Board under S. 31 (A) of Air Act 1981 and S. 33 (A) of Water Act 1974. The irregularities found in the functioning of the unit on inspection by the Board in February, 2012 were-

a. The unit was under operation without the valid Consent under Water Act and Air Act.
b. Even after several letters, reminders and show cause notices, the unit did not take any action to apply for Consent under Air Act.

c. Indiscriminate dumping of solid waste inside the premises was giving out foul odor and was not removed.
d. The Effluent Treatment Plant was not in operational condition and was choked with solid waste and vegetation growth.
e. The untreated trade effluent was being discharged on land for open percolation.
f. The unit had increased the production more than the consented quantity without the Consent for operation of the Board
g. For the treatment and disposal of sewage generated there was no Soak Pit/Dispersion Trench provided for the Septic Tank.

When the matter was brought before the Tribunal, the CPCB (Board) was directed to inspect the unit and give a report on functioning of its ETP and other safeguards for environment stated to have been made by the applicant. The report stated that-

a. Generation of process wastewater was more than the permissible quantity.

b. The present ETP was inadequate for treating the generated pollution load and the faulty operation of ETP had resulted in poor maintenance of biomass and dissolved oxygen in the aeration tank.

c. The ETP units and channels were not concretised; they had been constructed using bricks and black granite stones

d. No proper gardening/green belt had been developed; the treated wastewater from the outlet of ETP was discharged on the land, where it was stagnating.

e. It was informed by the unit that the lagoon constructed by black granite stone beside the ETP was planned to be utilised as a fish pond, but was not properly lined/cemented.

f. The seepage from the side walls was observed in the lagoon, which was due to the stagnation of treated wastewater on the land. Since the treated wastewater was not meeting the discharge norms, the storage in lagoon and stagnation on land might have led to groundwater pollution.

g. No proper sludge management system had been adopted and no storage facility for solid waste had been provided.

h. No records that were required to be maintained in order to regulate the activities of the unit had been maintained in any form.

The applicant contended that these were merely formal findings and that they should be given a chance to rectify them. But the respondents stated that non-compliance with such important technical grounds should be strictly dealt with. The Tribunal stated that the unit had not followed a single environmental norm during the operation of its unit. The Tribunal left it for the Board to decide on merits whether a future application to obtain consent would be entertained or not. Unless such consent was not granted, the Tribunal ordered the unit to remain closed. In view of the above, application no. 132 of 2013 was disposed of.

Shri V. Chandrasekar v. The Union Territory of Puducherry and Ors.

Application No. 269 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Illegal sand mining, Special Task Force, Monitoring Committee, Check Posts and Tank and River Bunds.

Application disposed of.

Dated: May 5, 2015

The application stated that in a communal liaison group meeting held in Soriyakuppam Village of Pudducherry in March, 2015, it was decided that a case of criminal prosecution would be initiated against anyone found to be illegally mining and transporting sand. Subsequently, complaints were filed at Bahour and Ariyankuppam police stations and the matter was taken before the Judicial Magistrate, Puducherry. The applicants contended that despite such measures taken by the government authorities against illegal mining of sand and its transport, such activities were still going on and certain immediate measures were required to be taken in order to preserve the Ponnaiyar river. Following were the suggestions proposed in the application:

1) A special task force comprising officials of Revenue, Police, and PWD etc. be set up , comprised of officials working out of the Bahour region.
2) A monitoring committee comprising officials of Agriculture Department, Local village people, social activists, civil society organisations, police, PWD and Tahsildar be formed and the committee to file reports every fortnight to the District Collector.
3) Check posts be set up at Nagammal Koil and Graveyard Road of Cherikuppam Revenue Village.
4) To order the PWD to immediately set right and repair the tank and river bunds, and submit a report to the Tribunal in this regard.

The Tribunal disposed of the application no. 269 of 2013 with the following directions:

1) A special task force as suggested by the applicant be formed which will effectively supervise the river basin and take all measures to prevent the illegal mining and transportation. The task force shall be composed of various government officials (spelt out in the judgment) of the region, whose activities shall be supervised by the Regional Director, Ministry of Environment and Forests, Chennai (South) periodically.
2) The two check posts to be created shall monitor such illegal action (transportation of sand) and take suitable action when such violation is found, and proper prosecution is to be initiated through the police agencies.
3) The Public Works Department (PWD) was directed to set right the damages that had already been caused to the river bed and to repair the tank and river bunds within four months – reporting the progress on the same to the Regional Director, Ministry of Environment and Forests, Chennai (South).

M/s. Yesuraja v. District Collector, Nagercoil, Kanyakumari District and Ors.

Application No. 321 of 2013 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Shri P.S. Rao.

Keywords: Consent to Establish, Consent to Operate.

Application disposed of.

Dated: May 6, 2015

The applicant in this case had filed an application against acitivities of the cashew nut processing unit owned by the 4th and 5th respondents. It was found that the emissions from the unit were found to be polluting the air, and the water and effluents discharged therefrom were causing health hazards and environmental degradation of the surrounding area, including a tank. It was also found that the unit had been running without obtaining consent to establish or to operate.When served with a show cause notice, the 4th respondent replied that the unit had been functional since a decade but without any consent. The 5th respondent, his wife (who was subsequently impleaded in the matter), was the one who had bought the unit in February 2011 and filed an application for consent to operate.

A communication was sent by the Pollution Control Board in reply informing about absence of consent to establish and directions to present land classification certificate from the concerned authorities. But because of failure of the respondent to reply to the notice, the Officer of the Board (respondent no. 2) was directed by the Tribunal to order immediate closure of the unit and terminate electricity service. The Tribunal directed that the 5th respondent be permitted to resubmit the application for consent

after complying with all conditions and formalities as required under law, and that the 2nd respondent consider the said application and pass suitable orders within 4 weeks of the resubmission.

Mr. Aman Sethi v. State of Rajasthan and Ors.

Appeal No. 61 of 2013 and

(M.A. No. 896 of 2014)

Judicial and Expert Members: Justice Mr. Swatanter Kumar, Dr. D.K. Agrawal, Mr. B.S. Sajwan.

Keywords: Condonation of Delay, Stone Crushing Industrial Units.

Appeal disposed of.

Dated: May 7, 2015

The Government of Rajasthan, in exercise of the powers conferred upon it under Section 5 of the Environment Protection Act, 1986 and Section 18 of the Air (Prevention and Control of Pollution) Act, 1981 issued directions in September, 2012 directing the Rajasthan Pollution Control Board to close down all stone crushing industrial units located in District Bharatpur, Rajasthan and not to allow establishment and operation of new stone crushing units in the nearby villages. These directions were passed in order to prevent and control air pollution, restore environment and to save it from further degradation, to protect the places of religious and ecological importance and to safeguard the life and health of people inhabiting the locality.

The appeal had been filed by an owner of one of the stone-crushing units that were closed down, following the orders dated September 11, 2012 and November 6, 2012. Initially, the applicant had filed a writ petition before the High Court in January, 2013. However, when the matter came before the court in April, 2013, the writ petition was withdrawn stating that the petitioner would seek the alternative remedy available to

him according to the law. An application was then filed before the Tribunal challenging the order of the Government but the application was not accompanied by any application for condonation of delay.

