M/s Krishna Stone Crushers & Ors.

Vs.

Haryana State Pollution Control Board

Misc. Application No. 617/2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar , Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. B.S. Sajwan, Dr. R.C.Trivedi.

Keywords: Appeal, Stone Crusher, Haryana, Haryana State Pollution Control Board, Limitation

Appeals Dismissed.

Dated: 9th January, 2014

This case dealt with the disposal of nine appeals arising out of similar facts and raising common legal issues. The appellants are carrying on the business of stone crushing under different names and styles in the State of Haryana.

The appellants have challenged the legality and correctness of the order passed by the Haryana State Pollution Control Board (for short 'HSPCB') dated 15th March, 2012 which was upheld by the appellate authority vide its order dated 24th January, 2013.

The respondent has contended that the said appeals are barred by time. It was contended that this Tribunal has no jurisdiction to condone the delay in terms of Section 16 of the National Green Tribunal Act, 2010 (NGT Act).

The provisions of this Section are that once there is a delay beyond 90 days, then the Tribunal will have no jurisdiction to condone the same unless and until the communication of the order impugned in the appeal is shown not to have been received so late that it falls beyond the period of 90 days.

In all other cases, the order of the HSPCB of 15th March, 2012 and that of the appellate authority is of 24th January, 2013. All the appellants had filed review application before the appellate authority which came to be dismissed vide order dated 5th April, 2013. In the appeals, none of the appellants have challenged specifically the order of review dated 5th April, 2013. It is a settled proposition of law that where a review application is dismissed and the original order, review of which is sought, is maintained, the limitation will be computed with reference to the first order, i.e. 24th January, 2013. There being no challenge to the order dated 5th April, 2013, all these appeals would also be barred by eight months and the Tribunal will have no jurisdiction to condone the delay. All these appeals have been filed much beyond the period of 90 days, the prescribed period, and permissible period of limitation beyond which the Tribunal has no

jurisdiction to condone the delay. As such all these appeals are also liable to be dismissed on the grounds of limitation.

Thus all the appeals were dismissed.

State Pollution Control Board, OdishaVs.

M/s Swastik Ispat Pvt. Ltd

Appeal No. 68 of 2012

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

Keywords: State Pollution Control Board, Bank Guarantee, Environmental Clearance, Deficiencies, Forfeit.

Appeal allowed.

Dated: 9th January, 2014

This case deals with two appeals being, Appeals No. 68 of 2012 and 69 of 2012 having common questions of law on similar facts and grounds.

The appellant i.e. The State Pollution Control Board, Odisha, (for short the 'Board'), is a statutory body, constituted under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short the 'Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (for short the 'AirAct'). The Board, in exercise of its powers, introduced bank guarantee system vide its Resolution No.17617 dated 18th August, 2003.

In the first appeal the Board had granted consent to operate under the Air Act in respect of Respondent No.1 Unit's Sponge Iron plant on 24th July, 2007, valid till 31st March, 2011. This consent was issued after inspection of the premises. But on 28th March, 2008, the Board issued a closure notice to the Respondent No.1's unit under the terms of Section 33A of the Water Act and Section 31A of the Air Act. In the closure notice the Board stated that, on the basis of inspection conducted on 15th March, 2008 a number of deficiencies were noticed in the working of the unit and there was no compliance with the conditions of the consent.

Vide letter dated 7th May, 2008, the Board informed Respondent No.1 (for short also 'the industry'), inter alia, that as a result of non-compliance and to consider the request of Respondent No.1 for permitting the unit to function, subject to such conditions, as may be imposed, Respondent No.1 had to furnish a performance bank guarantee for a sum of five lakh rupees, valid for three years and an affidavit in the prescribed proforma.

On compliance with the letter the bank guarantee was furnished. And later based on inspection the Respondent No.1's unit was granted consent with certain directions.

In a later inspection few other deficiencies were noticed and acting upon those deficiencies the Board issued a show cause notice calling upon the Respondent No.1 to show cause as to why its consent should not be revoked. The Board also called upon Respondent No.1 to extend the

validity of the bank guarantee uptil 30th June, 2012, which was done by the Respondent No.1 and the Respondent No.1 was granted to operate till 31st March, 2013.

But later on a recommendation of the Assistant Environmental Scientist, the Environmental Engineer and the Sr. Environmental Engineer of the Board, to forfeit the bank guarantee in view of non-satisfactory performance and non-compliance with the environmental clearance conditions, and as a result thereof, the bank guarantee amount of five lakh rupees stood forfeited and submitted a bank draft of five lakh rupees in that behalf. The action of the Board was challenged by Respondent No.1 by filing an appeal before the appellate authority under the Air Act.

But the Respondent No.1 contended that despite the non-compliance of the environmental clearance conditions well within the stipulated time the appellate authority and allowed the appeal preferred by Respondent No.1 and aggrieved by this order of the appellate authority, the Board has preferred the present appeal contending that the resolution of the Board requiring an industry to furnish a bank guarantee is in accordance with law. The Board has been vested with the power of issuing direction of closing an industry, and therefore, is requiring the industry to furnish a bank guarantee as a condition for grant and continuation of the consent, and it being less rigorous, would be permissible in law. It is a financial tool to achieve sustained compliance with the prescribed environmental parameters. The decision of the Board is not penal but is regulatory and compensatory in nature. Both these aspects are essential requirements for a clean and decent environment and are in consonance with the preambles of the Air Act and the Water Act. The industry has committed persistent violation of the terms and conditions of the consent order and the prescribed parameters and has caused a serious injury to the environment. Despite various show cause notices the industry had been committing the breach of the consent order and as a result of which the bank guarantee had been revoked and forfeited.

The respondent had raised the contention that the Board is not vested with any power to ask for a bank guarantee and such exercise of power is not backed by any statutory provision and it is a penal provision not a compensatory provision.

Answering the above contention the Tribunal held that the general Resolution governing industries, particularly the defaulting industries, was passed by the Board on 18th August, 2003, as has been noticed earlier, intended to invoke the 'polluter pays' principle and required the industry to furnish a bank guarantee for compliance with the terms and conditions of the consent order and installation of pollution control equipment clearly stipulating faithful utilization of the amount for pollution control abatement scheme/programmes of the said industry. The said Resolution in the light of the principles aforestated would clearly demonstrate that the bank guarantee asked for was not penal in nature but was clearly compensatory in its character and ensured prevention and control of pollution and restoration of environment. It is founded on the precautionary principle and is not beyond the statutory provisions of the Act concerned.

The invocation of Bank Guarantee was proper as the industry had failed to discharge its corporate social responsibility and it had done damage to the environment which it was liable

to make good. Also the data furnished in the inspection reports of the Board leaves no doubt in the mind of the Tribunal that the bank guarantee had been invoked when on repeated inspections, it was found that the industry is a persistent defaulter and thus, was causing air pollution, particularly in relation to ambient air quality and after issuing show cause notices to the industry from time to time. Thus, the Board was fully justified in invoking the bank guarantee.

The Tribunal further directed that the amounts received by the Board against encashment of bank guarantee shall, in preference to all other, be utilized for the compensatory purposes or restoration of the degraded environment resulting from emission and discharge of effluents and other pollutants in violation of the prescribed standards by the industry. Remnant, if any, may be utilized for installation of such effluent treatment plants/anti-pollution devices, directed to be installed under the order of consent or otherwise in the unit of the industry as it would help in bringing down the emission/pollution levels and bringing it in line with the prescribed parameters, thus protecting the environment. The Board shall have no authority or power to forfeit this amount and use it for any other, including for its own purposes.

The appeal was allowed partly with directions.

Smt. Shobha Phadanvis

Vs.

The State of Maharashtra

Misc. Application Nos. 29/2013 AND 30/13 (WZ)

(In Application No. 135(THC)/2013)

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

Keywords: Felling of trees, Transmission Line, Forest Area, Nagzira, Afforestation

Application Disposed of.

Dated: 13th January, 2014

This application had been filed by the Applicant Company M/s. Adani Power Maharashtra Ltd., which deals with the work of generation of electricity and intends to establish its power generation plant 3 x 660 MW capacity at Tiroda, Tq. Tiroda, District: Gondia. The Applicant-Company planned to establish 400 K.V. Double Circuit Tiroda-Warora Transmission Line (QUAD) (hereinafter referred as the said Transmission Line) and after getting the necessary approvals, the Applicant-company finalized the route of the Transmission Line. The said Transmission Line was passing the various areas and while finalizing the route of the said Transmission Line due care was taken that the areas such as Forest, Urban and Residential and Commercial Localities, reservoirs, Coal Belts etc. are avoided. It is submitted that the said Transmission Line was passing through village Morpar, Tq. Tiroda, District Gondia which is by the side of the Forest, popularly known as "Nagzira" and the said Transmission Line falls outside the forest area of Nagzira. The Applicant submits that the area of Nagzira Forest as it was prevailing at the time of initiation of work of the Transmission Line was expanded for the Forest area/Buffer Zone, by the Forest Department and therefore, the said Transmission Line is now passing through the said expanded area.

There are 311 trees that would be e interrupting in the Transmission of electricity and therefore needs to be removed for said Transmission Activities and in terms may also prove to be danger for the nearby Forest areas.

The Applicant have submitted that they have received necessary permission from the Ministry of Environment and Forest, which clearly indicates the required legal formalities have been completed and a sum of Rs.1,76,27,647/- (Rs. One Crore, seventy six lacs, twenty seven thousand and six hundred forty seven) has been deposited by the Applicant company for the necessary afforestation work and therefore, the Applicant has now approached this Tribunal to approve the cutting of the trees in context to the letter of Additional Principal Chief Conservator of Forest Government of Maharashtra, Nagpur.

The Tribunal allowed the cutting of trees while further directing the Applicant to responsibly ensure that the afforestation activities being carried out at the village and that the concerned Conservator of Forest shall personally supervise these cutting activities and submit a detailed compliance report of this Tribunal on completion of the work.

Arvind V. Aswal Ors.Vs.

M/s Arihant Realtors Ors.

Appeal No. 77/2013

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

Keywords: Condonation of delay, Limitation, Environment Clearance, Project Proponent.

Application allowed & Delay Condoned.

Dated: 13th January, 2014

This is an Application filed by the Appellants for condonation of delay in filing of the Appeal under Section 16 of the National Green Tribunal Act, 2010. Applicants have submitted that they have acted vigilantly and the Appeal is preferred within the timeframe, though there is delay of 7days caused due to certain justifiable grounds, and as such, they seek condonation of delay.

In their reply affidavit, respondent have resisted the appeal on the ground of limitation being one of the several grounds. The respondent has contended that the Project Proponent (Respondent No.1) pointed out that the EC was granted on 20th February, 2013 and its knowledge was immediately gained by the Appellants/Applicants, because that was put on the website of the Environment department. It is further contended that the Respondent No.1, issued advertisement in the local Newspapers, as per the procedure laid down in the MoEF Notification dated 14th September, 2006, on 30th and 31stMay, 2013. According to the Respondent No.1, since the Appeal is filed in July, 2013, it is beyond the prescribed period of limitation, and as such, is liable to be dismissed.

The Respondent further submitted that the Appeal cannot be entertained, because this Tribunal has no power to entertain the same, beyond the period of Ninety (90) days, because even after including expansion period of sixty (60) days, the outer limit will end on 21stMay, 2013.

In reply to the above contention of respondents the applicants have stated that after the Notice dated 11th February, 2013, issued for prosecution under Section 19 (b) of the Environment (Protection) Act, they had received reply from the Director, Environment Department that the copy of EC was called for from the Project Proponent and as such, they laboured under impression that till that date the EC was not granted. They had no knowledge of the EC till 1st April, 2013, in view of the communication issued by the Director, Environment Department, Maharashtra. They submitted that on 22nd April, 2013, their premises were demolished by the Competent Authority under police protection. They filed a complaint dated 22nd April, 2013, with the office of Deputy Collector (ER) Mumbai, alleging that the premises were illegally demolished. They visited the office of SRA on 30th April, 2013. They were provided with copy of the EC letter dated 20th February, 2013, during such visit and were told that further details were available on the website of the Environment Department. Thus, for the first time, they came to know about the grant of impugned EC on 30th April, 2013. They approached the

Counsel in Mumbai for filing of the Appeal without any delay. Their Counsel prepared a draft of the Appeal and sent it to the National Green Tribunal (PB) New Delhi on 20th May, 2013. The Registry of the NGT, informed that the Memorandum of Appeal was required to be filed, in accordance with the format as per the National Green Tribunal (Practices and Procedure) Rules, 2011. Thereafter, they approached the Counsel in Delhi and arranged for filing appeal in the proper format. They have contended that there is no intentional delay. They further submitted that they are likely to suffer if the delay is not condoned and that they were kept in dark about the grant of EC. And thus they urged for condonation of marginal delay of seven (7) days in filing of the Appeal.

The Tribunal has held that the EC conditions are required to be compiled with by the Project Proponent, so as to make the EC legal and valid. The record of the copies submitted by the applicants of the communications issued by the MPCB, shows that Show-cause Notices have been issued to the Project Proponent, as regards commencement of the construction, without obtaining prior Consent from the MPCB. It is, of course, not necessary to consider whether the Project Proponent gave adequate reply and such proceedings have been closed, or are still pending. It would be suffice to say that the Applicants have demonstrated that they were unable to get due information about the EC till the publication appeared in the Newspapers. Even though it is assumed that the limitation period triggered from the date of placement of the EC letter on the website of the Environment Ministry, then also further developments can be considered as 'sufficient cause' for condonation of the delay, which has occurred after initial period of thirty (30) days, in as much as, the Appeal filed on 7th June, 2013, is well within ninety (90) days period from that date, when the EC was put on the website of the Environment Ministry. Thus the objection raised by the Project Proponent, is liable to be rejected. The Application, therefore, succeeds and will have to be allowed. The Tribunal accepts the explanation of the Applicant and deems it proper to condone the delay.

Thereby the said application is allowed and delay is condoned.

Smt. Shobha PhadanvisVs.

The State of Maharashtra

Original Application No. 135(THC)/2013

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

Keywords: Illegal felling, Smuggling, Inspection, Disaster Management Plan.

Application Disposed of.

Dated: 13th January, 2014

The Applicant has filed this application to protect the forest cover of Maharashtra, particularly in the forest area of District Chandrapur and Gadchilori by way of prohibiting/preventing the illegal cutting and smuggling of seasonal wood. The Applicant was Member of State Legislative Assembly (M.L.A.) when the Application was filed and she tried to bring the issues raised in this Application on floor of the State Legislature through various legislatives methods. Due to lack of required responses, applicant has filed this application.

The applicant has submitted that in the month of November 1999 she received a complaint that there was illegal cutting of the forest involving teak and seasonal wood in Chimur Wahangaon compartment No. 57 of 536 Hectare. And upon verification it was found that this kind of illegal activity was going on this site. The applicant has further submitted that because of lack of adequate reply from the government on earlier occasions, the applicant herself went to the site with prior intimation to the Government officials on 29th December 1999 and as a matter of record a panchnama was made about the forest cutting. She has also submitted that she immediately gave the information of said fact to the Chief Secretary and the Forest Secretary who also conducted the inspection through the Department officials. During such inspection they noticed that in the forest depot, wood is being deposited without there being any number or hammer. The Applicant, therefore, claims that important part of the teak and forest trees were taken away and rest of the balance is deposited in the forest depot.

The applicant had approached the High Court and sought to save remaining forest by adopting immediate measures for the sound forest management activities. The Court further directed the Principal Chief Conservator of Forest (PCCF) to prepare a white paper by way of action plan for implementation of the High Power Committee Report and also interim orders passed at various occasions and to prepare a comprehensive and Integrated Action Plan, even making it clear that the service in Forest Department is not inferior to that in the Police Department, and is rather very challenging.The Court further directed all the Judicial Authorities and Courts to take up the cases involving Forest Offences on priority basis. The Court further directed the Chief Conservator of Forest not to renew any new Saw Mill licenses and cancel all such licenses of Saw Mills in Sironcha area and further not to permit any Saw Mill to operate in a Region as it is detrimental to the interest of Forest.

Upon the above facts and circumstances the Tribunal partly allowed the application in order to protect Environment and ecology and the forest area, directing the continuation of the operation of interim orders given by the High Court, thereby making them a part of the final order.

Some of the other directions given by the Tribunal were:

- The Respondents shall make available necessary funds to forestry sector in the state, and especially, the required funds for rehabilitation of affected villagers/Tribals for relocation to the new habitats, without any delay, and in any case, they shall be provided with new accommodation with the required facilities, within a period of six (6) months hereafter.

- The Respondents shall prepare a Disaster Management Plan (DMP) for protection of Forests and shall make available more number of G.P.S, fire beaters, fire brooms, fire rakes, Motor vehicle sets, Watch Towers by evolving particular standards based on scientific study and data collected, in accordance with the area of the Forests.

- The Respondents shall display the complete information about, the number of incidents of fires in the Forest areas, area of Forest affected by such fires and any other related information in respect of the entire state, on the Department's website, which shall be updated on quarterly basis.

Thus the said application was disposed of with the above directions.

M/s. Renaissance RTW Asia Pvt Ltd

Vs

The Chairman Tamil Nadu Pollution Control Board Chennai and others

Application No. 411/2013(SZ)

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

Keywords: Dyeing and bleaching unit, Pollution Control Board, CETP, Zero Liquid discharge

Application disposed of with directions

Dated: 22 January 2014

The concerned unit was incorporated in the year 1991 by M/s. Kwality Dyeing and Bleaching and obtained a Consent Order No.12121, dated 27.01.1995 and in 1996 the plant became a member of the Common Effluent Treatment Plant (for short 'CETP') with a share holding of 3,00,000 litres and accordingly plant and machinery were installed.

In the year 2003, the said unit applied for Individual Effluent Treatment Plant (for short 'IETP') and from 2003 onwards the unit has installed Zero Liquid Discharge (for short 'ZLD') facilities at a considerable cost of Rs.6.5 crore. The 2nd respondent vide his letter dated 04.08.2013 wrote to Tamil Nadu Electricity Board (for short 'TNEB') to provide additional power supply for the plant's proposed Effluent Treatment Plant, Reverse Osmosis Plant and Multiple Effect Evaporator System.

The applicant contends that the unit has been operational since 2003 with the ZLD system without any violations. The unit has to honour its commitment to its suppliers and achieve its targets. Therefore, the plant has to work all the seven days in the week including Saturdays and Sundays. Only then, the unit will be able to honour its commitment to its bankers and financial institutions.

The applicant herein made representation to the first respondent on 20.01.2013 to permit the applicant to operate on Saturdays and Sundays in view of the maximum daily discharge of 500 KLD vide consent order No. 22914 dated 08.08.2013. Despite all these, the respondents have not passed any orders and hence made out this application.

On hearing the Counsel for applicant and despite sufficient time granted to the respondent 1 and 2, Tamil Nadu Pollution Control Board, to file reply, no reply has been filed. After hearing the counsel for both sides and looking into the averments made in the application, the Tribunal is of the considered opinion that in order to avoid the avoidable delay, the application has to be disposed of by issuing a direction.

From the submissions made, it is quite clear that the applicant who is carrying on dyeing and bleaching unit made a representation on 21.10.2013 seeking permission of the Tamil Nadu Pollution Control Board to operate the ZLD plant on Saturdays and Sundays in view of the commitments made to the customers and to achieve its targets. The Tribunal feels that there is no impediment to issue a direction to the respondents, the Tamil Nadu Pollution Control Board, to consider the representation referred to above and pass suitable orders in accordance with law within a period of 3 weeks herefrom since the representation is already pending for nearly 3 months. The application is disposed of with the above directions.

Indian Medical Association Aurangabad

Vs

The Union of India Ors

Original Application No. 8/2013(WZ)(THC)

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

Keywords: Bio-Medical waste, Maharashtra, Bio-Medical Waste Rules 1998, fees, Notification, Rule 8(3).

Application partly granted

Dated: 22 January 2014

The Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad vide its order dated 1st October 2013 has registered this Application upon transfer of the Writ Petition No.3461 of 2002,. The Application has been mainly filed to challenge the Government of Maharashtra Resolution dated 20th April 2000, stipulating authorization fees under the BioMedical Waste (Management and Handling) Rules 1998, notified under the Environment (Protection) Act 1986, to be paid by the Health Care Institutions.

The Central Government has notified the Bio Medical Waste (Management and Handling) Rules 1998 (hereinafter referred as "BMW Rules") for Environment sound management and handling of the Bio Medical Waste in the country. As per Rule 7 of the BWM Rules 1998, as amended, the State Pollution Control Board was notified as the Prescribed Authority for the enforcement of the provisions of these Rules. Under Rule 8 of the BMW Rules, as per Sub-clause (3), every application in form (1) for grant of authorization shall be accompanied by fees as may be prescribed by the Government of State or Union Territory. State Government of Maharashtra has issued the impugned Notification dated 20th April 2000 under these provisions of the Rules which is under challenge in the present application.

The Applicants submit that the reference of the Levy of Fees in Clause (3) of Rule 8 of BMW Rules is outside the power, jurisdiction and authority of the Respondents. The Applicants further state that the Environment (Protection) Act 1986 and the provisions there under do not authorize the Respondents to levy the fees and therefore, the Applicants further state that purported empowerment under Rule 8(3) of the BMW Rules to prescribe fees is ultra virus the Statute and Rule making powers of the Respondents. The Applicants submit that Environment Department, Government of Maharashtra had earlier stipulated the Fees under Rule 8(3) of the BMW Rules vide the Government Resolution dated 9th March 1999 which have been subsequently revised vide the impugned Government Resolution. The Applicants further claim that they have made representation to the State Government clearly mentioning that there is abnormal increase in the fees for smaller hospitals and the fees are reduced for the larger

hospitals. The Applicants further submit that there is no special benefit, service or privilege to the Medical practitioners/professionals wanting the increase in the fees and rendition of services and there is no rational under-laying in charging of high fees for BMW authorization.

The Applicants pray for the following:

1. It be declared that impugned rule 8(2) of the BMW Rules purportedly framed under the provisions of sections 6, 8 and 25 of the Environment (Protection) Act, 1984 is ultravires to the Environment (Protection) Act, 1986 and the same be quashed and set aside as ultravires constitution, statute and illegal and void and that the same is unenforceable and still born.

2. It be declared that change in criteria of fees structure and the quantum of levy of fees made under impugned Government Resolution dated 20-4-2000 bearing No.ENV/2000/280/ADM No.20/TAN KA 3 are ultravires the constitution of India and ultravires to the Environment Act & the BMW Rules and are illegal and void.

3. By issue of writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari, the impugned Government Resolution dated 20-4-2000 bearing No.ENV/2000/280/ ADM No.20/TAN KA 3 be quashed and set aside and be declared as ultravires the Constitution of India, ultravires the Environment Act & Rules. It is unenforceable, stillborn, illegal, and void.

On perusal of the records and also submissions made by MoEF and MPCB and also, the communication from the Applicants' organization that the issue is now settled, the Tribunal is required to see whether, in fact Law allows the authority to charge the authorization fees and also contention raised that the Bio Medical Waste is not a hazardous waste will have to be considered.

The Principal Bench, National Green Tribunal in its Judgment delivered in the Application No. 63/2012 had already clarified the issue whether Bio-medical waste is a hazardous waste and the relevant paras are reproduced for ready reference :

A person who is interested in establishing and operating a plan under entry 7(d) of the Scheduled to the Notification of 2006 and is using an incinerator, alone or along with the landfill, would fall under category 'A' project and therefore, would require Environmental Clearance from MoEF. Bio Medical Waste undisputedly, is a hazardous waste though covered under Rules of 1998, a cumulative reading of the definition of "hazardous substance" under the Act of 1986, "hazardous waste" under Rules 2008 (particularly with reference to the schedule) and the Bio Medical Waste and such treatment facilitate under the Rules of 1998 clearly show that BMW is hazardous in nature "

It is also noted that the Chairman, Central Pollution Control Board had issued directions U/s. 18(1)(b) of Water (Pollution and Control Board) Act 1974 to all State Pollution Control Boards vide letter No.B-29012/1/2012/ESS/1540 dated 4-6-2012, to consider the Health Care Establishment (as defined in Bio Medical Waste Rules) as Red category activity under provisions of the Water (Pollution and Control Board) Act 1974 and Air (Pollution and Control Board) Act 1981 and to bring them under consent regime. The Counsel for MPCB made

statement on instructions that MPCB has started granting separate consent to the Health Care Establishments under the provisions of Water and Air Act. It is to be noted that the SPCB charge separate consent fees for the consent under the Water Act and Air Act 1981. The Health Care Establishment also needs an authorization under the BMW Rules 1998 by payment of authorization fees. Considering the above facts, the Tribunal is of the considered opinion that this matter needs to be reviewed by the MoEF for bringing uniformity in approach of the concerned Authorities and avoid double financial burden in view of levy of above two different fees.

Accordingly the MoEF is directed to take a review in the matter and do the needful.

Considering the above, the Application is partly granted to the above extent though allowed to be withdrawn with liberty to the Applicants to approach the proper Forum to challenge the fees for Authorisation under the Bio Medical Waste (M & H) Rules, if so advised. The Application is accordingly disposed off with no costs.

M/s. Ennore Tank Terminal (P) Ltd.

Vs.

V.P.Krishnamurthy and UOI

M.A. No. 286 of 2013 (SZ)

in

Application No. 176 of 2013 (SZ)

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

Keywords: Impleading, Direction, Pipelines, Groundwater.

Application dismissed.

Dated: 24th January, 2014

The applicant has filed the present application for impleading M/s. Ennore Tank Terminal Private Limited as a party respondent in the main application No. 176 of 2013 (SZ).The respondents herein and the applicants in the main application have filed their objections.

The main application i.e. Application No. 176 of 2013 (SZ) is regarding seeking a direction to the respondents to shift the pipelines passing through thedensely populated area in North Chennai and to discontinue immediately the use of these pipelines. It also requests for a direction to these respondents to find a suitable location for laying pipelines in accordance with environmental protection laws and taking into account the preservation of human lives and, flora and fauna and receiving the complaint that the ground water is being contaminated in the said area.

The Tribunal paid its anxious consideration on the submissions put forth and all the materials made available, and opined that the request of the applicant has got to be negatived as the application to become a party respondent is not going to solve the present problem.

The cardinal test to be applied here is that whether the question that arises for consideration could not be effectively adjudicated upon without the presence of the person who seeks impleadment. In the instant case, the presence of the impleading applicant is not necessary to decide the case and on that consideration he is not a necessary party.Thus the application is dismissed.

Dilip Burman

Vs.

Union of India & Ors.

Misc. Application No. 47/2014

Misc. Application No. 52/2014

In

Original Application No. 112/2013 (CZ)

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

Keywords: leave to amend, Illegal mining, SEIAA, EIA notification, Godavarman Case, forest land.

Application dismissed.

Dated: 27 January 2014

This application has been filed praying for leave to amend the Orignal Application.

The original application raised the grievance pertaining to the alleged illegal mining being carried out by the respondent nos. 6, 7 and 8 (Shri Nandkishore Malviya, Shri Rajesh Malviya, The Agroha Infrastructure Dev. Pvt. Ltd, respectively) on Khasara No. 116 in Village Dedtalai, Tahsil Khaknar, Distt. Burhanpur, which the Applicant alleges is a forest land and also prior permission from SEIAA was mandatory in accordance with the EIA notification dated 14.09.06. It was submitted that since there is no such prior permission the mining activity being carried out on Khasra No. 116 in Village Dedtalai, deserves to be stopped immediately.

The applicant prayed for taking on record the report submitted by the Expert Committee constituted as per the orders of the Hon'ble Supreme Court in the matter of T.N. Godavarman vs. Union of India.

The Tribunal has found that Khasra No. 116 in Village Dedtalai is not classified as 'forest land' as per the records produced by the Respondents. The contention of the Applicant that no permission was obtained for granting the mining leases in violation of Forest (Conservation) Act, 1980, is not applicable. With regard to the averments made by the Applicant that the mining leases granted to the Respondent Nos. 6 & 7 are under operation without obtaining EC from the SEIAA in violation of the Supreme Court orders dated 27.02.2012 in Deepak Kumar's case, the record produced before the Tribunal indicate that the mining leases were granted over an area of 2 hectares each to the Respondent No. 6 in 2007 and to the Respondent No. 7 in 2008 for a period of 10 years in Khasra no. 116 and therefore, the Tribunal agrees with the contention of the Respondent Nos. 4 & 5 that no EC is required.

Thus the Original Application stands dismissed but the applicant is granted liberty to move a proper application giving full particulars in respect of any other illegal mining activity being carried out by the Respondents.

Babu Lal Jajoo

Vs

The Chief Secretary, Government of Rajasthan

Original Application No. 121/2013 (CZ)

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

Keywords: Forest, Encroachment, Petition, Directions, Cognizance,

Application Disposed of.

Dated: 29 January 2014

In this application the applicant has alleged that in the Districts Jodhpur, Sikar, Kota, Jaipur, Ajmer, Udaipur, Sawai Madhopur and Bikaner in Rajasthan the total area under forest is 3289351.147 hectares out of which 486718.57 hectares have been encroached upon by various persons and only 14174.7342 hectares forest land has been made free from encroachment .

The Tribunal after going through the averments made in the petition stated that the petition is very general in nature and no general direction can be given in the said matter. In past, the Supreme Court of India in its various orders has issued various directions from time to time and the Central and State Govt. have issued necessary follow up order.

The Tribunal stated that if the petition points out any specific instruments of encroachment and in action on the part of the State Forest Department or the notification of any forest laws or notification pertaining to environment, then the Tribunal will not hesitate to take cognizance of the matter.

Accordingly, the present petition was disposed of, giving liberty to the applicant to raise a fresh specific issue and that the Tribunal shall examine each of those issues on their merits.

M/S. Riverside Resorts Pvt. Ltd.

Vs.

Pimpri Chinchwad Municipal Corporation

APPLICATION NO. 26 OF 2013 (WZ)

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

Keywords: NGT Act, Crematorium construction, River bank, Permission, PCMC, Central Pollution Control Board.

Application disposed of.

Dated: 29 January 2014

This Application is filed under Section 18 (1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010. The application is filed against the construction of a crematorium by Respondent No. 1, Pimpri Chinchwad Municipal Corporation (PCMC).

The applicant contended that no construction activity is permissible on bank of the river. The open plot bearing CTS No.1703, ought to be used only for restrictive purpose as per the specific permissible use, under the directions of the Central Pollution Control Board (CPCB).The permissible use of the open plot in question, does not cover construction of crematorium as such. The PCMC is not at all entitled to raise construction of any permanent structure, least that of the proposed crematorium. The legally imposed restrictions, as enumerated in the Government Circular dated 2.9.1989, cannot be violated by the PCMC. The applicant has further alleged that the PCMC did not obtain necessary permissions from the PWD, MPCB, and the Irrigation Department, prior to the commencement of the work of the crematorium.

The Tribunal stated that if any permanent structure is proposed to be erected within the prohibited area then it may amount to development of the land in question. It will amount to threat to the environment and as such cannot be allowed. Nor it is permissible under the Government circular dated 21.09.1989. In the present case is concerned, construction of the additional crematorium in the area, cannot be termed as'development activity' as such. The crematorium/incineration, does not lead to any production/development of anything new or creation of something that may be needed as development activity for progress of society. As a matter of fact, it is an activity connected with disposal of dead bodies with human dignity. There cannot be any two opinions about the fact that the crematorium/incineration place shall be appropriately maintained to avoid any exposure from attack of stray animals, scavenging birds and like dangers. Still, however, it does not require any extra safeguards by making 'pucca' construction. It would suffice if a temporary construction is done with appropriate channeling work and fixing of adequate number of iron (casted) metal poles to ensure proper fencing around the place of incineration/crematorium ground.

The above application was disposed of giving the following directions to PCMC:

(i) The construction of the retaining/protective walls on the side of the Pavanariver in CTS No. 1703 or land S.no.293 to the extent it is over and above the ground level shall be immediately demolished by the PCMC within period of two (2) weeks, at its own costs. On its failure to do so the PCMC shall be liable to pay amount of Rs.25, 00,000/- (Rs. Twenty five lacs) as cost for restitution work which will be carried out by appointment of a Commissioner.

(ii) The PCMC shall not carry out any construction activity within the blue line area (prohibited zone) to construct the crematorium by raising pucca construction.

(iii) The PCMC may erect poles by fixing them in cement-concrete foundation, keeping a distance of atleast 25 ft. from riverbank and may fix channeling/barbed wire fencing around the poles to secure the proposed place of cremation from danger of entry of stray animals scavenging birds or like birds/animals. The fencing so fixed around the place may be kept open for entry or gate may be fixed at the entry point from western side. There shall be no exit gate fixed or any exit place made available from eastern side site to facilitate the members of the public to go to the river for bathing or undertaking any activity like immersion of the ashes of the dead etc.

(iv)A temporary bathing place/washroom facility may be provided within the place of cremation ground that will be earmarked for the purpose.

(v) The PCMC however may seek appropriate permission from the water resources authority and any other competent authority as providedunder the Law if modern type crematorium with use of electric energy or furnaces charged with biogas, solar energy, or like fuel are to be used in order to avoid air pollution and deforestation.

M/s. Renaissance RTW Asia Pvt Ltd

Vs

The Chairman Tamil Nadu Pollution Control Board Chennai and others

Application No. 411/2013(SZ)

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

Keywords: Dyeing and bleaching unit, Pollution Control Board, CETP, Zero Liquid discharge

Application disposed of with directions

Dated: 22 January 2014

The concerned unit was incorporated in the year 1991 by M/s. Kwality Dyeing and Bleaching and obtained a Consent Order No.12121, dated 27.01.1995 and in 1996 the plant became a member of the Common Effluent Treatment Plant (for short 'CETP') with a share holding of 3,00,000 litres and accordingly plant and machinery were installed.