The respondents opposed this and contended that according to S. 16 of the National Green Tribunal Act, an appeal should be filed within a period of thirty days of communication of the order/decision/direction/communication. However, if sufficient cause is shown, an extension of thirty days can be awarded. The respondents contended that the application before the Tribunal had been filed 175 days after the communication of the orders in question. They opposed the appellant's contention that the time during which petition was pending before the High Court should be excluded as per S.14 of the Limitation Act, 1963, and that the delay in filing before the Tribunal was thus only 51 days. It was argued that in view of the express provisions of S. 16 of the National Green Tribunal Ac, 2010, the provisions of the Limitation Act were excluded by necessary implication (as held by the Supreme Court as well), and the appeal was therefore barred. Moreover, there still existed a delay for 51 days for which the appellant had not provided any sufficient cause. It was also submitted by the respondents that absence of the application for condonation of delay was a threshold requirement and since it was not filed by the applicants along with the appeal, the appeal was liable to be rejected at the outset and held non-maintainable.

The Tribunal relied on a number of decisions of the Tribunal as well as the Supreme Court and High Courts of the country. The Tribunal referred to the case of *Sudeep Srivastava v. Union of India* [All India NGT Reporter (3) Delhi 43] wherein it was held that an appeal which is filed beyond the prescribed period of limitation has to be accompanied by an application for condonation of delay in terms of proviso to Section 16 of the NGT Act and that such an application was a mandatory requirement. The Tribunal held that the Tribunal will have no jurisdiction to condone the delay at all if the appeal is filed beyond the period of 90 days.

In view of the body of statutory and case law on the point, the Tribunal upheld the contention that the application had been filed after a delay of 175 days. Even if, for the sake of argument, the contention that filing was delayed by 51 days only was accepted, the Tribunal stated that sufficient cause as to the delay had not been shown.

Therefore, there was no merit in the arguments by the appellant and Appeal no. 61 of 2013 was accordingly disposed of.

M/s. Jai Hanuman Ent. Udyog v. U.P. Pollution Control Board

Application No. 74 of 2014

Judicial and Expert Members: Justice Mr. Swatanter Kumar, Dr. D.K. Agrawal, Mr. B.S. Sajwan.

Keywords: Retrospective Application of Rules, Consent to Establish, No-Objection Certificate (NOC).

Application disposed of.

Dated: May 7, 2015

The appellant was a brick kiln unit at Kastooripur, Allahabad. The 2nd respondent herein had previously contended - in complaints made to government authorities as well as twowrit petitions before the High Court of Allahabad - that the unit had been running without consent from the State Pollution Control Board and that an order of its closure should have been issued. Disposing of the most recent writ petition, the High Court found that the matter required factual verification, and permitted an appeal to be filed before the Appellate Authority under the Water Act. The Appellate Authority, after hearing the matter, quashed the earlier consent order of the Regional Officer, UPPCB. In its order, the appellate authority stated that the UP Brick Kilns (Siting Criteria for Establishment) Rules, 2012 would have been applicable when the application for consent was filed before the Regional Officer. This order of the appellate authority was impugned by the appellant in the present appeal. The contention of the appellant was that the unit was established in the year 2010 after taking clearance from the Zila Parishad. The Rules of 2012 had been promulgated on 27th June, 2012; therefore, they could not be applied to the case of the appellant. The main issue was whether the Rules of 2012 could apply to the unit of the appellant with retrospective effect.

The Tribunal stated that it was clear from the records that when the brick kiln was established in 2010, it had taken an NOC from the Zila Parishad but it had not

obtained the consent of the UPPCB under Section 21 of the Air Act, 1981. In terms of Section 21 (6) of the Air Act, no person shall, without the previous consent of the SPCB, establish or operate any industrial plant in an air pollution control area. Even the units which were operative at the time of commencement of the Act were granted period of three months from the date of commencement of the Air Act, within which they were required to take the consent of the Board. Thus, there was a statutory obligation on the part of the appellant to seek consent of UPPCB for establishing and operationalizing its unit. Admittedly, the appellant did not take consent of the Board till the show cause notice was issued to it in January 2013. It is only after issuance of this show cause notice that the appellant had filed an application for grant of consent. Thus, for the first time when the unit applied for obtaining consent of the UPPCB was in August, 2013, that is, when the Air Act and all the laws framed thereunder, including the Rules of 2012, were in force. The application for grant of consent ought to have been considered by the UPPCB in accordance with the laws in force, when the application was moved and not when the unit claims to have been established or the time since when it was running.

The Tribunal held that this would be the position of law, in all cases wherein following a procedure is mandatory and only adds to additional obligation, but does not take away any existing rights; such laws would have to be treated retroactively, i.e., having an effect on units and industries established before the law in question came into force (not taking away vested rights, but imposing certain restrictions on their operation) . About the purpose of the legislation, the Tribunal stated that it, like other environmental legislations, was socio-benficial and intended to serve the greater cause of public health and environment and ensure that people residing in the vicinity were not affected by the units. It was held that the appellant could not take advantage of his own wrong conduct of not obtaining consent and hence his appeal was non-maintainableAppeal no. 74 of 2014 was dismissed accordingly.

Mr. P.K. Ellappan v. Government of Tamil Nadu and Ors.

Original Application no. 240 of 2013 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Shri P.S. Rao.

Keywords: Sand Mining, Sand Quarrying, Ground-water Depletion.

Application disposed of.

Dated: May 7, 2015

The applicant – a resident of Pinayur Village, Kancheepuram District – was aggrieved by that though the Palar river in the village had been declared as prohibited area for carrying out sand mining and quarrying by the Tamil Nadu and State Government, and though the villagers had been carrying out protests against such activity, no action had been taken to prevent the illegal quarrying either by the Panchayat administration or by the Revenue officials. The applicant alleged that water from the river was used for irrigation purposes and if the mining was not stopped, the drawing of water from the river would lead to depletion of ground water levels thereby posing a threat to all kinds of agricultural activities.

The respondents contended that a ban had been imposed by them on mining in the river beds of the Palar River and the ban was in force from November, 2013 for a period of one year. In November, 2014, it was further extended for a period of one year and hence, the ban stood extended till 12.11.2015. The Tribunal held that it had become necessary to issue a direction to the Revenue Officials of the District to see that the ban order was implemented effectively and if there was any breach, the Tribunal directed that the concerned authorities would initiate action if necessary with the assistance of District Police against the wrong doers. In view of the above, application no. 240 of 2013 was disposed of.

M/s. Manimalar Food Products (P) Ltd. v. District Collector, Tirrupur

Application no. 92 of 2015 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran.

Keywords: Public Interest, Jurisdiction.

Application disposed of.

Dated: May 8, 2015

The 2nd respondent in the case, Avinashi Panchayat Union, had refused to grant permission to the applicant to run a water packaging unit – against which order the present application was filed. The applicant contended that for the purpose of getting the permission from the Panchayat or PWD, he was being directed to approach various authorities and such action was not in accordance with the law. He relied on the case of *Anil Kumar Gupta v. Municipal Corporation of Delhi* [CDJ 2003 DHC 1107], wherein the Delhi High Court held that there was no purpose in two authorities scrutinizing the same norms for a premises where packaged drinking water had to be manufactured and the more stringent norms as prescribed by the Pollution Control Committee were liable to be followed.

The Tribunal did not agree with the contentions of the applicant, In its opinion, the High Court of Delhi had not held that different authorities would lose their jurisdiction but had observed that the decision must be taken under one umbrella for the benefit of the public at large. The Tribunal, therefore, directed the 2nd respondent to consider the application on merit in accordance with law and pass appropriate orders, and in view of the above, disposed of application no. 92 of 2015.

Shri Thamme Gowda and Ors. v. Union of India and Anr.

Appeal nos. 21 of 2013 and 56 of 2013 (SZ) and

Application no. 152 of 2014 (SZ)

In the matter of Appeal no. 21 of 2013 (SZ)

Judicial and Expert Members: Justice Shri M. Chockalingam, Prof. Dr. R. Nagendran.