In the year 2003, the said unit applied for Individual Effluent Treatment Plant (for short 'IETP') and from 2003 onwards the unit has installed Zero Liquid Discharge (for short 'ZLD') facilities at a considerable cost of Rs.6.5 crore. The 2nd respondent vide his letter dated 04.08.2013 wrote to Tamil Nadu Electricity Board (for short 'TNEB') to provide additional power supply for the plant's proposed Effluent Treatment Plant, Reverse Osmosis Plant and Multiple Effect Evaporator System.

The applicant contends that the unit has been operational since 2003 with the ZLD system without any violations. The unit has to honour its commitment to its suppliers and achieve its targets. Therefore, the plant has to work all the seven days in the week including Saturdays and Sundays. Only then, the unit will be able to honour its commitment to its bankers and financial institutions.

The applicant herein made representation to the first respondent on 20.01.2013 to permit the applicant to operate on Saturdays and Sundays in view of the maximum daily discharge of 500 KLD vide consent order No. 22914 dated 08.08.2013. Despite all these, the respondents have not passed any orders and hence made out this application.

On hearing the Counsel for applicant and despite sufficient time granted to the respondent 1 and 2, Tamil Nadu Pollution Control Board, to file reply, no reply has been filed. After hearing the counsel for both sides and looking into the averments made in

the application, the Tribunal is of the considered opinion that in order to avoid the avoidable delay, the application has to be disposed of by issuing a direction.

From the submissions made, it is quite clear that the applicant who is carrying on dyeing and bleaching unit made a representation on 21.10.2013 seeking permission of the Tamil Nadu Pollution Control Board to operate the ZLD plant on Saturdays and Sundays in view of the commitments made to the customers and to achieve its targets. The Tribunal feels that there is no impediment to issue a direction to the respondents, the Tamil Nadu Pollution Control Board, to consider the representation referred to above and pass suitable orders in accordance with law within a period of 3 weeks herefrom since the representation is already pending for nearly 3 months. The application is disposed of with the above directions.

Indian Medical Association Aurangabad

Vs

The Union of India Ors

Original Application No. 8/2013(WZ)(THC)

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

Keywords: Bio-Medical waste, Maharashtra, Bio-Medical Waste Rules 1998, fees, Notification, Rule 8(3).

Application partly granted

Dated: 22 January 2014

The Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad vide its order dated 1st October 2013 has registered this Application upon transfer of the Writ Petition No.3461 of 2002,. The Application has been mainly filed to challenge the Government of Maharashtra Resolution dated 20th April 2000, stipulating authorization fees under the BioMedical Waste (Management and Handling) Rules 1998, notified under the Environment (Protection) Act 1986, to be paid by the Health Care Institutions.

The Central Government has notified the Bio Medical Waste (Management and Handling) Rules 1998 (hereinafter referred as "BMW Rules") for Environment sound management and handling of the Bio Medical Waste in the country. As per Rule 7 of the BWM Rules 1998, as amended, the State Pollution Control Board was notified as the Prescribed Authority for the enforcement of the provisions of these Rules. Under Rule 8 of the BMW Rules, as per Sub-clause (3), every application in form (1) for grant of authorization shall be accompanied by fees as may be prescribed by the Government of State or Union Territory. State Government of Maharashtra has issued the impugned Notification dated 20th April 2000 under these provisions of the Rules which is under challenge in the present application.

The Applicants submit that the reference of the Levy of Fees in Clause (3) of Rule 8 of BMW Rules is outside the power, jurisdiction and authority of the Respondents. The Applicants further state that the Environment (Protection) Act 1986 and the provisions there under do not authorize the Respondents to levy the fees and therefore, the Applicants further state that purported empowerment under Rule 8(3) of the BMW Rules to prescribe fees is ultra virus the Statute and Rule making powers of the Respondents. The Applicants submit that Environment Department, Government of

Maharashtra had earlier stipulated the Fees under Rule 8(3) of the BMW Rules vide the Government Resolution dated 9th March 1999 which have been subsequently revised vide the impugned Government Resolution. The Applicants further claim that they have made representation to the State Government clearly mentioning that there is abnormal increase in the fees for smaller hospitals and the fees are reduced for the larger hospitals. The Applicants further submit that there is no special benefit, service or privilege to the Medical practitioners/professionals wanting the increase in the fees and rendition of services and there is no rational under-laying in charging of high fees for BMW authorization.

The Applicants pray for the following:

1. It be declared that impugned rule 8(2) of the BMW Rules purportedly framed under the provisions of sections 6, 8 and 25 of the Environment (Protection) Act, 1984 is ultravires to the Environment (Protection) Act, 1986 and the same be quashed and set aside as ultravires constitution, statute and illegal and void and that the same is unenforceable and still born.

2. It be declared that change in criteria of fees structure and the quantum of levy of fees made under impugned Government Resolution dated 20-4-2000 bearing No.ENV/ 2000/280/ADM No.20/TAN KA 3 are ultravires the constitution of India and ultravires to the Environment Act & the BMW Rules and are illegal and void.

3. By issue of writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari, the impugned Government Resolution dated 20-4-2000 bearing No.ENV/2000/280/ADM No.20/TAN KA 3 be quashed and set aside and be declared as ultravires the Constitution of India, ultravires the Environment Act & Rules. It is unenforceable, stillborn, illegal, and void.

On perusal of the records and also submissions made by MoEF and MPCB and also, the communication from the Applicants' organization that the issue is now settled, the Tribunal is required to see whether, in fact Law allows the authority to charge the authorization fees and also contention raised that the Bio Medical Waste is not a hazardous waste will have to be considered.

The Principal Bench, National Green Tribunal in its Judgment delivered in the Application No.63/2012 had already clarified the issue whether Bio-medical waste is a hazardous waste and the relevant paras are reproduced for ready reference :

A person who is interested in establishing and operating a plan under entry 7(d) of the Scheduled to the Notification of 2006 and is using an incinerator, alone or along with the landfill, would fall under category 'A' project and therefore, would require Environmental Clearance from MoEF. Bio Medical Waste undisputedly, is a hazardous

waste though covered under Rules of 1998, a cumulative reading of the definition of "hazardous substance" under the Act of 1986, "hazardous waste" under Rules 2008 (particularly with reference to the schedule) and the Bio Medical Waste and such treatment facilitate under the Rules of 1998 clearly show that BMW is hazardous in nature "

It is also noted that the Chairman, Central Pollution Control Board had issued directions U/s. 18(1)(b) of Water (Pollution and Control Board) Act 1974 to all State Pollution Control Boards vide letter No.B-29012/1/2012/ESS/1540 dated 4-6-2012, to consider the Health Care Establishment (as defined in Bio Medical Waste Rules) as Red category activity under provisions of the Water (Pollution and Control Board) Act 1974 and Air (Pollution and Control Board) Act 1981 and to bring them under consent regime. The Counsel for MPCB made statement on instructions that MPCB has started granting separate consent to the Health Care Establishments under the provisions of Water and Air Act. It is to be noted that the SPCB charge separate consent fees for the consent under the Water Act and Air Act 1981. The Health Care Establishment also needs an authorization under the BMW Rules 1998 by payment of authorization fees. Considering the above facts, the Tribunal is of the considered opinion that this matter needs to be reviewed by the MoEF for bringing uniformity in approach of the concerned Authorities and avoid double financial burden in view of levy of above two different fees.

Accordinglythe MoEF is directed to take a review in the matter and do the needful.

Considering the above, the Application is partly granted to the above extent though allowed to be withdrawn with liberty to the Applicants to approach the proper Forum to challenge the fees for Authorisation under the Bio Medical Waste (M & H) Rules, if so advised. The Application is accordingly disposed off with no costs.

M/s. Ennore Tank Terminal (P) Ltd.

Vs.

V.P.Krishnamurthy and UOI

M.A. No. 286 of 2013 (SZ)

in

Application No. 176 of 2013 (SZ)

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

Keywords: Impleading, Direction, Pipelines, Groundwater.

Application dismissed.

Dated: 24th January, 2014

The applicant has filed the present application for impleading M/s. Ennore Tank Terminal Private Limited as a party respondent in the main application No. 176 of 2013 (SZ).The respondents herein and the applicants in the main application have filed their objections.

The main application i.e. Application No. 176 of 2013 (SZ) is regarding seeking a direction to the respondents to shift the pipelines passing through thedensely populated area in North Chennai and to discontinue immediately the use of these pipelines. It also requests for a direction to these respondents to find a suitable location for laying pipelines in accordance with environmental protection laws and taking into account the preservation of human lives and, flora and fauna and receiving the complaint that the ground water is being contaminated in the said area.

The Tribunal paid its anxious consideration on the submissions put forth and all the materials made available, and opined that the request of the applicant has got to be negatived as the application to become a party respondent is not going to solve the present problem.

The cardinal test to be applied here is that whether the question that arises for consideration could not be effectively adjudicated upon without the presence of the person who seeks impleadment. In the instant case, the presence of the impleading applicant is not necessary to decide the case and on that consideration he is not a necessary party.Thus the application is dismissed.

Dilip Burman

Vs.

Union of India & Ors.

Misc. Application No. 47/2014

Misc. Application No. 52/2014

In

Original Application No. 112/2013 (CZ)

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

Keywords: leave to amend, Illegal mining, SEIAA, EIA notification, Godavarman Case, forest land.

Application dismissed.

Dated: 27 January 2014

This application has been filed praying for leave to amend the Orignal Application.

The original application raised the grievance pertaining to the alleged illegal mining being carried out by the respondent nos. 6, 7 and 8 (Shri Nandkishore Malviya, Shri Rajesh Malviya, The Agroha Infrastructure Dev. Pvt. Ltd, respectively) on Khasara No. 116 in Village Dedtalai, Tahsil Khaknar, Distt. Burhanpur, which the Applicant alleges is a forest land and also prior permission from SEIAA was mandatory in accordance with the EIA notification dated 14.09.06. It was submitted that since there is no such prior permission the mining activity being carried out on Khasra No. 116 in Village Dedtalai, deserves to be stopped immediately.

The applicant prayed for taking on record the report submitted by the Expert Committee constituted as per the orders of the Hon'ble Supreme Court in the matter of T.N. Godavarman vs. Union of India.

The Tribunal has found that Khasra No. 116 in Village Dedtalai is not classified as 'forest land' as per the records produced by the Respondents. The contention of the Applicant that no permission was obtained for granting the mining leases in violation of Forest (Conservation) Act, 1980, is not applicable. With regard to the averments made by the Applicant that the mining leases granted to the Respondent Nos. 6 & 7 are under operation without obtaining EC from the SEIAA in violation of the Supreme Court orders dated 27.02.2012 in Deepak Kumar's case, the record produced before the

Tribunal indicate that the mining leases were granted over an area of 2 hectares each to the Respondent No. 6 in 2007 and to the Respondent No. 7 in 2008 for a period of 10 years in Khasra no. 116 and therefore, the Tribunal agrees with the contention of the Respondent Nos. 4 & 5 that no EC is required.

Thus the Original Application stands dismissed but the applicant is granted liberty to move a proper application giving full particulars in respect of any other illegal mining activity being carried out by the Respondents.

Babu Lal Jajoo

Vs

The Chief Secretary, Government of Rajasthan

Original Application No. 121/2013 (CZ)

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

Keywords: Forest, Encroachment, Petition, Directions, Cognizance,

Application Disposed of.

Dated: 29 January 2014

In this application the applicant has alleged that in the Districts Jodhpur, Sikar, Kota, Jaipur, Ajmer, Udaipur, Sawai Madhopur and Bikaner in Rajasthan the total area under forest is 3289351.147 hectares out of which 486718.57 hectares have been encroached upon by various persons and only 14174.7342 hectares forest land has been made free from encroachment .

The Tribunal after going through the averments made in the petition stated that the petition is very general in nature and no general direction can be given in the said matter. In past, the Supreme Court of India in its various orders has issued various directions from time to time and the Central and State Govt. have issued necessary follow up order.

The Tribunal stated that if the petition points out any specific instruments of encroachment and in action on the part of the State Forest Department or the notification of any forest laws or notification pertaining to environment, then the Tribunal will not hesitate to take cognizance of the matter.

Accordingly, the present petition was disposed of, giving liberty to the applicant to raise a fresh specific issue and that the Tribunal shall examine each of those issues on their merits.

M/S. Riverside Resorts Pvt. Ltd.

Vs.

Pimpri Chinchwad Municipal Corporation

APPLICATION NO. 26 OF 2013 (WZ)

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

Keywords: NGT Act, Crematorium construction, River bank, Permission, PCMC, Central Pollution Control Board.

Application disposed of.

Dated: 29 January 2014

This Application is filed under Section 18 (1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010. The application is filed against the construction of a crematorium by Respondent No. 1, Pimpri Chinchwad Municipal Corporation (PCMC).

The applicant contended that no construction activity is permissible on bank of the river. The open plot bearing CTS No.1703, ought to be used only for restrictive purpose as per the specific permissible use, under the directions of the Central Pollution Control Board (CPCB).The permissible use of the open plot in question, does not cover construction of crematorium as such. The PCMC is not at all entitled to raise construction of any permanent structure, least that of the proposed crematorium. The legally imposed restrictions, as enumerated in the Government Circular dated 2.9.1989, cannot be violated by the PCMC. The applicant has further alleged that the PCMC did not obtain necessary permissions from the PWD, MPCB, and the Irrigation Department, prior to the commencement of the work of the crematorium.

The Tribunal stated that if any permanent structure is proposed to be erected within the prohibited area then it may amount to development of the land in question. It will amount to threat to the environment and as such cannot be allowed. Nor it is permissible under the Government circular dated 21.09.1989. In the present case is concerned, construction of the additional crematorium in the area, cannot be termed as'development activity' as such. The crematorium/incineration, does not lead to any production/development of anything new or creation of something that may be needed as development activity for progress of society. As a matter of fact, it is an activity connected with disposal of dead bodies with human dignity. There cannot be any two opinions about the fact that the crematorium/incineration place shall be appropriately maintained to avoid any exposure from attack of stray animals, scavenging birds and like dangers. Still, however, it does not require any extra safeguards by making 'pucca'

construction. It would suffice if a temporary construction is done with appropriate channeling work and fixing of adequate number of iron (casted) metal poles to ensure proper fencing around the place of incineration/crematorium ground.

The above application was disposed of giving the following directions to PCMC:

(i) The construction of the retaining/protective walls on the side of the Pavanariver in CTS No.1703 or land S.no.293 to the extent it is over and above the ground level shall be immediately demolished by the PCMC within period of two (2) weeks, at its own costs. On its failure to do so the PCMC shall be liable to pay amount of Rs.25, 00,000/- (Rs. Twenty five lacs) as cost for restitution work which will be carried out by appointment of a Commissioner.

(ii) The PCMC shall not carry out any construction activity within the blue line area (prohibited zone) to construct the crematorium by raising pucca construction.

(iii) The PCMC may erect poles by fixing them in cement-concrete foundation, keeping a distance of atleast 25 ft. from riverbank and may fix channeling/barbed wire fencing around the poles to secure the proposed place of cremation from danger of entry of stray animals scavenging birds or like birds/animals. The fencing so fixed around the place may be kept open for entry or gate may be fixed at the entry point from western side. There shall be no exit gate fixed or any exit place made available from eastern side site to facilitate the members of the public to go to the river for bathing or undertaking any activity like immersion of the ashes of the dead etc.

(iv)A temporary bathing place/washroom facility may be provided within the place of cremation ground that will be earmarked for the purpose.

(v) The PCMC however may seek appropriate permission from the water resources authority and any other competent authority as provided under the Law if modern type crematorium with use of electric energy or furnaces charged with biogas, solar energy, or like fuel are to be used in order to avoid air pollution and deforestation.

Jalindar Piraji Dhanwate

Vs.

Shri Nageen Chandra Bansal

Miscellaneous Application No. 61/2014

In

Original Application No.137/2013 (CZ)

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

Keywords: Mining Lease, Grant, Stone Crusher, Khandwa District, Forestland

Application Disposed of.

Dated: 5th February, 2014

This application has been filed by the Applicant questioning the grant of mining lease and / or establishment of Stone Crusher by the Respondent No. 1, 2 & 3 on separate pieces of land in Khandwa District. It is alleged that the Respondent No. 1 has been granted a mining lease over an extent of 10.470 hectares in Khasra No. 302 in Village Bhavsinghpura, Tahsiland District Khandwa for a period of 10 years with effect from 25.02.2009. It is alleged that the entire land in Khasra No. 302 was recorded in the revenue records since 1973-74 as 'Chhote Bade JhadKa Jungle' as such it is alleged that with the coming into force of the Forest Conservation Act, 1980 the aforesaid Khasra No. 302 being recorded as 'Forest' no non forest activity is permissible in Khasra No. 302.