Keywords: Environmental Clearance (EC), Environmental Assessment Committee (EAC), Terms of Reference (ToR), Consent for Establishment (CFE).

Application disposed of.

Dated: May 12, 2015

In the present appeal, the appellant had challenged the order of the Tribunal wherein the environmental clearance granted to for the project (consisting of a distillery, a cogeneration plant and a power plant) had been suspended for a period of six months on account of objections raised by the original applicants. The Tribunal opined that in view of the fact that the project was a Category 'A' industry as per the schedule to the EIA Notification, 2006, the EIA had to be carried out in a comprehensive and scientific manner. The Tribunal then proceeded to enlist the various improprieties and irregularities that had occurred in the process of granting the EC, including the inadequate Terms of Reference framed by the Environment Assessment Committee (EAC) and the illegal manner in which the public hearing was conducted. The factual discrepancies within the EIA report have also been discussed at length in the judgment. On these grounds, the EIA stood vitiated.

Considering that the EC had been improperly granted, and also considering the history of the project proponent in causing environmental pollution, the Tribunal – instead of quashing the EC altogether -directed the Ministry of Environment and Forests (MoEF) to call for additional information and clarifications in respect of all concerns and objections even if minor in nature, to consider the same at the time of meeting to be convened and conducted for the said purpose after giving an opportunity to the project proponent to be present at the time of that meeting. EAC was directed to consider each and every issue separately and independently and record

the reasons either for rejecting or accepting the concerns and objections and also the response by the Project Proponent so as to understand both the Project Proponent and Objectors, ensuring transparency in the process of recommending either for acceptance or for rejection of the clearance. The EC granted to the impugned unit was directed to be kept in suspension for six months.

The KSPCB was also directed to reconsider the consent to establish that was granted to the 3rd respondents in April 2013 for expansion of the industrial unit which was under challenge in the original application. As a result, the respondents were directed to stop all the work until the clearance was under suspension and would continue only when it was granted by the MoEF after the considerations mentioned above. In the above terms, appeal nos. 21 of 2013 and 56 of 2013 and application no. 152 of 2014 in the matter of appeal no. 21 of 2013 was disposed of.

Dr. Abraham Paul and Ors. v. State of Kerala and Anr.

Application no. 445 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Dr. R. Nagendran.

Keywords: Noise Pollution (Regulation and Control) Rules of 2000.

Application disposed of.

Dated: May 13, 2015

The application had been filed by the office bearers of the Indian Medical Association, Cochin Branch, stating that the place where their hospitals are situated were the places where noise pollution was at its peak, which disturbed and interfered with the health of the patients staying there. The applicants sought a direction from the Tribunal against the respondents to ensure that noise pollution levels were reduced in the region. For this, they relied on the case of *K.N. Namboodiri & Ors. v. State of Kerala & Ors.*[CDJ 2004 Ker. HC 26] wherein it was held that according to Rule 3 of

Noise Pollution (Regulation and Control) Rules, 2000, the State Government has the power to categorize areas like industrial, commercial, residential and silence zone, etc.; to regulate the vehicular movements, blowing of horns, bursting fire crackers, use of loud speakers etc. in order to maintain the standard of ambient air quality in terms of noise levels.

The Tribunal held that in an area like the present one wherein hospitals were situated, it was the duty of the government and the executive authority (Traffic Police) to see that air horns and other nuisance by the vehicles were totally avoided in the interest of the patients who were taking treatment there. Therefore, the government was directed to implement Rule 3 of the aforementioned rules within a period of 4 months and file a report of compliance. In view of the above, application no. 445 of 2013 was disposed of.

Mrs. Rosa Maria Fernandes v. Goa Coastal Zone Management Authority

Miscellaneous Application nos. 41 to 50 of 2015 with

Appeal nos. 9 to 18 of 2015 (WZ)

Judicial and Expert Members: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande.

Keywords: Small Inquiry Committee, Goa Coastal Zone Management Authority (GCZMA), Natural Justice.

Application disposed of.

Dated: May 14, 2015

A complaint was made by one, Betty Alvares, regarding illegal construction in a CRZ area of Candolim. Due to paucity of time and manpower, the Goa Coastal Zone Management Authority (GCZMA) was not able to inquire into the complaint. The Tribunal ordered the establishment of a Small Inquiry Committee (SIC) to look into the matter. The committee called for due records available and heard both the parties involved in an open court and accordingly submitted its conclusions to the GCZMA. Based on these findings, the GCZMA passed orders of demolition of structure which

was illegal to the appellants in this case without giving an opportunity to them to present their case, stating that there was no need to give further hearing since the small inquiry committee had already heard both the parties.

The only question that needed consideration was whether the procedure followed by GCZMA was proper, legal, correct and according to the principles of natural justice The Tribunal held that the function of the Small Inquiry Committee was like that of Court Commissioners, but the ultimate decision was to be made by the GCZMA which could not have abdicated this responsibility in any manner. Moreover, the Tribunal had not, by means of any order, delegated the powers of the GCZMA to the Committee. Since, there exists no embargo on second hearing; the Appellants should have been heard by the Authority even though it would have amounted to a repetition or a second hearing. Therefore, the Tribunal directed the Authority to hear the appellants again and pass an order accordingly. In view of the above, miscellaneous application nos. 41 to 50 of 2015 with appeal nos. 9 to 18 of 2015 were disposed of.

Mr. Paramjeet Singh Kalsi v. Ministry of Environment and Forests and Ors.

Application no. 44 of 2014 (WZ)

Judicial and Expert Members: Justice Mr. V.R. Kingaonkar, Dr. Ajay A. Deshpande.

Keywords: Illegal sand mining, Mechanical Mining, Manual Mining, Bombay Mining and Mineral Rules, Environmental Impact Assessment (EIA) Notification, 2006, Environmental Clearance (EC).

Application disposed of.

Dated: May 15, 2015

The applicant had filed the application under Sections 14, 15 and 17 of the National Green Tribunal Act, 2010 alleging environmental damage caused in the village Rajola in district Nagpur due to illegal sand mining by heavy machinery. It was found that no permission had been granted by the Groundwater Survey and Investigation Department allowing mining with heavy machinery. As a result, such excessive sand mining using suction pumps and mechanical blocks in the blocks reserved for manual

mining was affecting the river beds, banks and groundwater circulation. The following was what was prayed before the Tribunal:

1) Appropriate orders to be issued against illegal mechanical mining without proper permissions from the concerned authority.
2) A report released by the Government of Maharashtra regarding grant of permits for mining, the amount of sand mined and whether the grants were for manual or mechanical excavation.

The Tribunal held that the first respondent, Ministry of Environment, Forests and Climate Change did not have a direct role in enforcement of local laws. However, the Ministry was directed to frame regulations or guidelines for the proper and effective implementation of the Environment Impact Assessment Notification of 2006. Respondents 3, 4 and 5 were the main contesting parties. They contended that the District Mining Officer and the Revenue Officer had released a notification in November, 2013 which included a list of equipment that was allowed to be used for the purpose of sand mining. Use of a suction pump had been expressly forbidden except when it was in public interest. They contended that though there were some cases where certain illegalities had been committed by individual contractors, they had initiated stringent actions under the Bombay Mining and Mineral Rules and such action was in accordance with the principle of sustainable development.

The respondents submitted that two Environmental Clearances had been granted under the EIA notification in the name of the collector and that it was the duty of the collector to see that all conditions in the EC had been complied with. The Tribunal came to the conclusion that there were two issues that needed consideration:

i) What was the enforcement mechanism of the ECs granted for sand mining activities including verification, legal action and assessment of environmental damages by the authorities?
ii) Whether any objective parameters had been defined in the ECs like restriction on area of mining or volume of sand excavated in order to initiate legal action?