The respondent has contended that the land in question is not recorded as 'Chhote Bade JhadKa Jungle' and that as per the revenue record of the year 1985-86 filed before us as Annexure (A-3) it is recorded as 'Ghaas' with the remark 'CharaiKeLiyeSurakshit'.

The disputed question of fact is that the record has been tampered with, the matter needs to be investigated and the issues pertaining to the status of the land, its character as well as the ownership on the two respective dates of 25.10.1980 and January, 1997 have to be enquired into as also on the date of the allotment of mining lease on 25.02.2009. If there has been any change in the entries post the aforesaid two dates it also requires to be enquired into whether it has been done in accordance with the law or not. Based upon the aforesaid findings the District Collector, Khandwa shall verify record, conduct enquiry and take a decision with regard to the validity of the allotment of mining lease as to whether it is in accordance with law after affording opportunity of being heard to both the sides and also by allowing production of any evidence filed with affidavit of the parties in support of their respective claim.

The second dispute has been raised with respect to the granting of mining lease to the Respondent No. 2 over an extent of 2.5 hectares of land out of Khasra No. 302 in Village Bhavsinghpura on 16.12.2007. Since the land is the same, the same question which has been highlighted above in so far as granting of mining lease to the Respondent No. 1 is concerned, shall also be investigated in this case also and enquired into by the District Collector and findings recorded after affording reasonable opportunity of hearing to all the concerned parties.

Thus the above application was disposed of with direction to the District Collector, Khandwa to investigate and enquire into the factual situation as has been alleged by both the parties and arrive at a conclusion based upon the correct position of the revenue record and after affording opportunity to both sides and accordingly either permit or cancel the mining leases in accordance with law. The District Collector, Khandwa has been directed to decide the aforesaid issue on or before 31st May, 2014.

The Registrar was also directed to send duly attested photocopies of the pleadings as well as the documents filed by both the parties before this Tribunal to the District Collector, Khandwa. In case the District Collector, Khandwa finds any of the party having tampered with or manipulated the record, he shall initiate proceedings for prosecution in accordance with law against the people responsible.And the parties were directed to appear with a certified copy of this order before the District Collector, Khandwa on 24.02.2014. The Registrar shall ensure the transmission of the record as directed above so as to reach the office of the District Collector, Khandwa before 21.02.2014.

The decision taken by the District Collector, Khandwa along with consequential orders shall be submitted to the Tribunal by the District Collector, Khandwa and on receipt of the same, the same by the Registrar, shall be brought to the notice of the Tribunal by listing the matter for compliance on 02.07.2014.

The Misc. Application No. 61/2014 that was filed on behalf of the Respondent No. 1 & 2 for taking on record the additional submissions was considered and disposed of.

M/s. Greetings Colour Processors

Vs

The Appellate Authority, Tamil Nadu Pollution Control

APPEAL No.55 of 2013 (SZ)

against

Order dated 28.06.2013 in Appeal Nos. 12 and 13 of 2011

of the Appellate Authority, Tamil Nadu Pollution Control

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

Keywords: Dying Unit, Consent Order, Consent, Tamil Nadu Pollution Control Board, Water Act, Air Act

Appeal disposed of.

Dated: 5th February, 2014

This appeal has been filed by the appellant herein against the order dated 28.06.2013 in Appeal Nos. 12 and 13 of 2013 of the Appellate Authority, Tamil Nadu Pollution Control, Chennai (for short 'Appellate Authority') wherein the Appellate Authority had set aside the orders dated 28.06.2013 passed by the Tamil Nadu Pollution Control Board (for short 'the Board') under section 28 of the Water(Prevention and Control of Pollution) Act, 1974 (for short 'Water Act, 1974) and section 31 of the (Air Prevention and Control of Pollution) Act, 1981 (for short Air Act, 1981) and dismissed the appeals.

The facts of the case are:

The appellant has been running a dyeing unit in Maniyakaranpalayam, Nallur village, Vijayapuram Post in Tiruppur District since 1995 with the name and style of 'M/s. Greetings Process' and has obtained necessary consent order under Water Act, 1974 and Air Act, 1981 from the Board for the capacity of 150 kilolitre per day (KLD). Subsequently, the appellant changed the name of the unit as M/s. Greetings Colour Processors on 11.11.2012 and the appellant has been paying the consent fees every year. The unit installed an individual effluent treatment plant (ETP) in the year 1998 to abate water pollution.

As per the directions of the Hon'ble Supreme Court of India in Vellore Citizen Welfare Forum Vs. Union of India reported in 1996(5) SCC, 647, the Hon'ble High Court of Madras in W.P. No. 1649 of 1996 inter alia issued directions to all the dyeing and bleaching units to prove their case. Based on that the appellant has installed ETP system with sludge drying beds from the trail of the unit itself.

Based on the Writ Petition No. 21791 of 2003 filed by the agriculturists in the year 2005, the Hon'ble High Court of Madras inter alia directed all the dyeing and bleaching units to achieve Zero Liquid Discharge (ZLD) by installing RO and Multiple Evaporation System. The appellant is permanent member of M/s. Eastern Common Effluent Treatment Plant (for short 'CETP') which achieved ZLD and is in operation now. As on date, the appellant's dyeing unit is a ZLD unit. The appellant has been running a dyeing unit in a rental premises at S.F. No. 159/2, Maniyakaranpalayam, Nallur Village, Vijayapuram Post in Tiruppur District. The land owner insisted the appellant to vacate the premises for his personal use and therefore, the appellant herein had purchased a piece of land measuring an extent of 6.90 acres in S.F. Nos. 35, 36/1, 2 and 37 of Muthapalaiyam Village, Ponnapuram, Tiruppur District for establishing a dyeing unit. The appellant has laid pipelines to carry the treated and untreated water from the proposed site to M/s. Eastern CETP to achieve ZLD and the proposed site is nearby M/s. Eastern CETP. The appellant submitted an application before the 2nd respondent herein for shifting the dyeing unit from S.F. No. 159/2, Maniyakaranpalayam, Nallur Village, Vijayapuram, Tiruppur District to the appellant's own land which is situate nearby the CETP in S.F. No. 35,36/1,2 and 37, Muthaliapalayam Village, Ponnapuram, Tiruppur District and the same was rejected by the 3rd respondent on 02.03.2011 on the ground that the proposed shifting site is located within 1 km from River Noyyal thus attracting G.O. Ms. No. 213, Environment and Forests Department dated 30.03.1989 and G.O. Ms. No. 127 dated 08..05.1998 of the State of Tamil Nadu. Challenging the same, the appellant herein had preferred the Appeal No. 12 of 2011 under section 28 of the Water Act, 1974 and under section 31 of the Air Act, 1981 before the 1st respondent, Appellate Authority and the appeals were dismissed by the impugned order dated 28.06.2013 of the said Appellate Authority.

The appellant unit namely M/s. Greetings Process at S.F. No. 159/2, Maniyakaranpalayam, Nallur Village, Vijayapuram, Tiruppur District had obtained the consent from the Board under the Water Act, 1974 and Air Act, 1981 for dyeing of 25 T/m hosiery cloth and to generate 15 KLD dye bath and 135 KLD other stream effluent. While obtaining the consent, the unit was an IETP unit. Later, an amendment for change of name from 'Greetings Process' to 'Greetings Colour Processors' was issued to the unit vide Board's Proceedings dated 11.11.2002. Subsequently, consent to the appellant's unit has not been renewed due to non- installation of ZLD.

Later as directed by the Hon'ble High Court of Madras in its various directives issued in W.P. No. 29791 of 2003, some of the individual bleaching and dyeing units in the areas have decided to establish a CETP so as to achieve ZLD and one such CETP is M/s. Eastern Common Effluent Treatment Plant Ltd., and the appellant's unit became the member of the said CETP. The said CETP has installed ZLD system and obtained consent to operate from the Board.

Thereafter the appellant's unit became a member of M/s. Eastern Common Effluent Treatment Plant and was permitted by the CETP to discharge 500 KLD of trade effluent to the CETP for treatment and disposal. Then theappellant applied for the consent of the Board under Water Act, 1974 and Air Act, 1981 for the proposed activities of carrying out of 50 T/m dyeing hosiery fabric and to generate 150 KLD of trade effluent in a new location at S.F. No. 35, 36/1, 2 and 37,

Muthalipalayam Village, Ponnapuram, Tiruppur District. As per the certificate obtained by the appellant's unit from Coimbatore Institute of Technology, Coimbatore dated 15.12.2010 along with its application, it was observed that the unit's proposed new location is within 1 km from River Noyyal and the application received from M/s. Greetings Colour Processors, S.F. No. 35, 36/1, 2 and 37 of Mudalipalayam Village, Ponnapuram, Tiruppur District was rejected vide letter No. F. No. TPR 2755/DEE/TNPC Board/TPR/2011, dated 02.03.2011 for the following reason:

"The unit is proposed to carry out the dyeing activity and the proposed site is located within 1 km from River Noyyal, thus attracting G.O.Ms. No. 213, Environment and Forests Department/EC3 dated 30.03.1989 and the said Government order prohibits dyeing units locating within 1 km from the specified water sources as mentioned in the Government order."

The appellant, who has been carrying on his unit by obtaining the necessary consent from the 3rd respondent from 1998 onwards and has joined as a unit of Eastern CETP which has achieved ZLD. There arose the necessity for the appellant to shift his unit from the existing rental premises to his own premises. Shifting of an existing unit by the appellant to a new location cannot be construed as a new industry since the appellant is shifting the unit to a new location. In the instant case, it is noticed that the appellant unit is a member of Eastern CETP which has achieved ZLD. The case of the appellant is that, it is feasible to lay pipelines to carry the treated and untreated water to and from Eastern CETP through the proposed site is not denied by the respondent/Tamil Nadu Pollution Control Board. Under such circumstances, it would be highly unreasonable to refuse the grant of consent to the appellant on unsustainable grounds for shifting of an existing industry that has been functioning with the consent from the Tamil Nadu Pollution Control Board allalong and also achieved ZLD in the new location.

Upon all the facts stated above the Tribunal directed the 3rd Respondent i.e. The District Environmental Engineer, Tamil Nadu Pollution Control Board to issue consent order for shifting the dying unit of the appellant from S.F. No. 159/2 of Maniyakaranpalayam, Nallur Village, Vijayapuram, Tiruppur District to the appellant's own land which is situated near the CETP at S.F.No.35,36/1, 2 and 37, Muthalipalayam Village, Ponnapuram, Tiruppur District subject to the following conditions:

1. Shifting is to be done under the supervision of the respondent/Board.

2. The appellant, after shifting to the new location, shall not increase the discharge of the trade effluent over and above the quantity for which the consent was given by the respondent/Tamil Nadu Pollution Control Board.

3. The appellant shall not change the nature of the industry or vary or alter the operation and process.

4. The appellant after shifting to the new location in S.F.No.35,36/1, 2 and 37, Muthalipalayam Village, Ponnapuram, Tiruppur District shall not use the premises in S.F. No. 159/2 of

Maniyakaranpalayam, Nallur Village, Vijayapuram, Tiruppur District for running a dyeing unit or any other industry or process.

Court on its own Motion

Vs.

State of Himachal Pradesh

APPLICATION NO. 237 (THC)/2013

(CWPIL No.15 of 2010)

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. U.D. Salvi, Dr. D.K. Agrawal, Mr. Bikram Singh Sajwan.

Keywords: Pollution, Himachal Pradesh, Rohtang Pass, Directions.

Application disposed of with directions.

Dated: 6th February, 2014

This application has been filed regarding the considerable increase in vehicular traffic in Himachal Pradesh, which has resulted in blackening/browning of snow cover in mountains, especially emissions of unburnt hydrocarbon and carbon soot. The Case focuses especially on the Kullu-Manali and Rohtang Pass areas, which have been under pressure of toursim and local vehicles.

The air pollution problem has aggravated in the recent years due to tremendous increase in the number of trucks and other vehicles for tourists and local population, plied on these routes. Another serious impact of theincreased vehicular traffic on these areas is on the wild animals living along the traffic routes. These include walking or running away from vehicles. Many wild animals including birds show "high response" to vehicles. Increase in number of vehicles coincides with decrease in walking activity and vice versa. The vehicles interfere with the animal activity and their mobility in particular. In some sections, even survival of the animals is affected. Curiosity on the part of tourists to approach the animals too closely is another additional factor interfering with their other activities such as searching for prey, mating and seeking cover. Vehicular noise may disturb many animals in their routine activities including breeding behavior, which may affect the sustenance of ecosystem.

Based upon a study conducted by the Indian Institute of Forest Management, Bhopal, the economic value of the ecosystem services provided by forests of Himachal Pradesh is Rs. 1,06,664 crores per annum in terms of direct and indirect value. Therefore, degradation of forests in Himachal Pradesh is a worrisome factor in the highly sensitive ecological zones in the State.

In addition, the Constitution through its various Articles mandates the State to protect and improve the environment and safeguard the forest and wildlife in the country. Article 21 of the Constitution of India that provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Right to

decent environment, as envisaged under Article 21 of the Constitution of India also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry. Right to clean environment is a guaranteed fundamental right.

In light of the above-mentioned facts, the Tribunal issued various directions:

The State Government and all authorities concerned shall take immediate and effective measures for reforestation of the area of Kothi, Gulaba and Marhi. Reforestation shall be taken up as a top priority project and all possible efforts would be made for commencing and completing the plantation in this area.

(ii) As a first step in this direction, the State Government agencies should identify areas that can be brought under reforestation, using latest available remote sensing data coupled with ground verification by the Forest Department. (This exercise should be completed in the first three months).

(iii) Such species may be used for afforestation as the forest authorities in the State of Himachal Pradesh consider appropriate but it isrecommended that up to 1000-metre height, coniferous species of chir, and broad-leaved species of siris, tun, behul, shisham, ritha, tut, behera, etc. should be planted. At a height of 1000 to 2000 meters, coniferous species of kail, deodar, chir, and broad-leaved species of poplar, willow, ohi, robinia, drek, toon, behmi, chulli, Walnut, khirik and oak while at a height ranging from 2000 to 3000 metres, coniferous species of deodar, kail, fir, spruce, taxus and broad-leaved species of Maple, Ash, bhojpatra, oak, horse chestnut, alder, robinia, poplar, walnut may be planted.

(iv) It is difficult to undertake plantation at a height of 2000 meters and above. The seedlings at this height are exposed to several biotic pressures of cattle, tourists and villagers, who trample the young saplings. Therefore, it is required that all the plantations must use fairly tall seedlings which have been grown and looked after in nurseries at appropriate height at least for a period of two to three years, having similar climatic conditions such that they could adjust or adapt to the harsh climatic conditions. Considering the harsh climatic conditions at higher elevations, it is necessary to provideappropriately designed canopy cover to the saplings in the first two to three years whereafter they should be planted at the defined region by providing due care and protection, while being appropriately maintained and looked after at least for a period of ten years.

(v) Keeping in view the ecological and geological fragility of the area, it is directed that all forestry programmes must be preceded by soil and moisture conservation works including bio-engineering measures in steep hills. A number of plants, particularly chir and kail have thick mat of needles on forest floor that makes the forests vulnerable to frequent fire hazards. Thus, the Government should take all precautionary measures and provide a specific scheme for forecasting, controlling, and preventing the forest fires.

(vi) The State Government shall provide due regulatory mechanism in this regard without any further delay and shall notify and implement the same in all parts. The plantation programme must include at least 50% broad leaved species, as stated above. Joint forest management programme should be promoted by involving the local villagers by planting high conservation value medicinal plants like atish, kutki, kuth, etc.

(viii) Preparing and declaring a working plan by the Government is the sine qua non of scientific forestry and so shall it be prepared and declared.

The Tribunal also said that the directions given above are essential and are required to be obeyed by all concerned in the interest of sustainable development and protection of the ecological and eco-sensitive area of Rohtang Pass.

The Tribunal also gave further directions which would be in consonance with the Constitutional mandate contained under Articles 21, 48-A and 51-A (g) and are the very essence of the Act of 1986.

(i) The Tribunal stated that it was informed by the State Government that it had created 'Green Tax Fund' in order to ensure proper development for protecting theenvironment in all its spheres. The persons who are travelling by public or private vehicles to the glacier of Rohtang Pass must pay a very reasonable sum of money as contribution on the principle of 'Polluter Pays'. Thus, the Tribunal directs that every truck, bus and vehicle of any kind which passes through the route ahead of Vashishta and Rohtang Pass shall be liable to pay a sum of Rs.100/- for heavy vehicles and Rs.50/- for light vehicles. The passengers travelling through the CNG or electric buses to Rohtang Pass as tourists shall be liable to pay a sum of Rs.20/- per head, which shall form part of the ticket for the bus.

(ii) The funds so collected shall be kept by the State Government under the existing head of Green Tax Fund. The amounts so collected shall be used exclusively for development of this area i.e. from Vashishta to Rohtang Pass and five kilometers ahead of Rohtang Pass. This amount should also be used for prevention and control of pollution, development of ecologically friendly market at Marhi, for restoring the vegetative cover and afforestation. The funds shall not be used for any other purpose whatsoever.

(iii) The operational vehicles like those of BRO/Army would be exempted from paying the Green Tax.

(iv) The GREF i.e. BRO is hereby directed to ensure that the road remains in a very good motorable condition round the year.

(v) The State Government, particularly the Department of Tourism, shall immediately take

steps for collection and disposal of MSW on the entire route from Vashishta to Rohtang Pass.

(vi) To start with, the State Government shall provide all requisite funds for commencement and progress of the various projects that are to be commenced by it under these directions. These funds shall be provided on top priority basis.

(vii) The State Government and all its authorities, municipalities and all private organizations are directed to fully co-operate, co-ordinate and ensure that these directions are complied with, without default or demur.

(viii) The Tribunal hereby constitute a Monitoring Committee consisting of Secretary (Environment), State Govt. of Himachal Pradesh; Conservator of Forests concerned of Kullu Division; Director (Tourism), Govt. of Himachal Pradesh; Environmental Engineer, Himachal Pradesh Pollution Control Board; and an eminent environmentalist from G.B. Pant Institute of Himalayan Environment and Development, Kosi-Katarmal, Almora.

This Committee shall tour the area of Rohtang Pass and en route and ensure that the directions contained in this order are carried out in true spirit and substance. If any department, person or authority is found to be erring in such matter, then it shall bring the same to the notice of the Tribunal for appropriate action.

(ix) The above Monitoring Committee shall submit quarterly reports to the NGT, clearly stating non-compliances with the directions, if any, the persons responsible for such defaults and also suggestions, if any, as it may consider appropriate in order to make further improvements and catalyze the prevention and control of pollution in that area more effectively.

(x) The State Government of Himachal Pradesh has already taken a definite stand and made a statement that it shall follow the 'Madhya Pradesh Model' for prevention and control of forest fires. Thus, it is directed that an extra effort should be made by the State Government of Himachal Pradesh, for ensuring prevention andcontrol of forest fires, particularly in the Himalayan region, as they are the direct source of deposition of Black Carbon and suspended particulate matter on the glacier.

(xi) The authorities concerned of the State Government of Himachal Pradesh including the Departments of Forest and Agriculture would ensure that no remnants of crops in agricultural fields are burnt, as this also results in deposits of Black Carbon and suspended particulate matter on the glacier.

(xii) G.B. Pant Institute of Himalayan Environment and Development, Kosi-Katarmal, Almora, after expiry of six months from the date of passing of this order, shall conduct a study of the glacier of Rohtang Pass in all respects and submit a report to the Tribunal immediately thereafter. The report, inter alia, shall deal with cleanliness, deposits of Black Carbon and suspended particulate matter, ambient air quality, progress in reforestation in the stated area and collection and disposal of municipal solid waste at, around and en route Marhi. The report shall specifically deal with comparative analysis of vehicular pollution, pre and post this order.

xiii) Preferably, no horses shall be permitted at Rohtang Pass. However, if the authorities and the committee concerned are of the view that horses should be permitted at Rohtang Pass in the

interest of healthy tourism, then the authorities and the committee shall ensure that all the horsemen permitted to ply their horses at Rohtang Pass are permit holders. These permits will be issued by the representative of the committee concerned and the Deputy Commissioner, Kullu. The conditions of the permit should clearly state that horse dung be instantaneously removed/lifted and stored appropriately in the bins specifically provided for that purpose. Cleaning of horse dung, MSW and such other waste shall be the responsibility of the staff appointed at Rohtang Pass. In the event of default, the permit issued to such horsemen shall be liable to be cancelled in accordance with law.

In additoon, the Tribunal made it clear that this order does not deal with the rights of the persons engaged in commercial activity at Marhi and en route and granted liberty to all the parties or even to the persons not being a party to this case to move the Tribunal for any clarification or variation of the directions contained in this order.

Mayflower Sakthi Garden Owners' Association

Vs.

State of Tamil Nadu

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

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

M.A.Nos. 69 of 2013(SZ) and 16 of 2014(SZ)

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

Keywords: Writ Petition, Construction activity, Coimbatore, Sewage tank, Health hazard, Tamil Nadu Pollution Control Board

Application disposed of.

Dated: 12 February 2014.

This application has been raised by the applicant/ association i.e. "May Flower Sakthi Garden Owners Association, Coimbatore, State of Tamil Nadu which comprises over 500 persons in a residential colony called Mayflower Sakthi Gardens at Uppiliyapalayam Village, Nanjundapuram, Ramanathapuram at Coimbatore. An area measuring approximately 6 acres bearing S.Nos. 655, 656/2,657 and 658 of Uppiliyapuram village is situated on the side of the colony of the members of the applicant/association. After noticing the commencement of construction activities of a large open sewage tank by the 4th respondent, the applicant/ association raised its objection by way of representation to the Commissioner, Coimbatore Corporation and also to other authorities and also made a request for relocation of the sewage treatment plant (for short 'STP') and also existing pumping station from the immediate vicinity of the residential apartments in order to save the residents from serious health hazards. Despite the same, the construction activities were being undertaken which constrained the applicant/ association to file a Writ Petition.

The writ petition has been directed against the proceedings of the Chairman, Tamil Nadu Pollution Control Board, (for short 'TNPCB') bearing No. MA1/TNPCB/2.13302/2009 dated 13.11.2010 , which has been passed pursuant to the order dated 8.2.2010 passed by the High Court in W. P. No. 6800 of 2009 and issued to the fourth respondent namely the Commissioner/ 4th Respondent herein, Coimbatore Corporation, Coimbatore. The impugned proceeding, after virtually accepting the entire case put forth by the petitioner on merits, has however, proceeded to condone the statutory violations alleged to have been committed by the Municipal Corporation of Coimbatore, the fourth respondent, when such power was clearly absent.

The first Writ Petition was disposed of with the following order:

"As suggested by the learned Advocate General, we direct the TNPCB to consider the matter as per the report submitted by the Committee appointed by this Court in W.P.No. 6800 of 2009 dated 06.10.2009, after hearing the parties and pass orders on merits and in accordance with law within 4 weeks from the date of receipt of copy of this order."

Thereafter the applicant/ association filed a second Writ Petition before the High Court in W.P.No. 6695 of 2010 in the month of March 2010 for the following relief:

"issue a writ of mandamus or any other writ or order or direction in the nature of writ of mandamus forbearing the respondents, their officers, employees, subordinates, men, agents or any other person(s) or entry(ies) claiming or acting under the respondents from in any manner proceeding with the construction activities of the proposed open sewage treatment plant at S.No. 655,656/2, 657, 658 Uppiliyapalayam Village, Nanjundapuram, Coimbatore, which is presently situated within the immediate vicinity of the petitioner's residential colony."

Later the applicant/ association filed a Writ Petition, W.P. No. 3561 of 2011 which is presently the Application No. 34 of 2013 (SZ) (THC) of this Tribunal. After that during the pendency of the application, the Respondent No. 4 made an application for consent for establishment of STP to the TNPCB, upon which the TNPCB passed the following order:

The pending application filed by the Coimbatore Corporation on 22.04.2010, is returned herewith for resubmission after rectifying the defects therein and conducting the required studies from the stand point of the existing site being used for the STP. The Coimbatore Corporation may submit it revised DPR, layout, design, estimates, etc., as relevant to the project site. Care must be exercised to revise the design suitably so as to achieve greater buffer zone and economy in the use of land by revised design, duly considering the circular format suggested by the TNPCB.

The only grievance ventilated by the applicant/association in all the writ petitions was that the 4th respondent/Corporation was not justified in selecting the site for setting up the STP in the subject site from the environmental point of view. As could be seen from the grounds in the Appeals before the Appellate Authority, the same grounds have already been raised. Hence, no impediment is felt for the applicant/association to raise the same ground before the Appellate Authority. Due to all the above reasons the application was dismissed as not maintainable. However, in view of the facts and circumstances of the case, the Tribunal was satisfied that it was a fit case in which liberty has to be given to the applicant/association to implead as a party to the proceedings in Appeal Nos. 32 and 33 of 2012 pending before the Appellate Authority, Tamil Nadu Pollution Control and raise all contentions both legal and factual before the said authority. The connected Miscellaneous Application Nos. 69 of 2013 (SZ) and 16 of 2014(SZ) were closed.

Shri Vasant Krishnaji VhatkarVs.

Union of India

Originial Application No. 33/2013

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

Keywords: Environment Clearance, Consent Order, Section 26, Mining, Tiger Reserve, Manoli, National Tiger Conservation Authority, wildlife corridor, Sahyadri Tiger Reserve

Application Dismissed.

Dated: 13th February, 2014

The applicant sought two reliefs under this application, first, action under Section 26 of the National Green Tribunal Act 2010 by initiating proceedings against the Ministry of Environment and Forest (Respondent) for non - compliance of order passed by this Tribunal on August 2, 2013 in proceeding of Appeal No.61 of 2012. Second, he further seeks directions against the Respondent to grant Environment Clearance within period of three (3) months for the mining lease as claimed by him in that Appeal.

The Applicant claims that somewhere in 1981, mining lease was granted in his favour over a non-forest area situated in village Manoli, (District Kolhapur). He submitted an Application for grant of Environment Clearance to the MoEF. The Application was processed. The MoEF sought certain clarification from the National Tiger Conservation Authority (NTCA) particularly in respect of distance/location of the Mine from the Tiger Reserve and its impact thereon. The MoEF desired to know whether any part of the mining area comes within the Tiger Reserve or corridor or otherwise and whether the Wild Life Sanctuary/National Park etc affect the mine area. In pursuance to directions of the Supreme Court in S.L.P. No.12351 of 2010, the State of Maharashtra notified Sahyadri Tiger Reserve (STR). The MoEF rejected request of the Applicant by Order dated 16th August 2012 on the ground that the mining block falls in the Tiger Corridor Linking Sahyadri Tiger Reserve (STR) Chandoli National Park and Radhanagari Wild Sanctuary. The Applicant challenged an order dated 16 August 2010 rendered by the MoEF by filing Appeal No.61 of 2012 before the National Green Tribunal, New Delhi. The Appeal was disposed of by consent order dated August 2, 2013. The following order, by consent, was passed on August 2, 2013 in that Appeal:

The said order was passed by way of consent given by both the sides;

1. The Respondent will finalize the proposal regarding the Tiger Conservation Plan, which is submitted by the State Government of Maharashtra, within a period of two months.

2. In case the Tiger Conservation Plan has been disapproved or any adverse observation is made by the Respondent pertaining to the area of the Tiger Conservation Plan which will be

unacceptable to the Appellant, the Appellant is at liberty to make representation to the Respondent within a period of fifteen days after communication of such result in the context of approval or disapproval of the said plan or modification, if any.

3. In case, the Tiger Conservation Plan is approved as submitted by the State Government of Maharashtra and the Respondent comes to the conclusion that the mine area is outside such plan, Corridor or the boundaries of the Sanctuary/Tiger Reserve, the decision may be expeditiously taken and in any case not beyond three months.

Later an order was passed by the Tribunal wherein a team of the Court Commissioner was appointed to visit the place of the Mine and surrounding area including the Tiger Project Site and to submit a Report. The N.T.C.A. was supposed to take independent decision as regards identification of the Corridor as per the order dated August 2, 2013.

The Tiger Conservation Plan (TCP) was ultimately approved. The competent Authority namely, N.T.C.A. held that the proposed mining activity falls within the linkage/corridor of Radhanagari and Chandoli National Park and Radhanagari Wild Life Sanctuary. On such a ground, the Application of Appellant herein was rejected.

However, the appellant has contended that the directions passed by the Tribunal on August 2, 2013, have been breached in as much as the Respondent failed to finalize the TCP (Tiger Conservation Plan) within period of two months from the date of that order. The Applicant further alleges that the TCP was tampered with when it was finalized and thereby the Respondent, particularly D.I.G. (Forest), N.T.C.A. and the concerned authorities have committed an offence of perjury. The Applicant alleges that the Respondent committed willful disobedience of the order dated August 2, 2013. Incidentally, he seeks direction against the Respondent to grant the Environment Clearance in his favour within period of three months.

The core issues involved in this application are:

1. Whether it is established prima facie that the Respondent committed willful disobedience of order dated August 2, 2013 passed by this Tribunal and thereby is liable for prosecution U/s. 26 of the N.G.T. Act 2012?

2. Whether the Tribunal has the authority to direct the Respondent to grant Environment Clearance in favour of the Applicant as sought by him?

According to the Applicant, fraudulent act committed by the concerned authorities of the Respondent by changing the approved plan dated 25-10-2013 and substituted with the another plan prepared at the behest of an official of the NTCA on 8-11-2013 can be taken in to consideration for such action. The Tribunal is not inclined to consider such argument in as much as the issue is as to whether there is, prima facie, non-compliance of the order dated August 2, 2013. When it is found that the said order passed in Appeal No.61 of 2012 is a consent order, it goes without saying that action U/s. 26 of the N.G.T. Act, 2012 is uncalled for. It follows, therefore, that this Tribunal cannot give any direction to the Respondent to issue the Environment Clearance in favour of the Applicant.

In the result, the Application fails and is dismissed without costs.

M/S Kizhakethalackel Rocks

Vs.

Kerala State Level Environment Impact

APPEAL No. 29 OF 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Mr. Justice S. N. Hussain, Dr. D.K. Agrawal and Mr. RanjanChatterjee.

Keywords: Environmental Clearance, Stone Quarrying, SEIAA, Kerala, Granite, 5-Hectare rule, Western Ghats, WGEEP Report.

Application Disposed of.

Dated: 13 February 2014

This Appeal was filed challenging the decision taken by Kerala State Level Environment Impact Assessment Authority (for short 'SEIAA') in its meeting dated 13th December, 2012, more particularly numbered as Item No. KLA/13.05, refusing the grant of Environmental Clearance (for short 'EC') sought for the quarrying project in Survey No. 65/1pt, Kumily Village, PeermadeTaluk, District Idukki, Kerala.

The facts of this case are as follows:

The appellant has been in the business of quarrying and crushing granite stone since the year 1990 and has been continuing the said business in an uninterrupted way till day, with all necessary licenses and sanctions. The appellant pleads that on 19 March 2013 an application for grant of quarrying lease under the Kerala Minor Mineral Concession Rules, 1967 for an area of 1.23.44 hectares of land under its ownership situated in village Kumily was moved after due inspection and survey of the land. Geologists from Idukki forwardedtheir recommendations dated 19 April 2012 for grant of quarrying lease in favour of the appellant to the Director, Department of Mining and Geology, Government of Kerala. Thereafter, Government of Kerala allowed the said application and passed an order dated 5th May, 2013 granting the appellant mining rights over an area of 0.9309 hectares of Patta land comprised in Survey No. 65/1pt of Kumily Village, PeermadeTaluk, Idukki District for a period of 12 years from the date of execution of the quarrying lease, subject to certain conditions; one of them being prior Environment clearance from Ministry of Environment and Forests (for short 'MoEF'). The appellant further states that on 8 November 2012, it had applied for EC to the SEIAA, (first Respondent), with all the required documents. In the wake of this application for securing EC, the appellant states that, the technical presentation of the project proposal along with the impact assessment and management plan was given to the first Respondent.

Later as stated by the appellant the first Respondent was satisfied with the afore said technical presentation as well as impact assessment and management plan but did not respond favourably to the plea for grant of EC. On enquiry, the appellant submits, the first Respondent

Authority expressed its inability to issue EC for the reason that the decision had been taken not to consider and entertain any application for grant of EC in respect of the lands falling in the zones classified as ESZ-I in Madhav Gadgil Committee Report, namely Western Ghats Ecology Expert Panel (hereinafter referred to as 'WGEEP Report') dated 31 August 2011. Further, the appellant submits that the first Respondent explained its inability to consider the application for grant of EC because of the interim Order dated 25 July 2012 passed by this Tribunal in the matter of Goa Foundation &Anr. Vs. Union of India & Ors., (Application No. 26 of 2012).

Additionally, the first Respondent Authority has erroneously interpreted the interim Order dated 25 July 2012 passed by this Tribunal as direction to them not to issue EC for any application falling under ESZ-I classified in the WGEEP Report, when neither the recommendations of WGEEP Report nor interim Order dated 25 July 2013 passed by this Tribunal intends to stop the existing quarrying activities in ESZ-I. Thus, the appellant has submitted that the respondents have acted arbitrarily and illegally in rejecting the application for grant of EC.

The issues raised in this appeal were, firstly, whether the rejection of the proposal for grant of EC was the result of proper application of mind or not. Secondly, what could have been the approach of the regulatory authority in a matter of such kind?

To answer the above questions it needs to be examined whether the first Respondent exercised its jurisdiction as a regulatory authority under Environment Clearance Regulations of 2006 properly or not. The Central Government made it obligatory from date of notification SO No. 1533 (E) dated 14th September, 2006 for every new project or activity of expansion or modernisation of existing project or activity or existing capacity addition with change process and technology listed in the schedule to the said notification, to obtain EC from the Central Government or from the SEIAA.