However, it was mentioned that the ECs were granted in the name of the District Collector. Moreover, the District Collector was entrusted with the responsibility to ensure compliance and that in case of non-compliance, the District Collector and the

District Mining Officer would be held personally liable for the non-compliance. In other words, the responsibility to enforce the EC as well as the compliance of the EC had been placed on the District Collector. This proposition was declared as unrealistic and against the basic principles of governance by the Tribunal stating that if the Collector was the project proponent himself, he was not expected to reasonably regulate the operation himself.

The respondents further stated that the District Collector was not the project proponent, only the EC had been granted in his name, while the lease deeds had been signed in the name of the mining industries. The Environmental Department in the District further submitted that District Collector had been entrusted with the compliance due to lack of sufficient man power for enforcement of the EC. The Tribunal stated that violation of conditions of the EC need to be attributed to the project proponent, in this case to the mining lease holders.

Regarding the second issue, the Tribunal held that there was a significant policy gap for setting up a mechanism for enforcement and for ensuring compliance of the EC conditions as far as sand mining was concerned. As a result the Tribunal held that there was no enforcement mechanism for conditions of the EC and that no parameters had been mentioned in the EC as to when legal action could be initiated against the project proponents. The Tribunal gave the following directions guided by the precautionary principle and by the power conferred on it under S. 20 of the NGT Act:

i) The Secretary of the Environmental Department, Govt. of Maharashtra was directed to formulate enforcement mechanism for compliance of Environment Clearance conditions in respect of sand and other minormineral mining activities within a time frame of 2 months;

ii) The mechanism was to clearly outline the enforcement protocol including the criteria for assessment of violations, officers and their roles and responsibility including taking legal action under the Environment (Protection) Act along with guidelines for assessment of damages;

iii) A copy of the mechanism was to be submitted before the Tribunal and that until the guidelines were drafted, the District Collector was to submit reports regarding compliance and actions against non-compliance to the State Environment Impact Assessment Authority and to the Environmental Department.

In view of the above, application no. 44 of 2014 was disposed of.

Shri C. Murugan, Proprietor v. Member Secretary, Karnataka State Pollution Control Board and Ors.

Application no. 225 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran.

Keywords: Common Effluent Treatment Plant (CETP), Polluter Pays Principle, Effluent Collection Line,Bangalore Water Supply and Sewerage Board (BWSSB).

Application disposed of.

Dated: May 15, 2015

The applications were filed along with an appeal, against the orders of closure issued by the Karnataka State Pollution Control Board against the appellant and the applicants. The applicants and appellant were units engaged in silk fabric dying and washing activities in Cubbonpet, Bangalore and were alleged to be in violation of

Water Act, 1974 and Air Act, 1981. The first time applications were filed in the matter by residents living near these units, closure orders were given on grounds that there was a threat to their health and to the quality of the environment. An appeal was preferred before the Karnataka State Appellate Authority, which stayed the closure orders and directed the Board to give directions after hearing both parties to the dispute. The second time these applications were filed, the Board gave the same decision after hearing both the parties, i.e., gave closure orders. The application and appeals have been filed before the Tribunal challenging the order of the Board.

While the applicants and the appellant contended that orders by the Board had been given without any application of the mind, the respondents, who were the residents of the colony, contended that effluent from the units was directly being discharged into the drain without any treatment and that these units had been established without obtaining any consent from the Board or without any renewal of the consent if it had expired at a certain date Moreover, the chimneys provided in the units were not sufficient to regulate air emissions. These units being situated in a residential area were likely to cause damage to the health of other residents. Subsequently, the Tribunal appointed Court Commissioners to prepare a report regarding nature of the units, manner of operation, storage and disposal methods, effluent discharge, alternative remedy and other environmental impacts.

The issues that needed consideration according to the Tribunal were:

1) Whether the applicant units running were authorized following the pollution norms?
2) Whether the impugned orders of the State Pollution Control Board in directing closure of the units were valid in law?
3) To what relief the applicants/appellant were entitled to?
4) What other orders to be passed in the interest of maintaining proper environment in the Area?

Regarding the first two issues, the Tribunal held that following the assessment of air and water samples in the locality where the units were running, it was found that the quantities of various contents of the samples exceeded the maximum levels set according to pollution norms. Sections 25 and 21 of the Water Act and Air Act respectively state that an industrial unit cannot run without obtaining consent to establish and to operate from the Pollution Control Board. Therefore, these units were

held to be unauthorized and the contention that the applicant and appellants were not heard was rejected. The closure order would not be lifted unless the Board granted consent to establish and operate to the units and such consent could only be granted of all directions and requirements by the Board were followed. As far as the last issue was concerned regarding the relief, the report of the commissioners was accepted and the units were directed to deposit a sum of Rs. 15000/- each guided byb the Polluter Pays Principle and which would be used in the future to set up a Common Effluent Treatment Plant (CETP) for the units as a long term measure.

As a short term measure, the units were directed to collect the effluents in a common tanker which would be transferred by a vehicle to a CETP. The units using coal or firewood were directed to use Liquefied Petroleum Gas (LPG) in order to reduce air emissions. As a long term measure, the concerned governmental authorities along with the Board were directed to make arrangements to relocate the units keeping in mind pollution control measures and sustainable development of this economically important industry. The long term measures were to be implemented within two years. The Tribunal also directed the Board not to grant consent to those units that did not deposit the amount under the Polluters Pay Principle or did not implement the short term measures recommended by the Tribunal. In view of the above, application no. 225 of 2014 was disposed of.

M/s. Sai Exports v. Shri N. Selvaraj and Ors.

Miscellaneous Application no. 132 of 2015 in

Application no. 156 of 2013 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran.

Keywords: Polluter Pays Principle, Consent to Establish.

Application disposed of.

Dated: May 15, 2015

The miscellaneous application was filed by the respondent in the original application, Sri Padmanabha Cashew, a manufacturer of roasted cashew which was ordered to deposit an amount of Rs. 500000/- according to the Polluter Pays Principle and only then would an application for consent was to be granted. Till that time, the unit was ordered to be closed. The said order was issued on April 28, 2015.

The respondent contended in the miscellaneous application that a copy of the order was received on May 12, 2015 by the respondent and it would be very difficult for him to arrange for the amount within the stipulated period. Therefore, the respondent had filed for extension of time for payment. The Tribunal thereafter allowed the extension and ordered the respondent to deposit the said amount by May 25, 2015. In view of the above, the miscellaneous application no. 132 of 2015 was disposed of.

M/s. Kuberan Aqua Industries v. Chairman, Tamil Nadu Pollution Control Board and Ors.

Application no. 95 of 2015 (SZ).

Judicial and Expert Members: Justice Shri M. Chockalingam, Shri P.S. Rao.

Keywords: No-Objection Certificate (NOC), Consent to Operate.

Application disposed of.

Dated: May 15, 2015

The applicant in the present case was a packaged drinking water unit. The unit was situated at Mudivaithanendal, Tuticorin District in ‘over-exploited’ category area. The unit had been closed down in July, 2014, electricity connection to the unit was disconnected, an application seeking a No-objection certificate (NOC) before the Public Works Department (PWD) was rejected and the application for renewal of consent to operate was not accepted by the Tamil Nadu Pollution Control Board.

The application had been filed seeking restoration of electricity connection only to the extent of maintaining the membranes and machineries of the unit. The Tribunal held that since the aforementioned permissions had not been granted, the Tribunal could not direct continuation of commercial work in the industry. However, in order to

avoid financial hardships that would be faced by the applicant if the membranes and machineries were not kept in proper condition, the Tribunal allowed restoration of electricity connection but only to the extent that would be necessary to maintain the equipment. The District Environmental Engineer was ordered to monitor the unit and ensure that it was not used for regular commercial work. In view of the above, application no. 95 of 2015 was disposed of.

Dr. Chandrabhan Rajpurohit v. State of Rajasthan and Ors.

Original Application no. 18 (THC) of 2015

Judicial and Expert Members: Justice U.D. Salvi.

Keywords: Common Effluent Treatment Plant (CETP), Sustainable Development, Reverse Osmosis Plant, Environmental Clearance.

Application disposed of.

Dated: May 15, 2015

The applicant had filed this application requesting the Tribunal to direct concerned authorities to stop construction of the Common Effluent Treatment Plant (CETP) on the Bandi river alleging that such construction would affect the free flow of water and would pose a threat to the citizens residing near the bank of the river. The applicant also filed a writ petition before the High Court of Rajasthan with similar pleadings but it was dismissed when the High Court found out that the installation of the CETP was necessary for treatment of water discharged by the textile industries situated in the locality and also that the construction was not being done in a manner that would affect the flow of water in the river. The High Court also found that such cases involved taking of a holistic and comprehensive view keeping the principle of sustainable development as a guiding principle. Subsequently, the Court transferred the application to the Tribunal to decide on the issue of limitation in the application.

The Tribunal held that the mandate of the Tribunal under the National Green Tribunal Act was to examine the substantial questions related to the environment while in the present application the applicant had not disclosed any environmental concern. The

respondents had even contended that the plant in question would also include the Reverse Osmosis Plant which would make it possible to reuse the treated water discharged from nearby industrial units, thereby attaining zero discharge. Therefore, the Tribunal held that the allegations of the applicant were not maintainable. Moreover, they had not challenged the grant of Environmental Clearance (EC) given to the project proponent. Even if they had, it was too late to file an application against a clearance given in 2011 since S. 16 of the NGT Act allows a six month time frame to appeal against such orders from the concerned authority. In view of the above, application no. 18 of 2015 was disposed of.

Department of Environment, Government of Kerala v. K. Savad and Ors.

M.A. No. 133 of 2015

in

Application No.01 of 2015 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran.

Keywords: Forest area, Physical verification.

Application disposed of.

Dated: May 18, 2015

The miscellaneous application was filed by the State of Kerala for extension of time granted to them by the Government of India to a period of six months on the grounds that carving out actual forest area for 142 villagers would require physical verification.

The Tribunal granted an extension of three months to the State Government to complete the entire exercise and stated that no further extension would be granted. In view of the above, miscellaneous application no. 133 of 2015 in application no. 1 of 2015 was disposed of.

K.M. Subramanian v. District Collector, Dindigul District and Ors.

Application No.185 of 2013 (SZ) (THC) and

M.A.No. 87 of 2014 (SZ)

Judicial and Expert Members: Justice Dr. P. Jyothimani, Prof. Dr. R. Nagendran

Keywords: Tamil Nadu District Municipalities Act of 1920, Noise Pollution (Regulation and Control) Rules of 2000.

Application disposed of.

Dated: May 18, 2015

The application was filed against the respondents who were owners of a Marriage Hall seeking orders to close down the hall since it had been operating without obtaining necessary consent Tamil Nadu District Municipalities Act, 1920, Water Act, 1974 and Air Act, 1981 and also because the activities were in violation of Noise Pollution (Regulation and Control) Rules, 2000.

The marriage hall had been closed down and the respondents submitted that it would not start functioning unless they had duly obtained consent from the concerned authority and were acting in compliance with the environmental laws of the country. In view of the above, the Tribunal dismissed the application directing the Board to consider such an application for consent on merit as and when it is submitted and to ensure that the marriage hall does not function unless such consent has been granted. The Board was also directed to take into account not only air and water pollution, but also to take into account waste management, noise hazards and other environmental protections while imposing restrictions.

Aam Aadmi Lokmanch v. State of Maharashtra andOrs.

Review Application No. 4 of 2014

Judicial and Expert Members: Justice Shri V.R. Kingaonkar, Dr. Ajay A. Deshpande

Keywords: Land grabbing, Illegal hill cutting, National Highway Authority of India (NHAI).

Application disposed of.

Dated: May 19, 2015

The applicant is an organization concerned with environmental issues and the application had been filed under Sections 14, 16 and 18 of the National Green Tribunal Act seeking injunction against the 5th and the 6th respondents stating that illegal cutting of a hill at Wadachiwadi, Pune district. A general relief had been sought asking for directions to other respondents to take necessary actions for protection of hills from destruction. There were large number of newspaper reports as wellas electronic media reports, which showed destructionof hills around city of Pune for the purpose of landgrabbing and illegal construction of buildings.Thehill cutting could give rise to landslides, loss of humanlife, floods and like calamities and, therefore, it isnecessary to protect terrain of hills.Due to such illegal activities, a huge landslide had taken place during heavy rainfall and as a result had crushed a woman and her daughter to their deaths.

Respondents No. 5 and 6 submitted that the Application is not maintainable for the reason that it did not fall within the jurisdictional domain of the NGT Act. They pleaded that the Applicant ought to have approached a Civil Court concerned, seeking suitable relief. According to them, they had not done any illegal act. They submitted that they were occupiers of plots situated near the service road. They had obtained due permission for extraction of a minor mineral (soil) from the Govt.authorities on payment of royalty. They further submitted that the debris had collected due to heavy rainfall on that day followed by media reports stating that the incident occurred due to illegal hill cutting. They alleged that the Application was only based on media reports and hence not maintainable.

The main issues that were subsequently framed were-

i) Whether any illegal hill cutting had taken place at Katraj, somewhere between April to June 2014, which narrowed down passage of available entry or exit to Pune and outside?

ii) Whether the Respondents No. 5 and 6 were issued permit to extract minor mineral by the office of Collector and it was under the garb of such permit that they committed illegal hill-cutting?

iii) Whether the then Tehsildar, Bhor was aware of and could have probably stopped the illegal activity of hill-cutting with the help of Respondent No.9(NHAI) or other officials and could have also stopped illegal construction of building, which was being constructed by the Respondents No. 5 and 6 at the hill-top, which he could have noticed at any cost?

iv) Whether the Respondents No. 5 and 6, in support with Tehsildar, Bhor and the Respondent No. 9 caused extensive irreversible and uncontrolled environmental loss due to hill-cutting at Katraj, which resulted in the death of an innocent girl and her mother?

v) Whether Respondents would be liable to pay compensation, restoration charges and restoration? If yes, in what manner and to what extent?

A report dated September 15, 2014 was submitted by the Tehsildar. This report showed that a large number of violations and extraction of minor mineral by the villagers was being done. The Tribunal stated that hill-cutting was adopted by the villagers to earn easy money at the bidding of developers/contractors of buildings, and some of the builders which projects might have been without permission. This had made the area of hill fragile, susceptible to danger to the ecology and devoid of any support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure.

The destruction of hill could not have occurred without involvement of the Project Proponent i.e. NHAI. It was responsibility of NHAI to persuade concerned authority to act to avoid such accidents. The Respondent No. 9 (NHAI) had been silent for about two (2) years, in spite of knowledge that the work of hill cutting was going on. The Tribunal opined that NHAI was likely to be benefited in some way due to the illegal act of hill cutting because of availability of murum, stones and soil for the work forits project.