Additionaly, before the judicial pronouncement in Deepak Kumar's case (supra), no environmental land clearance was required for mining lease of areas less than 5 hectares vide entry 1(a) in schedule to the Environmental Clearance Regulations, 2006.

The honourable apex court in order to curb the mischief of misusing the 5-hectare rule, directed that licenses of mining minerals including other renewable minerals for an area of less than 5 hectares be granted by the States/Union territories only after getting environmental clearance from MoEF/SEIAA.

In the light of this judicial mandate, Kerala State Pollution Control Board granted consent to operate under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 dated 17th September, 2012 to the appellant on the condition that necessary EC for such quarrying work shall be obtained. The appellant, therefore, moved application dated 8 November 2012 in the prescribed form as given in the Form-I at Appendix 1 to the Environmental Clearance Regulations, 2006 to Respondent No. 1.

The Tribunal passed the following order:

a. The impugned decision refusing to grant the EC for the quarrying project of the appellant in survey no. 65/1pt village Kumily, TalukPeermade, District Idukki, Kerala dated 13 December 2012 is set aside.

b. The case is referred back to SEIAA/SEAC, Kerala for fresh consideration of the application for EC moved by the appellant in accordance with law.

c. The appellant shall comply with all such prescribed directions and conditions stipulated by the SEAC/SEIAA in the process of considering the proposals for grant of EC.

d. The application thus stands disposed of with no order as to costs.

Mrs. Prabavathi Muthurama Reddy Chennai

Vs

The Collector, Thiruvallur District, and Ors

R.A. No. 6 of 2013 (SZ)

In

Application No.95 of 2013 (SZ)

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

Keywords: Review, Sand Blasting, Tamil Nadu Pollution Control Board, Consent Order

Application dismissed.

Dated: 14th February, 2014

This application was filed seeking review of an order passed by the Tribunal in Application No. 95 of 2013 (SZ) which was dismissed on 10.10.2013 with findings that the allegations found therein were unfounded and imposition of a cost of Rs.35, 000/-.

The Applicant has contended that the industry owned by the 7th respondent (M/s. Industrial Sandblasting and Painting Works) was carrying on the sand blasting apart from the painting work. Representations were made to the authorities on different occasions, which resulted in the issuance of show-cause notice, by the Tamil Nadu Pollution Control Board to the 7th respondent, but the same was not disposed of. It is true that the Commissioner appointed by the Tribunal on inspection filed a report that the 7th respondent was not carrying on the sand blasting at that time, but mistakenly time was not taken for filing objections on the report. Apart from that, the Board, shown as 2nd respondent issued show-cause notice for which reply was also given, did not culminate in any order. Had these facts been brought to the notice of the Tribunal, the Tribunal would not have dismissed the Application. The learned counsel further added that the 7th respondent is carrying on the sand blasting and even for painting work, the consent needed from the authorities was not obtained. Hence, the order has to be reviewed.

The Tribunal dismissed the review and stated that the order and the next contention that the 7th respondent's unit is carrying on sand blasting without necessary consent from the Board cannot be a reason to review the order made in Application No. 95 of 2013(SZ). There cannot be any impediment for the applicant to seek the remedy if available and if so advised.

Ms. Betty C. Alvares

Vs

The State of Goa Ors.

Misc Application No. 32/2014(WZ)

Judicial and Expert Members: Shri Justice V.R. Kingaonkarv and Dr. Ajay A. Deshpande

Keywords: Common order, maintainability, limitation, Section 14, Writ Jurisdiction of High Court, CRZ

Application dismissed

Date: 14 February 2014

By this common Order, the Tribunal disposed of miscellaneous applications, which raised identical objections regarding maintainability of the main Application. The objections raised in these Applications are twofold. The first objection is that Applicant – Betty Alvares, has no locus standi to file the main Application (Appln.No.53 (THC) of 2012). Secondly, the main Application is barred by limitation and as such, is liable to be dismissed in limine. The objections are raised by contesting Respondents Nos. 8 and 9 (Mr. Santana Jose Pires and MR. John Francisco Pires, respectively) in the Writ Petition No.1 of 2012, Public Interest Litigation (PIL) before the Hon'ble High Court of Bombay Bench at Goa. By order dated October 23, 2012, the Writ Petition came to be transferred to this Tribunal.

What appears from the record is that the Respondent Nos. 8 and 9, challenged locus standi of Betty Alvares to maintain a PIL Writ Petition mainly on the ground that she is not a citizen of India. The Respondents stated that she is legally incompetent to file the petition in the garb of Article 21, because there is no guarantee of any right in her favour under the Constitution of India.

The Tribunal stated:

Article 21 of the Constitution gives guarantee of life to a person. It is not restricted to guarantee of life only to a citizen of India. The Tribunal cannot take a narrow view, to restrict applicability of Article 21 only to a citizen of India. Even assuming that Applicant- Betty Alvares is not the citizen of India. Yes, the Application is maintainable. In fact, the Writ Petition reveals that she had filed other Writ Petitions and Contempt Applications prior to filling of the present Application. The averments in the Application go to show that her complaints were duly inquired and the Authorities had found substance in the complaints, but had not taken affirmative action and therefore, she approached to Hon'ble High Court, in as much as the Respondents were found to have committed blatant violation of the CRZ Regulations. She asserted that the Respondents raised illegal constructions and encroached upon part of

seabeaches, as well as on government properties. She sought demolition of illegal constructions raised by the Respondent Nos. 8 to 21, which allegedly were hoodwinked by the first seven Respondents.

In order to answer to answer the question about locus standi, the Tribunal stated, A plain reading of Section 2(j) will make it manifest that the word 'person' has to be construed in broad sense. It includes 'an individual', whether a national or a person who is not a citizen of India. The Tribunal does not need to go into details of nationality of Betty Alvares. Once it is found that any person can file the proceeding relating to environment dispute, it is understood that the Application of Betty Alvares is maintainable, irrespective of the question of her nationality.

Secondly, the Respondent has claimed that the application is time barred, as it should have been filed within 6 month from the date that cause of action arose. The Respondent also claimed that the applicant had filed a writ in the High Court to avoid impediment of limitation. The Tribunal stated that there was no cause to believe this because the High Court has writ jurisdiction under Article 226 of the Constitution. It is discretion of the Hon'ble High Court to consider whether the Writ Petition should be entertained even though any other remedy is available to the Petitioner.

In the Tribunal's opinion, violation of CRZ Notification, or environment obligation under the statute, including Regulation pertaining to Municipal Laws, or pertaining to parameters of the constructions by which the community at large is affected, would come within ambit of Section 2(m) (i) (A) of the National Green Tribunal Act, 2010. The Applicant has not filed any Application directly in this Tribunal. It being a transferred Application, the objection regarding limitation is not open for consideration and will have to be rejected. This is particularly so when the main Petition itself could not be objected on the ground of limitation. Consequently, the Tribunal does not find any substance in both the objections raised on behalf of the contesting Respondents.

In the result, both the Misc. Applications are dismissed. Objections are overruled.

Paryavaran Avam Manav Adhikar Sanrakshan Samiti

Vs

State of Madhya Pradesh and Ors.

Original Application No. 108/2013 (CZ)

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

Keywords: Madhya Pradesh Pollution Control Board, Handpump, Water Purity, Compensation, Deceased villagers, Directions

Application disposed of.

Dated: 14th February, 2014

This application has been filed by the Petitioner/Organization with the prayer to direct the Madhya Pradesh Pollution Control Board (in short 'MPPCB') to submit a report regarding the purity of tubewell water where a handpump has been installed in the village Sarapani, Block Harrai in District Chindwara. Further, the State Government is directed to pay compensation to the family of deceased villagers, Summa Bharti and Munnilal who were reported to have died after having suffered with diarrhea because of drinking contaminated and polluted water drawn from the hand-pump in the village Sarapani.

By the order dated 13thDecember, 2013, notices were ordered to be issued and the Standing Counsel for the State of Madhya Pradesh was directed to accept notice on behalf of Respondent Nos. 1,5,6& 7 and the Standing Counsel for the MPPCB was directed to accept notice on behalf of the Respondent Nos. 3 and 4.

Respondent No. 3 and 4 submitted their replies, wherein the MPPCB submitted that they collected water samples from the handpumps and the open wells of village Sarapani and on analysis it was found that, the total coliform is NIL in all the samples drawn from the handpumps. As far as the samples drawn from open wells are concerned total coliform was found to be 21.00 MPN/100 ml. and 15.00 MPN/100 ml. and accordingly the Public Health Engineering (PHE) Department of the State was instructed to take necessary corrective measures in this regard. As per the reply, the Nitrate as NO3 was also found to be below detectible level in the water drawn from the handpumps and there was no sewage contamination. The analysis report of the samples collected was filed along with the reply as Annexure R-2 according to which only in the open wells belonging to one, Soomi Bhardhiya the coliform levels were found to be 21.00 MPN/ 100 ml. and at the well of one, Mr. Jhina Ganesh it was 15.00 MPN/ 100 ml.

Thereafter the Tribunal also directed the District Collector, Chhindwara to take necessary steps for proper maintenance and sanitation around the tubewells and the area around them.

As far as the question as to what was the cause of death, the Tribunal held that it cannot be derived as in the instant case no post-mortem report is available to indicate the cause of death of the two deceased persons. Unless the cause of death is attributed directly to the consumption of contaminated water from the tubewells in the village Sarapaniit, it is not possible to consider the case for award of damages / compensation on that account.

The Tribunal rejected the prayer with regard to award of compensation and with regard to the other prayer it directed that the PHE Department shall take all necessary steps for taking necessary samples from the hand pumps periodically and wherever the water is not found fit for drinking remedial steps shall be taken immediately. The Officers of the PHE Department in the concerned district shall submit a quarterly report before the District Collector who shall be responsible and overall in-charge for ensuring potability and quality of the drinking water in the villages.

Ramubhai Kariyabhai Patel

Vs.

Union of India &Ors.

APPLICATION No. 87/2013(WZ)

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

Keywords: Gujarat, Hazardous Waste, Pollution, Compensation, Polluter Pays Principle, Central Pollution Control Board, Common Hazardous Waste Treatment Storage and Disposal Facility, Vapi, spillage

Application disposed of.

Dated: 18 February 2014

This application has been filed by the farmers and residents of village Kalvad, District Valsad (Gujarat). The applicants are aggrieved by damage caused to their agricultural fields, surrounding environment because of the toxic waste spread, and spilled on 17 July 2012, resulting from improper handling of Hazardous Waste at the Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF) site at Vapi and the pollution caused due to the said spillage. The present Application is filed under Section 14 and 15 of the National Green Tribunal Act, 2010, since it involves substantial question relating to environment and involves the prayer for restitution of the environment and compensation commensurate to the damage done to the ecology.

The Applicants submit that a Common Effluent Treatment Plant (CETP) and a Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF) has been provided in Vapi Industrial area which are developed, managed and operated by Vapi Waste and Effluent Management Company Ltd. i.e. Respondent No. 4. The Vapi Industrial area is a huge Industrial Complex accommodating hundreds of units, manufacturing various products including hazardous chemicals, pesticides etc.

The applicants have submitted that the Common Hazardous Waste Treatment Storage and Disposal Facility (CHWTSDF or TSDF) site is located at Phase-IV, GIDC Vapi and was established in the year 1999. The total plot area of facility is about 1,00,000 square meters out of which about 30,000 square meters is the landfill cell area. There are total four (4) cells and cell No.1 to 3 are already filled.

The applicants further submitted that on 17 July 2012, the wall of cell No.4 collapsed and consequently, all the nearby areas of CHWTSDF site were inundated and covered with toxic and hazardous waste, thereby contaminating the agricultural fields of the Applicants, surrounding lands, ground water and the adjoining river Kolak and Bil-khadi, as well as the natural drain passing from nearby this facility.

According to the report of CPCB the reasons for the breach in the wall are due to one or more of the following:

- Overload of waste disposed at Cell No.4 (heavy load/pressure increased on the wall due to disposal of more moisture (more than 80%) laden CETP sludge without proper dewatering at CETP Vapi).
- Entry of rainwater in the cell due to improper cover for the Monsoons.
- Improper construction of wall including its slope.

Applicants have further submitted that GPCB has also issued a show cause notice to the respondent no. 4 and to its directors dated 17 July 2012 and that the respondents no. 3 and 4 due to their sheer negligence have caused immense harm to the environment in and around CHWTSDF site including their agricultural lands, contamination of the soil, ground water, air pollution and the adjoining water bodies namely Bil-Khadi, a natural drain, which meets river Kolak which is the source of water for the people and live-stock in the area.

The applicants have prayed for the following reliefs:

a. Direct the Respondents to discover all the documents relating to the incident in issue and on the contamination of soil, ground water and air of the area in question.

b. Appoint a local Commissioner to inquire and inspect the site and quantity the damage caused by the Respondents.

c. Direct that the Respondents No.3, 4 and 5 (Vapi Industries Association, M/S. Vapi Waste & Effluent Management, Gujarat Industrial Development Corporation) are liable for the damage caused to the ecosystem and pay compensation of the loss to ecology and livelihood in accordance with the Polluter pay principle.

d. Direct that the restitution of the area is undertaken in accordance with the Polluter pay principle.

e. Direct the concerned authority to initiate action against the persons responsible under section 15 and 17 of the Environment (Protection) Act, 1986.

The following issues have been framed which needs to be answered:

1. Whether the accidental release of hazardous waste due to accident that occurred in midnight of 17.7.2012, has caused environmental damage? If so, what is the nature and scale of such environmental impact?

2. Whether the land of the Applicants have been affected and damaged due to accidental release of hazardous waste? If so;

(a) What is the scale and nature of such impact, including area of impact?

(b) Whether any compensation is due and payable to the Applicants for such adverse impact on the agriculture?

It is an admitted fact that on 17 July 2012, there was an incident of breach in the wall of Cell No. 4, at the TSDF site at Vapi, Gujarat and subsequent spread of waste/ sludge (land fillable hazardous waste) in the nearby area. This facility is operated by M/s Vapi Waste & Effluent Management Company Ltd i.e. the Respondent Nos. 3 and 4. It is observed from the first report on this incident, prepared by the CPCB, dated 3 August 2012, that about 25,000 to 27,000 MT hazardous waste was spread/washed out in the incident. The waste was spread inside the premises of the facility as well outside and about 20,000 sq. m. outside the area was affected. The CPCB has also mentioned the reasons for such breach due to either overloading of the waste disposal in Cell No.4, or entry of rainwater in the Cell due to improper cover or improper construction of the wall. It is also submitted by the CPCB that they have collected samples of water at Bil-khadi on 18, 19, 20 July, 2012 and the values reported in the downstream of TSDF shows high concentration of TSS (935), TDS (2626), COD (1399) and BOD (144).

The observations available clearly demonstrate that the spillage of hazardous waste and its further drifting has caused environmental impact on the surrounding environment including adjoining lands and water bodies.

The adjudication by the National Green Tribunal has to be done on Polluter Pay's Principle as enumerated in Section 20 of the National Green Tribunal Act 2010. We, therefore, hold that the Application will have to be allowed for the reliefs claimed and proper measures should be taken to avoid future similar incidents. Due to the hypothetical loss sustained by the Applicants and possible degradation of the fertility of the soil due to spillage of the hazardous waste the compensation was awarded on following accounts:

1. Actual loss

2. Probable future loss

3. Non-pecuniary damages (mental harassment)

4. Loss due to fertility of soil.

Considering the above facts the application was partly allowed with following directions:

1) The Respondent Nos. 3 and 4 shall deposit an amount of Rs.10,00,000/- (Rs. Ten lakhs) towards the Environmental damages due to the un-scientific disposal of about 7320.4 metric ton of Hazardous Waste with the Collector Valsad, who shall create a separate account for this amount and shall use it for an effective and urgent response to deal with any Environmental damages/risk/accident which might be reported in the District Valsad and more specifically, in Vapi Industrial area. This amount is to be spent at the discretion of the Collector, Valsad,

however, he is directed to adopt principle of austerity and ensure the effective and efficient use of such amount.

This amount shall be deposited by the Respondent Nos.3 and 4 with the Collector's office within one month.

2) The Respondent Nos. 3 and 4 shall pay the compensation to the affected farmers as identified by Collector in his order dated 22.5.2013, towards:

i. Actual loss, equal to the amount identified by Collector in his order dated 22 May 2013.

ii. Probable future loss equal to double the said amount identified by Collector.

iii. Non-pecuniary damages: equal to the amount identified by Collector.

iv. Loss of soil fertility: equal to the amount identified by Collector.

3) Respondent Nos.3 and 4 shall deposit an amount of Rs.5, 00,000/- (Five lakhs) with the GPCB within next 15 days, towards the expenditure of monitoring, sampling/analysis, investigations and supervision conducted by GPCB and CPCB. The GPCB and CPCB may finalize their claim within next fifteen days and if any additional amount is required to be claimed from the Respondent Nos.3 and 4, the same shall be paid by the Respondent Nos.3 and 4 in next one month.

4) The Respondent 3 and 4 shall deposit an amount ofRs. 10,00,000/- with GPCB who shall immediately undertake the study of contamination of the affected areas including the agricultural lands and also the water bodies, particularly the sludge which may have been accumulated at bunds in Bil-Khadiin order to evolve the comprehensive remediation program with the technical assistance of CPCB and any other expert agency, if required. We expect that GPCB/CPCB shall complete the exercise of evolving remediation plan, in next 2 months.

5) GPCB shall issue directions to the TSDF to carry out improvements in operations, including provision of pre-treatment and incorporating the recommendations of CPCB, in next 15 days, which shall be complied by TSDF within next 3 months. GPCB shall specifically review the arrangements of TSDF that if the HW sent by member is not as per norms, the same is rejected and the individual member is responsible for its disposal.

6) GPCB and CPCB shall immediately undertake efforts for capacity building within their organizations and other SPCBs for scientific handling of such accidents, through training and preparation of guidelines and manuals, particularly enforcement of Rule 25 and of HW Rules, 2008. This is essential to develop such capacity in SPCBs and CPCB as they are the scientific and technical organizations having responsibilityto handle such environmental hazards and therefore, it is necessary to ensure adoption of suitable scientific tools and techniques to develop suitable response to such accidents. GPCB and CPCB shall take suitable steps in next 3 months.

7) The Respondents shall pay Rs. 10,000/- to each Applicant as costs.

Shri R. Arumugam

Vs

The Union of India &Ors.

Application No. 93 of 2013 (SZ)

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

Keywords: Common Solid Waste Management facility, Environment degradation, Permission, water body, drinking water, Chennai

Application Disposed of.

Dated: 20 February 2014

This judgement has been given with regard to the averments made by the applicant seeking direction restraining the respondents from granting permission and putting up a Common Solid Waste Management facility in the grazing lands situate in Survey No. 820/1C, to an extent of 99.61 acres of land in Kuthambakkam village.

The applicant has contended that there is a lake situated near the common grazing land covering an area of about 99.61 acres in Survey No. 820/1C. It came to the knowledge of the applicant that steps have been take for putting up a Common Solid Waste Management facility in that land. The officials of the Corporation of Chennai have visited the site many a time and if allowed, it would certainly affect the water body, the main source of drinking water for the area and also the grazing ground apart from causing damage and degradation to the ecology and environment and hence, a direction has to be given against the respondents from taking any steps therein.

The respondent/ Corporation of Chennai has stated in its reply that it is true that there is a proposal for putting up a project for Common Solid Waste Management facility in the said land. Pursuant to the G.O. Ms. No. 447, Revenue, dated 21.12.2012, the Government of Tamil Nadu has granted entry permission to the officers of the Corporation of Chennai for the said purpose and thus not even the land has been transferred to the Corporation of Chennai.

However, it is true that the officials made site inspection and the said project would fall under the B category according to EIA Notification '2006 in respect of which Environmental Clearance has to be obtained from the Ministry of Environment and Forests, New Delhi and in the instant case, except a site inspection, no other steps have been taken by the Corporation of Chennai. Under the circumstances, the application itself is premature and has to be dismissed.

After going through all the submissions made, the Tribunal held that there is no need to undergo all the stages before grant of Environmental Clearance. In particular, it has to pass through the step of public hearing. It is always open to the applicant to raise objections not only at the time of public hearing, but at different stages also. What is all said in the application, as

per the averments, is only a visit made by the officials of the Corporation of Chennai, and that too, according to the 7th respondent (The Commissioner of Corporation), was only for a site inspection.

Hence the contention putforth by the applicant's side that active steps have been taken cannot be countenanced.

Therefore, the Tribunal disposed of the application giving liberty to the applicant to raise objections at the appropriate stage(s) and also if necessary, ventilate the grievances before the Tribunal in a proper form.

Swami Gyan Swarup Sanand

Vs.

Union of India and Ors.

M. A. No. 461/2013

In

Original Application No. 26/2011

Judicial and Expert Members: Mr. Justice S.N. Hussain, Dr. G.K. Pandey, Prof. A. R. Yousuf, Mr. RanjanChatterjee, Mr. Bikram Singh Sajwan.

Keywords: Grievance, Non- compliance, IIT Delhi Report, Inter Ministerial group, Environmental Clearance, Hydro Power plant, E-flow

Application disposed of.

Dated: 20 February 2014

This application has been filed in grievance of non- compliance of the Tribunal's order dated 17 July 2012, wherein the Ministry of Environment & Forests (MoEF) was directed to examine the suggestions/objections/representations, if any, filed by the Applicants along with other materials available while dealing with the reports/study conducted by the Indian Institute of Technology, Roorkee and Wild Life Institute of India, Dehradun.

The grievance is that even though the Chairman of the Inter-Ministerial Group (IMG) constituted by the MoEF did hear their views but the written representation made by the Applicants do not find place in the final report of IMG. The applicants have contended that the IMG report clearly indicates that their submissions have been considered and hence there is contempt of the Tribunal order dated 17 February 2012. Further, they have contended that it was incumbent on IMG to give reasoned responses to the submissions made by the Applicants that have not been done.

Applicants have stated that their original Application (OA No. 26/2011) was directed against the two studies done by IIT, Roorkee and WII. The IIT, Roorkee report has been rejected both by IMG and the Supreme Court in its judgment dated 13.08.2013 in SLP No. 362/2012. Now the grievance is only with respect to the Wildlife Institute of India (WII) Report. Besides the above report the applicants have also stated that the construction of dam or barrage across the river bed will have huge negative impacts on water quality as also on aquatic bio-diversity due to obstruction of migratory route of the fishes and have, therefore, suggested the alternative for harnessing the hydropower potential by a cascade of projects with proper designing to avoid any negative impacts.

Reliefs claimed by the applicants are:

(a) Take appropriate action against the Respondent for not complying with the directions/ orders of this Tribunal dated 17 July 2012, as per law.

(b) Direct MoEF not to issue Environment Clearance or Forest Clearance to any hydropower project on the Ganga or its tributaries until the submissions made by the Applicants before the IMG are considered and a reasoned order is passed.

(c) Direct MoEF to add a condition to any directive issued regarding E-flows to operational or under construction projects that the same would be subject to the outcome of this Application;

(d) Direct MoEF to stay the Environment Clearance or Forest Clearance of all projects on Ganga where actual construction has not started till the submissions made by the Applicants before the IMG are considered and a reasoned order is passed;

(e) Direct MoEF to stipulate E-flows after reassessing the Environmental Management Class (EMC) of the Ganga after considering the submission of the applicants.

(f) Direct MoEF to commission a study on the technical and economic feasibility of the alternative of partial obstruction

The Tribunal after going through all the facts and representations submitted and the issues raised by the applicants held that they are to be critically examined by MoEF before finalizing the IMG report. It also directed MoEF to record reasoned decision/response covering the points and issues raised therein before finalising the report submitted by IMG.

Aam Janta

Vs

The State of Madhya Pradesh

Original Application No. 35/2013 (CZ)

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

Keywords: PIL, Sarpanch, Pollution, Sanitation, Mining, Inspection, MPPCB.

Dated: 21 February 2014

This petition has been filed by the Sarpanches of five Gram Panchayats i.e., MahurachhKandaila, Malgaon, Sijahata, Bathiya and Mankahari of Janpad Panchyat Rampur Baghelan, District Satna (M.P.) seeking issuance of directions by the Tribunal to the Respondent No. 5, M/s Prism Cement Ltd. to stop pollution from its plant and improve sanitation in the open area of the Gram Panchayats where the plant is located and thereby prevent causing damage to the environment as well as to the people living in the surrounding villages. By not providing proper sanitation facilities to the employees and labourers working for the cement factory as well as due to not providing proper parking facilities to the heavy vehicles operated by/for the factory the environment in the surroundings of these villages is being damaged, filth is being accumulated resulting in insanitary conditions of the environment and pollution. The dust emitted by the cement plant is damaging the agriculture crops due to which the farmers are suffering. The Petitioners submitted that they have been authorized by their respective Gram Panchayats by passing a resolution, to file the PIL and to put up their grievances before the High Court so that they may get favorable orders directing the Respondent No. 5, M/s Prism Cement Ltd to take immediate action in preventing pollution and avoid consequent damage to the environment in the surroundings of their villages, health of the people as well as to their agricultural crops.

They further stated that resolutions passed by the Gram Panchayats were forwarded to the factory management to look into the concerns of the villagers but due to the indifferent attitude of the factory management there is no improvement in the situation and no concrete steps are taken in this regard and the villagers continue to suffer. They had also personally met the officials of factory management a number of times and made representations to control pollution and avoid causing damage to the environment but the requests went unheeded and no concrete steps were taken by the management to redress the grievances of the villagers as well as in reducing the pollution caused by the factory.

Moreover due to irregular parking of heavy vehicles in the premises and surroundings of the truck yards and due to no provision of residential or sanitary facilities to the truck drivers and others including the labourers working for and on behalf of the factory, it is resulting in haphazard discharge of huge quantity of filth and solid waste as well as releasing of sewage water which is flowing freely into the surroundings including the roads, agriculture fields and

common lands of the villages and the garbage is getting littered everywhere leading to pollution in the surroundings of their villages. The pollution as well as improper handling of the vehicles moving from and to the mining sites as well as factory site is not only causing damage to the environment but also affecting the health of the villagers. Irregular dumping of solid waste and poor sanitary conditions are a regular practice near truck yards. It has become very difficult for the people to live there and the villagers are suffering both from economic point of view and health point of view besides undergoing mental stress. The petitioners contended that irreparable damage is being caused to the environment, which cannot be compensated in terms of money.

Another issue being the uncontrolled blasting of the mines by the Respondent No. 5, M/s Prism Cement Ltd. Due to which the houses of the villagers are getting damaged and due to excess digging of mines the quarrying pits have gone so deep that the adjacent river water is entering into those empty pits leading to wastage of water and drying up of the river causing shortage of drinking water.

The applicants have prayed that the Respondent may be directed to properly manage the truck yards for orderly movement and parking of the heavy vehicles and operate the mines and the factory in such a manner that pollution is arrested in their surroundings.

The respondent has denied the averments made by the Applicants in their reply. The Respondent company have also filed a set of documents listing the prizes/awards won by it for complying with the mine safety norms for different years during 'Mine Safety Weeks' organised by the Director General of Mines Safety (DGMS) at all India level. The company also placed on record the awards it won from IBM during 'Mines, Environment and Mineral conservation weeks' based on which the company was granted permission for carrying out the blasting just beyond a distance of 100 mt. from the dwellings.

With respect to Corporate Social Responsibility (CSR) the company stated that they provide employment to the local villagers and they have established a hospital as well. They also established a school in which not only the wards of company employees but also the children of the local villagers are imparted with good education. The company is helping the local Gram Panchayats and organizing the community welfare programmes for the benefit of the villagers. The company has also undertaken steps for filling the mine pits and for establishing the reclaimed areas it has undertaken plantation of about 1,50,000 trees.

With regard to the alleged pollution caused by the heavy movement of trucks and poor maintenance of the truck yards the Respondent no. 5 states that the company has constructed one parking yard on its own and two yards were taken on contract basis. All the three yards have sanitation facilities including toilets for the truck drivers and the workers and no garbage and / or filth is allowed to let into the public places and whatever sewage is generated by the company it is treated in the sewage treatment plant and the treated water is reused by the company.

The MPPCB (Madhya Pradesh State Pollution Control Board) after conducting detailed inspection during August, September & October 2013 have categorically repudiated the contention of the Applicants that the factory and its mining operations are causing any perceptible pollution to the surroundings of the villages. The MPPCB however stated that the factory management is required to undertake improvement works with regard to maintenance of truck yards in general and sanitation in particular.

Considering the detailed inspection reports filed by the MPPCB and documents produced before the Tribunal by the Respondent No. 5 in it's replies, the Tribunal considers it fit to give the following directions:

(1) The company should maintain a good relationship with all the stakeholders particularly with the local villagers where the unit is located and where its mines are located for the common good and should demonstrate its commitment by way of undertaking various welfare measures incorporated in the conditions and their letter at Annexure R/5 dtd.16.08.2013. They should not just limit their activities for increasing their profits but strive to fulfill their Corporate Social Responsibility on a continuous basis as long as the unit is under operation. They should integrate the economic, environmental, and social objectives into their working system and they cannot escape from their responsibility of maintaining clean environment and avoid causing inconvenience and damage to the villagers, which affects their quality of life.

(2) Tribunal directs the Respondent No. 5 to set apart required amount from their profits in order to ensure remedying of the damage caused to the environment as the Applicants have sought protection of environment in their village limits and prevent damage to the houses and enforce the provisions of Environment (Protection) Act, 1986.

(3) Where there is a continuity of environmental degradation, the Respondent No. 5 shall continue to undertake remedial measures till the nuisance, degradation or damage is brought to halt. The Tribunal has no hesitation in holding that there is urgent need to address problems of environmental degradation and concerns of villagers and therefore, the factory and mining areas including the truck yards require revamping, upgradation and modernization. The company shall take suitable steps to do needful as it is supposed to avoid environmental problems and cater to the needs of the local people.

(4) The management of the Respondent No. 5 shall implement all the above directions along with the provisions already committed by it under appropriate CSR and see that the villagers of all the five surrounding Gram Panchayats develop a positive attitude towards the factory by taking them into confidence, amicably settling their problems and attending to their grievances so that the villagers do not suffer damage to their health and their environment as well as economic loss and at the same time the Respondent No. 5 can continue to do his operations without any hindrance.

The Tribunal directed the Respondent No. 3, District Collector, Satna and the Respondent No. 4, Sub Divisional Officer, Rampur Baghelan, District Satna to monitor the afore said activities undertaken by the factory management and directions given above and send six monthly

progress reports to the Regional Officer, MP Pollution Control Board, Satna who in turn shall file the same before the Tribunal.

For the verification of the compliance the matter is listed with the first six monthly reports of the District Collector, Sub Divisional Officer & Regional Officer of MP Pollution Control Board on 15th September, 2014

With the above directions, the petition was disposed of.

M/s. Indian Rare Earths Limited

Vs

District Environmental Engineer

APPEAL No.97 of 2013(SZ)

Judicial and Expert Members: Shri Justice M.Chockalingam and Prof. Dr. R. Nagendram.

Keywords: Coastal Regulation Zone, Mining, EAC

Appeal Dismissed.

Dated: 24th February, 2014

This appeal is filed challenging an order of rejection of the application made by the appellant seeking Coastal Regulation Zone (for short 'ÇRZ') clearance in the 59th meeting of District Coastal Zone Management Authority of Kanyakumari District, shown as 2nd respondent, held on 10th July 2013 and communicated in Letter No. F-NGL-CRZ 01(161)/13 dated 19.07.2013.

The appellant, (M/s. Indian Rare Earths Limited), a Govt of India undertaking, incorporated in 1950 is under the administrative control of the Department of Atomic Energy. It operates a number of mining plants across the country engaged in mining and separation of beach sand minerals such as IIimenite, Rutile, Zircon, Monazite, Sillimanite, and Garnet apart from a number of value added products. This appeal is concerned with only a portion of appellant's mining lease area located at Midalam and Manavalakurichi of Kanyakumari District. The appellant made application for CRZ clearance under CRZ Notification, 2011 by the 1st respondent.

In respect of mining area totally measuring 44.6212 ha (a) 2978.12 ha falls under deemed extension G.O. Ms. No. 1085 dated. 21.9.1977 and (b) 14.84 ha falls under fresh mining lease grants – G.O. (3D) No. 74 dated 17.6.1998.

In 2007, an organization under the name the Coastal Environmental and Ecological Conservation Committee filed a W.P. 5678/2007 in the High Court of Madras seeking a writ of mandamus against the 2nd respondent to forbear the 9th respondent "the appellant herein" from carrying on mining operations/activities at Manavalakurichi, Kanyakumari District which fell within CRZ for not obtaining clearance under CRZ Notification and also to direct the 4th respondent to withdraw the consent, if any, granted. The appellant filed a detailed counter pointing out that the Environment Impact Assessment (for short 'EIA') Notification 2006 and CRZ 1996 Notification were not applicable to the mining operations for the appellant at Manavalakurichi since the same was established long before the issue of the said notifications. It was also stated that there have been no setting up of facilities or expansion of the existing facilities after the said notification came into force. However, by way of abundant caution, the appellant applied for Environmental Clearance (EC) before the Ministry of Environment and Forests (MoEF) under the EIA Notification, 2006. When the same was brought to the notice of the High Court, the Writ Petition was disposed of with an order stating that in the event of filing such application by the 9th respondent (the appellant herein), the 2nd respondent was directed to consider and pass orders on the same in accordance with law after giving an opportunity to the writ petitioner. On receipt of the order, it was noticed that the High Court had directed the 2nd respondent namely the Chairman, Tamil Nadu Coastal Zone Management Authority and the Secretary, Department of Environment and Forests, Government of Tamil Nadu to pass orders on the application for clearance as and when filed. The clearance under CRZ Notification, 1991 was to be granted by the MOEF, Government of India who was also the

authority for granting EC under EIA Notification, 2006. Hence the appellant filed a Miscellaneous Petition in M.P.No.1 of 2010 seeking modification of the earlier order dated 18th Oct 2010 and accordingly the said order was modified directing the 1st respondent to consider and pass orders on the same in accordance with law after giving an opportunity to the petitioner within a period of 4 weeks from the date of submission of the application.