The Tribunal gave the following directions:

i) Respondents no. 5, 6 and 9 were directed to pay amount of Rs. 50 lakh as joint penalty imposed on them for causing environmental damage in the areas of Katraj, due to the hill-cutting activities.

ii) This amount was to be deposited with Collector (Pune) within 6 weeks and was to be spent for environmental protection and conservation activities in the district.

iii) Respondent nos. 5, 6 and 9 were to jointly and severally pay amount of Rs.15 lakh towards compensation to the legal representatives of deceased persons.

iv) Respondent nos. 5, 6 and 9 were also to deposit amount of Rs.10 lakh with the office of Collector for plantation of trees in order to restore damage caused to environment.

v) The concerned authorities were directed to look into any cases relating to illegal hill cutting in the area in the future.

In view of the above, application no. 4 of 2014 was disposed of.

A.D. Louis v. Kerala State Pollution Control Board

APPLICATION NO.99 of 2015 (SZ)

Ajay Kumar Negi v. Union of India

APPLICATION NO.183 (THC(HC)) / 2013

Appeal dismissed

Dated: July 30, 2015

The appeal was filed by the Appellant challenging the orders dated 22.08.2014 passed by the Tamil Nadu Pollution Control Board (TNPCB)(3rd Respondent).

The appellant M/s Amudha Textiles is located in Komarapalayam in Tiruchengodu and engaged in bleaching and dyeing of cotton yarn.

On 17.03.2010, TNPCB inspected the Appellant's unit and submitted that the unit was operating without obtaining the consent and was discharging untreated trade effluents. It was further alleged that the site of the appellant was in close proximity to Mettur Canal East and Cauvery River. Moreover, notification issued by Environment and Forest Department prohibited setting up tannery and textile dyeing units within 1 km and 5 km from the specified water resources including Cauvery River.

The Appellant had attempted to rectify the deficiencies by providing ETP and RO facilities and installing nano filtration and solar evaporation plant for treating effluents. Despite making these efforts, the Appellant was denied consent to operate, which implied that they would have to close

the unit. According to the Appellant, such denial was against the principle of sustainable development.

The Tribunal observed that the Appellant had been operating the unit without obtaining consent for several years and failed to comply with the notifications issued by the Environment and Forest Department in the past. The appeal was accordingly dismissed, as it had been filed in violation of the principles of equity.

Bharat Shamrao Gajendragadkar v. Shri Theatre & Ors.

APPLICATION No. 116 of 2014

Application allowed and disposed of

Dated: July 22, 2015

The applicant being a senior citizen approached the Tribunal to monitor noise pollution caused by Shri Theatre (Respondent No. 1) which had been functioning for the last 10 years in Osamanabad. The Applicant was residing behind the theatre.

The main allegation of the applicant was that high sound levels caused by the operation of the theatre was affecting the health of the residents living nearby, especially senior citizens. The noise pollution caused by Respondent No. 1 allegedly even made it difficult for the residents to converse amongst themselves. Several complaints were made by the residents following which the concerned Authorities directed Respondent No. 1 to carry out the necessary repairs to maintain the sound system but no action was taken to comply with these directions. He further alleged that the sound level increased when the songs were being played in the theatre

Respondent No. 1 stated that the sound levels were maintained at the prescribed limits and did not cause any noise pollution in the adjoining area. Moreover, several improvements were carried out by Respondent No. 1 as per the suggestions of Maharashtra Pollution Control Board (MPCB).

The Tribunal directed Respondent No. 1 on the basis of the Precautionary Principle to install automatic sound amplifier control system to keep the sound emanating from the theatre within the prescribed limits. Further, the Tribunal asked MPCB to ensure that Respondent No. 1 complied with the directions within the specified time frame.

Cavelossim Villagers Forum v. Village Panchayat of Cavelossim

APPLICATION No. 03 of 2015 (WZ)

Application disposed of

Dated: July 9, 2015

This application was filed on behalf of the Cavelossim Villagers Forum against M/s Sai Champions Family Trust (Respondent No. 4) for undertaking a project which was found illegal by Goa Coastal Zone Management Authority (GCZMA) for dumping mud which was in violation of CRZ Regulation, 2011.

It was alleged by the Applicant that the Village Panchayat was not the competent authority to grant permission for construction activity to Respondent No. 4. The advocate for the Respondent was absent.

The Tribunal was of the considered opinion that construction carried out was illegal and liable to be demolished as clearances were not permissible under the CRZ Notification of 1991 or 2011. The demolition work was directed to be carried out within three weeks and Respondent No. 4 was directed to pay Rs. 10 lakh as the cost for restoration of that area. Therefore, the application was disposed of.

G. Senthilkumar v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION No. 78 of 2015

Application Dismissed

Dated: July 10, 2015

The application was filed against M/s Santhya Plastic (Project Proponent), which was engaged in the business of re-processing of plastic lump in Erode. The allegations set forth by the applicant were that the Project Proponent was manufacturing plastic lump without erecting carbon scrubber and a stack with fan blower which caused air pollution. Further, it

was alleged that no building plan approval was obtained by the Project Proponent from the appropriate authority under the Town and Country Planning Act.

The Project Proponent averred that the site where his unit was located fell under the unclassified land zone and the process of manufacturing plastic lumps by melting polythene bags did not generate trade effluents. Moreover, the odour which was emitted from this process was taken out in a scrubber which was then passed out by activated carbon column through a stack.

The Tribunal observed that the height of the tank required by the Board was 15 metres and the Project Proponent has the tank of height 18 metres and was willing to raise it to 25 metres. Further, the Tribunal would not intervene when the manufacturing capacity of the unit was 174 kg per day which was in order.

Accordingly, the Tribunal disposed of the application and the Board was directed to pass a fresh order for renewal of consent.

Green Garden Residents' Association v. District Collector, Kochi

APPLICATION No. 26 of 2014 (SZ)

Application disposed of with directions

Dated: July 2,2015

The application was filed against General Manager, Park Residency Hotel, Kochi (Respondent No. 5) and Chairman, Greater Cochin Development Authority, Kochi (Respondent No. 6) for causing water pollution. Respondent No. 5 which was a hotel in Kochi discharged effluents into the quarry and the stagnated water is further used by the public for bath and other activities.

Respondent No. 5 submitted that the pipeline which was laid for the purpose of discharging effluents was removed and it had also established a sewage treatment plant (STP) which was functioning within the required parameters.

Though the 5th Respondent had stated that the pipeline was removed, it was alleged by the Applicant that it still existed.

The Tribunal disposed of the application with the following directions:

i. If the pipeline was identified by the Applicant to be still available then it would be removed at the cost of the 5th Respondent.
ii. It was directed to the 5th Respondent to pay Rs 30,000 under the 'Polluter Pays" principle to Principal Secretary, Department of Environment, Government of Kerala within one month from the receipt of the judgment.

Haryali Welfare Society v. Union of India

APPLICATION No. 269 of 2013

CORAM: Hon'ble Mr. Justice U.D. Salvi and Mr. Ranjan Chatterjee

Application disposed of with directions

Dated: July 20, 2015

The Applicant moved the Tribunal to bring attention to the newspaper report in Hindustan Times dated 05.09.2013, Gurgaon Edition against Directorate of Town and Country Planning, Faridabad (Respondent No. 3) and Mrs. Rajni Chawla (Respondent No. 5) allowing fencing and construction of damp proof course (DPC) in a plot located in Mangar village which is a part of ecologically fragile Aravali Forest-Manger Bani. The Applicant alleges that the area was a "deemed forest" and such activity would be detrimental to its ecology.

Respondent No. 3 submitted that fencing of land along with DPC was done on the land without violating any provisions of the Punjab Scheduled Roads and Controlled Areas Restrictions on Unregulated Development Act, 1963.

The Tribunal after consideration disposed of the application with the following directions:

i. The State and its authorities were directed to ascertain and verify the land as forest land or not keeping in view the landmark decisions of the Apex Court such as *T.N. GodavarmanThirumulpad v. UOI* and *M.C. Mehta v. UOI* and submit a report to the Tribunal.

ii. Until the land was identified as such, no construction work including DPC or wall construction was to be carried out on it. In the event of identification of the land as forest land, the Respondent No. 5 was to remove fencing and DPC made along the boundary and efforts should be made to bring the land to its original condition.

iii. By invoking the Polluter Pays principle, Tribunal held Respondent No. 5 vicariously responsible for cutting off trees from a labourer and to pay Rs 50,000 as compensation to Environment Relief Fund.

iv. Permission for allowing barbed wired fencing vide order dated 01.04.2014 was an interim arrangement and was not to be considered as a blanket permission to erect fences in the area.

v. Leave of the Tribunal was to be taken by State Government or any other authority for fragmentation of the area which falls under Manger Gair Mumkin Pahar Disrict, Faridabad.

Human Rights and Consumer Protection Cell Trust v. State of Telangana

APPLICATION No. 118 of 2015 (SZ)

CORAM: Hon'ble Mr. Justice Dr. P. Jyothimani and Dr. R. Nagendran
Application dismissed

Dated: 7th July 2015

The application was filed seeking removal of the encroachments from a lake bed area and restore the water bodies to its original size in Telangana.

The Tribunal clarified that the encroachment was a policy matter and did not fall under its domain. Since the applicant was not able to specifically point out any instance of environmental damage, the Tribunal was of the considered opinion that it would not be able to provide any remedy to the applicant. Therefore, the application was dismissed.

Hussein Khan v. Ministry of Environment & Forests & Ors.

APPLICATION No. 150 of 2014

CORAM: Hon'ble Mr. Justice Dr. P. Jyothimani and Dr. R. Nagendran

Application dismissed

Dated: July 20, 2015

The application was moved to the Supreme Court and the interim order passed by the Tribunal on 11.06.2014 in favour of the applicant stood vacated as the matter was still pending before the Apex Court.

Ishwarya Health Care v. Tamil Nadu Coastal Management Authority & Ors.

APPLICATION No. 250 of 2014 (SZ)

CORAM: Hon'ble Mr. Justice Dr. P. Jyothimani and Dr. R. Nagendran

Application allowed

Dated: July 6,2015

The Applicant approached the Tribunal challenging the order passed by the Tamil Nadu Coastal Management Authority (TNCZMA)(Respondent) stating that zones which were falling in 100 metres on both the sides of Buckingham Canal were to be treated as CRZ-II according to the Coastal Zone Management Plan (CZMP) approved by the MoEF.

The Applicant alleged that the CZMP which was prepared by the State Coastal Zone Management Authority as construed by the Respondent was impermissible in law as it was in overreach of the provisions of the CRZ Notification, 2011, thus, the order passed by the Respondent was void and should be set aside.

The Tribunal was of the considered opinion that the order passed by the Respondent should be set aside as it was not in accordance with the CRZ Notification, 2011 along with it directed CMDA to consider the matter of the applicant afresh. Therefore, the application was allowed.

K. Kandasamy v. Tamil Nadu Coastal Management Authority & Ors.

APPLICATION No. 90 of 2014 (SZ)

CORAM: Hon'ble Mr. Justice Dr. P. Jyothimani and Dr. R. Nagendran

Application disposed of with recommendations

Dated: July 20, 2015

The application was filed against M.S.P Lodge which allegedly emanated fumes and sewage water without having any proper disposal mechanism in place. It was further found that the Lodge was operating without a No Objection Certificate from the Board. However, all the allegations were denied by the Respondent.

The Tribunal observed that the kitchen of the lodge was using firewood which was hazardous to the health of the people living nearby. The Tribunal was of the considered opinion that the Lodge should adhere to all the recommendations provided by the Board in the Status Report and only on such compliance by the Lodge, the Board should consider the consent application. Further, the Tribunal directed the Board to monitor the operation of nearby hotels in that area.

Therefore, the application stood disposed of with specific recommendations.

Madhup Agency v. State of Rajasthan & Ors.

APPLICATION No. 50 (THC) of 2014

CORAM: Hon'ble Mr. Justice U.D. Salvi and Dr. D.K. Agrawal

Application allowed

Dated: July 31, 2015

The application was transferred to the Tribunal from the High Court of Judicature at Jodhpur as it involved issues pertaining to the Environment (Protection) Act, 1986.

The main question involved in this application was whether plastic roll and seven plastic bags of different sizes weighing 1512 kg seized from the godown of M/s Madhup Plastic Agency (Applicant) during inspection fell within the definition of plastic carry bag or not. It was revealed in the inspection report that the plastic roll did not have self-carrying feature and did not fall under the prohibited plastic carry bag as per Rajasthan Notification dated 21.07.2010 but it could not be ruled out that the plastic material could be used as plastic carry bag.

According to Plastic Waste (Management and Handling) Rules, 2011, the plastic carry bag has to have a particular shape and form to make it a contraband item and as per the definition of plastic carry bag under section 3(b) of the said Rules, excludes bags that form an integral part of packaging used for sealing goods.

The Tribunal after considering the fact that the applicant was not a manufacturer but the seller of packaging material and could not convert the plastic material into carry bags, allowed the application.

Dharmarajan v. District Collector, Coimbatore

APPLICATION No. 74 of 2013 (SZ)

CORAM: Hon'ble Mr. Justice M. Chockalingam and Dr. R. Nagendran

Application disposed of with directions

Dated: July 31, 2015

The Applicant was engaged in agricultural business along with his family in Kondampatti Village, Pollachi Taluk. M/s Sowthri Fibres (Respondent No. 4) started a coir business adjacent to the applicant's property after obtaining permission from the Tamil Nadu Pollution Control Board (TNPCB). The unit belonging to Respondent No. 4 caught fire which burnt 60 coconut trees of the Applicant and caused damage to his crops. The applicant and his family members had to also undergo medical treatment. The applicant complained about the noise and air pollution caused by the Respondent No. 4 to the Board which gave them three months' time to implement pollution control measures. However, Respondent No. 4 failed to follow the directions and the Applicant approached the Tribunal.

Respondent No. 4 denied the allegations put forth on him by the applicant of causing air and water pollution and averred that all the measures to control pollution were taken by them.

The Tribunal after considering the inspection reports of the Board was of the opinion that Respondent No. 4 had taken measures to control pollution such as by having water sprinklers and construction of tin sheet wall. Therefore, the application was disposed of with directions to District Environmental Engineer to ensure that air and water pollution did not recur.

P.S. Jeyachandran v. State of Tamil Nadu & Ors.

APPLICATION No. 239 of 2013 (SZ)

CORAM: Hon'ble Mr. Justice M. Chockalingam and Shri P.S. Rao

Application disposed of

Dated: July 29, 2015

The application was filed by the applicant to restrain the quarry activities carried by M/s Sri Gokulam Blue Metals and M/s Sivasankari Blue Metals (Respondent No. 6 and 7 respectively) and to pay compensation for the environmental damage caused by them.

It was alleged by the Applicant that the units operated by Respondent No. 6 and 7 were functioning without necessary approvals from the Board. The Tribunal was of the considered opinion that the consent was eventually obtained by both the Respondents by the Board. Accordingly the application was disposed of.

Kanakaraj v. Tamil Nadu Pollution Control Board

APPEAL No. 101 of 2014 (SZ)

CORAM: Hon'ble Justice Dr. P. Jyothimani and Prof.Dr. R. Nagendran
Appeal disposed of with conditions

Dated: July 6, 2015

The applicant challenged the validity of the order passed by the Tamil Nadu Pollution Control Board (TNPCB) allowing Respondent No. 4 to manufacture mango juice.

The allegation of the Applicant was that Respondent No. 4 stated to the Board before the construction activity that the purpose of the building was to manufacture mineral water and after the completion of the construction activity stated to the Board that the consent was required to manufacture mango or other fruit juices. Thus, that a different reason was stated by Respondent No. 4 for approval, and that such discrepancy was not given due consideration by the Board were the main grievances of the Applicant. It was further alleged that they were drawing ground water for commercial purposes and the same had not even been considered by the Board.

Respondent No. 4 submits that he never drew ground water for commercial purposes and in case it did, then the Board may cancel its consent certificate. The Tribunal was of the considered opinion that consent to establish and operate was granted to the Respondent No. 4 and there was no need for it to question the validity of the order passed by the Board.

Therefore, the Tribunal disposed of the application with the following conditions:

i. Respondent No. 4 can file an application for renewal of consent to operate and the Board shall consider the said application on merits.
ii. Respondent No. 4 shall not indulge in any manufacturing activity without the order passed by the Board.
iii. Respondent No. 4 shall not draw ground water for commercial purposes.

Maria Filomena Furtado v. Goa Coastal Zone Management Authority & Ors.

APPEAL No. 33 and 35 of 2014 (WZ)

CORAM: Hon'ble Justice V.R. Kingaonkar and Hon'ble Dr. Ajay A. Deshpande

Appeal disposed of with directions

Dated: July 2, 2015

A writ petition was filed before the High Court of Bombay by Rabindra Dias alleging that Maria and her family members violated several provisions of CRZ Notification, 1991 by carrying out certain construction activity within No Development Zone (NDZ). Upon complaint of the same by the Applicant to the Goa Coastal Zone Management Authority (GCZMA), it passed an order stating that only a retaining wall constructed by Maria was part of the illegal construction and was liable for demolition. The Applicant, aggrieved by the said order, challenged the same before the Tribunal by way of this appeal.

The Applicant alleged that Furtado family illegally constructed rooms in NDZ area without any permission which were converted into hotel and were used for commercial purposes. The Respondent denied the allegations by stating that a house was constructed in the year 1979 with the permission of the Village Panchayat. However, this permission which was issued to Maria's husband was lost after his death and she was unable to find the certified copy of the same from the Panchayat.

The Tribunal observed that the members of Furtado family could not adduce any evidence of residential accommodation or traditional place of storage prior to CRZ Notification 1991. The Tribunal observed that by not demolishing the construction activity the provisions of CRZ Notification would be further breached. Moreover, the Tribunal stated that in such a situation where Furtado family has blatantly disregarded the law by way of illegal construction, the *fait accompli* principle would not apply.

Therefore, the appeal was disposed of and the order passed by the GCZMA was set aside. It was directed that the entire construction made by the Furtado family was to be demolished within eight weeks.

Umayal Achai v. District Collector, Cuddalore

APPLICATION No. 280 of 2013

CORAM: Hon'ble Shri Justice M. Chockalingam and Hon'ble Shri P.S. Rao

Appeal disposed of

Dated: July 2, 2015

The Applicant approached the Tribunal seeking an order against her neighbours, Mr S.D.S. Philip and M/s Balaji Flour Mills for causing noise pollution after making several attempts before the Board to take care of the situation.

It was alleged by the Applicant that Mr Philip had obstructed the free flow of air and light to the Applicant's house. Mr Philip had installed a mobile tower on the first floor of his house and a generator which ran for several hours during the day and night, which also caused a substantial amount of noise pollution. The Respondent denied all the allegations of the Applicant.

The Tribunal directed District Environmental Engineer (DEE) to inspect and submit the report before it. The report stated that by installation of mobile tower by Mr Philip did not result in injury and Balaji Flour Mills had undertaken preventive measures. Tribunal directed that operation should be carried out by the mill between 8:00 a.m. to 6:00 p.m. only. Thus, the application was disposed of.

OM Industries v. Tamil Nadu Pollution Control Board & Ors.

APPLICATION No.122 of 2015

CORAM: Hon'ble Shri Justice P. Jyothimani and Hon'ble Prof.Dr. R. Nagendran

Appeal disposed of

Dated: July 9, 2015

The Applicant was a manufacturer of packaged drinking water and was aggrieved by the action taken by the Board to discontinue electric service connection for maintenance of membrane and the machineries of the Applicant's unit.

The Tribunal directed the Board to restore electricity connection to the Applicant's unit otherwise it would result in loss of commercial activity. Accordingly, the application was disposed of.

P. Sasi v. State of Kerala & Ors.

APPLICATION No.144 of 2013 (SZ) (THC)

Appeal disposed of

Dated: July 2, 2015

This application was transferred before the Tribunal by the High Court of Kerala for the authorities to take immediate action.

The Applicant was aggrieved by the waste water released by the vehicles that carried fish throughout National Highway-17 which resulted in foul smell. The Respondent submitted that amendments were required to be made in the Act and for which a new bill was pending before the Parliament which would take a reasonable time to be passed.

Meanwhile, an interim order was passed by the Tribunal which directed the officials of the Police and Transport Departments of the State of Kerala to prosecute the drivers of the vehicles which would emanate pollution. The Department charted out an Action Plan to address the problem.

The Tribunal was of the considered opinion that the interim directions and Action Plan would be sufficient to solve the problem until new rules came into force. Therefore, the application was disposed of.

P. Chathukutty v. District Collector, Wayanad

APPLICATION No. 201 of 2014

CORAM: Hon'ble Shri Justice Dr. P. Jyothimani and Hon'ble Prof.Dr. R. Nagendran

Application disposed of with directions

Dated: July 9, 2015

The Applicant's main grievance was against the petroleum companies' decision to start new petroleum outlets in Wayanad District resulting in felling of trees and harm the environment.

The Respondent submitted that the installations of petroleum outlets were done in the manner prescribed under the Petroleum Act and Rules, 1934 and the district authorities took all the necessary steps to protect environment and ecology.

The Tribunal was of the considered opinion that the government would take necessary steps to install the new outlets. Therefore, the application was disposed of with the following directions:

i. Setting up of new petroleum outlets by the respondent shall be not be made in breach of any law.
ii. The District Collector should not grant NOC to the petroleum company unless it is satisfied that the outlets would be installed legally by carving out the hill area.
iii. In case of receipt of complaint about any illegal activity, the Revenue Divisional Officer shall take appropriate legal action.

RCS Infrastructure Private Limited v. Tamil Nadu Pollution Control Board & Ors.

APPEAL No.15 & 16 of 2014 (SZ)

CORAM: Hon'ble Shri Justice M. Chockalingam and Hon'ble Shri P.S. Rao

Appeal dismissed

Dated: July 15, 2015

The Appellant, a stone crusher unit filed the appeal against the order passed by the Board rejecting the grant of consent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

The Appellant submitted that it had started operating the unit in the year 2008 and was not aware at that time that it had to obtain prior permission from the Board. After the inspection in the year 2010, the Appellant applied for consent to establish (CTE) from the Board and it was rejected since the minimum distance between the two stone crushers should be at least 1 km to prevent dust pollution from one unit to another unit.

The Tribunal was of the opinion that the Board's decision to reject the consent application was right as the Appellant's unit was located within 1 km radius from the existing units. Therefore, the appeal was dismissed.