The MoEF granted Terms of Reference (ToR) for all the applications. As far as the subject mining lease was concerned the ToR came to be issued by the Ministry's letter dated 16.05.2011. The TOR Nos. 9 and 10 read as follows:

"9. Identification of CRZ area: A CRZ map duly authenticated by one of the authorized agencies demarcating LTL, HTL. CRZ area, location of the mine lease and other project activities with reference to CRZ, coastal features such as mangroves, if any. Recommendations of the State Coastal Zone Management Authority for the project should also be furnished.

10. NOC from State Pollution Control Board as required under CRZ Notification, 2011 should also be furnished."

As per the CRZ Notification, 2011 superseded the CRZ Notification, 1991 the ToR required the appellant to seek also a recommendation from the State Coastal Zone Management Authority.

On receipt of the ToR, the appellant took steps for a comprehensive EIA for all the applications and submitted the particulars of compliance with the ToR to the MoEF. The Expert Appraisal Committee (for short 'EAC') of MoEF reviewed the appellant's EIA report during its meeting held on 27th and 28th June 2013 and recommended for Environmental Clearance (EC) under EIA Notification, 2006 to the appellant for all 4 mining leases subject to certain conditions including that necessary clearance from the State Coastal Zone Management Authority should be secured.

All the respondents filed their replies in affidavits.

The applicant filed an application wherein it was sought for a declaration that the EAC of the 1st respondent, MoEF is not entitled to recommend the grant of EC in respect of the mining project in violation of MMDR, 1957 and MCR, 1960 and consequently to set aside the recommendation made by the 1st respondent in its 8th meeting of the reconstituted committee of the EAC for environmental appraisal of the mining project constituted under EIA Notification, 2006.

The issues to be considered for decision ar as follows:

Appeal No. 97 of 2013 (SZ):

1) Whether the order of rejection of the CRZ clearance to the appellant made in F-NGL-CRZ 01(161)/13 dated 19.07.2013 by the 2nd respondent/DZCMA is liable to be set aside on all or any of the grounds set out in the appeal.

2) Whether the appellant is entitled for the consequential relief of the CRZ clearance on the application made by the appellant dated 09.02.2013 under CRZ Notification, 2011.

3) Whether the appellant is entitled to any other relief.

Application No. 419 of 2013 (SZ):

1) Whether the applicant is entitled for a declaration that EAC was not entitled to recommend for the grant of EC in respect of the mining project of the appellant in violation of the MMDR, 1957 and MCR, 1960 and consequently the impugned recommendations made by the EAC is liable to be set aside in respect of the subject mining project of the appellant.

2) Whether the applicant is entitled to any other relief.

In the view of all the above facts and circumstances the Tribunal agreed with the case of the applicant to declare that the EAC is not entitled to recommend for the grant of EC in the Minutes of Eighth Meeting of the Reconstituted Committee of EAC of Mining Projects Constituted under EIA Notification, 2006 in respect of the mining project, in violation of MMDR, Act 1957 and MCR, 1960 and consequently to set aside the EC granted by the MoEF to the 2nd respondent in the Eighth meeting of the Reconstituted Committee of Experts Appraisal Committee for Environmental Appraisal of Mining Projects under EIA Notification, 2006 as sought for in the Application.

In so far as the Appeal No 97 of 2013 (SZ) is concerned, a challenge is made to an order of rejection of the CRZ clearance of the appellant dated 09.02.2013 in the 59th meeting of the 2nd respondent/DCZMA dated 10.07.2013.

In addition, the Tribunal held that the order of rejection has to be sustained for more reasons than one. The TNCZMA is the authority charged with enforcing the provisions of the CRZ Notification. As could be seen, paragraph 4 of the CRZ Notification, 2011 stated supra envisages regulation of permissible activity in CRZ.

Following activities should be regulated:

(i) Clearance shall be given for any activity within the CRZ only if it requires water front and foreshore facilities; and.

(ii) If the projects are listed under CRZ Notification, 2011 and attracts EIA Notification, 2006 for such projects, clearance under EIA Notification only shall be required and it should be subject to being recommended by the concerned State Government/Union Territories.

Appeal No. 97 of 2013 (SZ) :

In the result, the Appeal No. 97 of 2013 (SZ) is dismissed leaving the parties to bear their cost.

Application No. 419 of 2013 (SZ):

The Application No. 419 of 2013 (SZ) is allowed granting a declaration that the EAC is not entitled to recommend the grant of EC in respect of a mining project in violation of MMDR Act, 1957 and MCR, 1960 to wit the requirement set out in paragraph (x) of Form J of the MCR, 1960

and consequentially the recommendation made by EAC as in paragraph 2-20 of the 8th Meeting of the Reconstituted Committee of the EAC for Environmental Appraisal of mining projects constituted under the EIA Notification, 2006 is set aside.

Sonyabapu T.Rajguru

vs

State Of Maharasthra

APPLICATION No. 07(THC)/2013(WZ) AND APPLICATION NO.36 (THC) OF 2013

CORAM: Hon'ble Mr. Justice V.R. Kingaonkar(Judicial Member), Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Keywords – Brick kilns, MPCB, emission standards

Application party allowed

Dated - 24th February 2014

Judgment –

These two writ petitions have been transferred from the honorable high court of Bombay. The case was filed by Sonyabapu T Rajguru against Sitabai, Sonyabapu T Rajguru claimed that Sitabia used brick-kiln in agricultural land. In his application, Sonyabapu also challenged the order of the tehsildar on allowing Sitabai to use the brick kiln. Sonyabapu has claimed that the brick kilns were being run by Sitabai without the appropriate permissions which defies the statutory provisions. The writ permission was earlier disposed when the Learned A.G.P claimed that in case the brick kiln was found to be run illegally and without the appropriate permissions by the A.G.P, there was supposed to be action taken against the respondent 7 Sitabai which didn't happen. In the current application filed by Sonya Bapu, he claims that Sitabai has not taken required permissions from the heath officer or Zila Parishad Ahmednagar, or Gram Panchayat karajgaon to run the brick kiln. There was also no issuing of a NOC to Sitabai by the collector for running the brick kiln. Neither did MPCB give any permission for the running of the brick kiln to the respondent 7, Sitabai. Sonyabapu further claimed that the health of around 300-400 residents of the area was endangered because of the pollution caused by the brick kilns run by Sitabai.

In the second application filed in this suit, the applicant has put forward the claims that the brick kilns which were operated by the respondents 5 and 6 have increased the temperature in the locality and have also caused pollution. It had also posed a serious health hazard in the locality. The solid waste from the

brick kiln was also said to be disposed in an irregular manner which was deemed to be causing environmental degradation as claimed by Sonyabapu. According to the applicant there were complaints filed by him to the MPCM as well as the collector though no necessary actions were taken by either.

The issues that came before the tribunal in relation to these two applications were – Whether the brick Kilns that were run by the respondents were in contravention of the environmental norms? Whether the brick kilns by the respondents should be immediately closed down? Whether there is need of any other order(s) to ensure that the environment is protected and safe?

The tribunal in its judgment says that MPCB has a list of guidelines that need to be followed to run brick kilns. There need to be certain permissions obtained from the District Collector or any Authority to whom such power is delegated by the Collector. It had been recorded that there were emissions coming out of the brick Kilns mentioned in both the applications though MCPB hasn't submitted the exact level of pollution etc which arose from these brick kilns. It is important to note that in the current application that there weren't emission standards mentioned for clamp type traditional brick kilns. In case of getting an application approved it was important that the emission standards along with the conditions were to be mentioned in the consent application. It was therefore important as mentioned by the Tribunal that air emission standards should be ascertained before the implementation of the decision of MPCB under consent management for brick Kilns.

In the current case, the guidelines issues by the MPCB in 1997 were required to be followed in absence of specific standards for Clamp type of Brick kiln. These guidelines weren't found to be adhered too. The tribunal also believed that the brick kilns were to be shut down as they are causing major environmental degradation. The tribunal also issued directions to identify an authority which can grant permissions for the establishment of such brick Kilns.

The order that was passed by the tribunal was also to partly allow the application – the brick klins of the respondents in question were allowed to function up-to 1st September 2014 post which they will be allowed to operate only after getting the concerned permissions from the MPCB. Moreover MPCB has to formulate emission standards for clamp type traditional brick kilns within a period of 4 months through the due process of law. In cases where permissions have been granted to applicants for operating brick kilns, it is necessary that even after that pollution levels don't exceed as the Kilns can be shut down after that as well.

Prabhakar Pangavhane

Vs

State of Maharashtra and Ors.

Application No. 07 (Thc)/2013(Wz)

And

Application No.36 (Thc) Of 2013

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

Keywords: Writ Petition, Appeal, Brick Kilns, Pollution, environment impact, MPCB

Dated: 24 February 2014

This petition deals with two Writ Petitions i.e. Writ Petition No. 2059 of 2013 and Writ Petition No. 9855 of 2012, which have been registered as applications. They involve common issues related to pollution caused due to Brick kilns, environmental impacts of brick kilns and operating the Brick Kilns without necessary permissions from regulatory authorities, including MPCB.

Following are the issues involved in the Applications. They are:

1) Whether it can be said that the bricks kiln run by the concerned Respondents are being run in breach of the environmental norms and particularly any parameters fixed by the MPCB or under any Rules of the State Govt.?

2) Whether it is necessary to give directions to the Respondents to immediately close down the brick kiln?

3) Whether it is necessary to give any other directions, in order to ensure environmental protection and particularly prevention of air pollution, which is likely to be caused due to running of the clamp type (Country) brick kilns, without fixation of proper norms?

The MPCB has issued guidelines for running of the brick kilns. The brick kilns are required to be run by obtaining necessary permission of the District Collector or any Authority to whom such power is delegated by the Collector. There is no particular standard fixed by the MPCB for grant of consent to traditional country type (clamp type-Bhatti), however, MPCB has issued communication to the District Collector of each district to incorporate safeguards as per those guidelines while granting permissions for establishment of the brick-kilns. MoEF has notified industry specific emission standards for the brick kilns under the provisions of Environmental (protection) Rules vide notification dated 22.7.2009, wherein emission standards have been specified for:

(i) Bull's Trech Kiln (BTK), (ii) Down-Draft Kiln (DDK) and (iii) Vertical shaft kiln (VSK) types of the Brick kiln.

One of the important observations noted in the present Application relates to absence of emission standards for the clamp type traditional brick-kilns, as noted from the MPCB affidavit. MPCB has already submitted that all the brick-kilns need to obtain the Consent from MPCB under Water Acts in compliance with the directions issued by CPCB. It is an admitted fact that the emission standards and the conditions to be incorporated in consent are essential prerequisites for appraising the consent applications. The Tribunal, therefore, records the necessity of stipulating the air emission standards and other conditions for environment safeguard before implementing the decision of MPCB to cover the brick kilns under consent management. This Tribunal has already ruled on the Authority for prescribing the emission standards under provisions of Air Act, 1981 in M.A. No.202 of 2013 and it is the State Pollution Control Board that will have to formulate and stipulate the air emission standards and other environmental safeguards for such brick kilns. In the instant case, MPCB has taken the decision based on the directions given by CPCB, and therefore it is expected that CPCB must have considered all such aspects while issuance of directions, and if such standards have already been framed by CPCB, MPCB can consider adopting the same or develop its own standards by following due process of law.

The Tribunal has to consider "Precautionary Principle" as contemplated U/s. 20 of the National Green Tribunal Act while deciding such a substantial question relating to the environmental dispute. We may refer to the observation of the Apex Court in 'Vellor Citizens Welfare Forum Vs. Union of India, (1996) 5 SCC 647' and further explained in 'M.C. Mehta Vs. Union of India, (2004) 12 SCC 118', the Apex Court observed: - "Law requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

Though, the MPCB has now taken a decision to issue such permission, yet, guide-lines issued by the MPCB in 1997 are ordinarily required to be followed in absence of fixation of standards for Clamp type of Brick kiln and particularly when there are no specific Rules framed for Clamp type Brick kiln by the Ministry of Environment and Forest (MoEF) or the State Government. In both cases, these guidelines are not adhered to. The Tribunal is of the opinion therefore, that the running of impugned brick-kilns is illegal activity and will have to be shut down as it poses threat to the environment to the surrounding area. The Tribunal is also of the opinion that there is need to consider fixation of environmental safeguard as per Environmental (Protection) Act 1986 and/or Air Act, 1981 and to identify the authority that is competent to issue permission for establishment/operation of such brick-kilns.

Admittedly, the brick kilns in both these cases are operating without the necessary consent from MPCB and have not provided the air pollution control arrangements, as noted by MPCB.

As per the above facts and legal position the Applications were partly allowed in the following terms:

a. The Brick kilns operated by concerned Respondents shall not be operated beyond 1st September 2014, without the necessary consent of MPCB.

b. MPCB shall formulate and notify the emissions standards for clamp type traditional brick kilns under the provisions of Air (P&CP) Act, 1981, within a period of 4 months following due process of law. CPCB shall provide necessary technical assistance for the same.

c. The State Government of Maharashtra shall consider framing of suitable Rules for brick kilns, may be on line of the Rules notified by the Uttar Pradesh viz. Uttar Pradesh Brick-kilns Setting Criteria for Establishment Rules 2012 or other Rules/guidelines prevailing in other State like State of Rajasthan, Andhra Pradesh, within next 4 months. It was made clear that Respondents owning and operating brick kilns will have a right to apply for permission or the consent to establish and operate the brick kiln in their land if such Application is in accordance with relevant norms. The competent authority may consider their Application as per the norms/ Rules existing as on the date of such application. In case such valid permission is granted, they may operate the brick-kiln without causing environmental damage as per the conditions that may be imposed, by avoiding environmental degradation/ nuisance/damage.

The Applications were accordingly allowed and disposed of.

Shri. Rudresh naik

Vs

State of Goa

APPEAL No. 3 OF 2013 (WZ)

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

Keywords: Rejection of application, Eco Sensitive area, Permission, GCZMA, hill cutting, slipway, dry dock, Tourism, Writ Petition

Appeal allowed with directions.

Dated: 24 February 2014

This Appeal is directed against order dated 13th September, 2013, communicated to the Appellant by letter bearing Ref.No.GCZMA/N/09-10/67/706, passed by the Goa Coastal Zone Management Authority (For short 'GCZMA'). By the impugned order, the GCZMA rejected Application of the Applicant for the proposed slip-way/dry dock at Survey No.41/2, of Vagurbem. The GCZMA held that the development sought would be at the site adjoining to coastal side of eco sensitive area, which may affect eco-system. The GCZMA further directed the Appellant to restore the area in question to its original position under the technical supervision of the Town and Country Planning department, Forests Department and the Water Resource Department, Government of Goa on the Ground that the development was carried out without prior consent/ permission.

The appellant is the proprietor of M/s Sudarshan Dry Docks. He is also a partner of the private firm called M/s Swastic Cruises. The partnership firm carries on Tourism business, such as conducting boat cruises in the rivers of Goa. The firm has engaged three vessels to carry tourists as its normal business activity. In order to facilitate this functioning, the Firm purchased a piece of land measuring about 13,525 sq.m. to carry on its business activity. The land so purchased is adjacent to the river and this can be utilized for inspection, maintenance and repairs of the vessels as well. To facilitate this activity and to carry out other developmental activities, the Appellant seek to construct a slipway. For this purpose, the Appellant had applied in July 2009 to the Goa Coastal Zone Management Authority, seeking necessary permission to carry out such activities. Since for a considerable time, no response had been received from the said authority, the Appellant filed a Writ Petition before the High Court of Bombay, being W.P(C) No.165 of 2010. During pendency of the said Writ Petition a show cause notice in July 2010 was issued by the CGZMA to the Appellant. This resulted in the disposal of the Writ Petition, granting liberty to the petitioner to proceed in accordance with the law. Subsequently, GCZMA passed an order restraining the Appellant from going ahead with the work concerning the construction of the slipway. This resulted in filing of another Writ Petition by the Appellant in the same Court. The High Court allowed the Writ Petition and set aside the order passed by the GCZMA primarily on the ground that adequate opportunity was not granted to the Appellant before passing the

order. The said authority, after providing an opportunity to the Appellant again passed an order dated 11th April, 2012, directing the Appellant to make good of the geological and ecological loss at the site by back filling the cut portion in the disputed properties, restore the area back to its original status and carry out the plantation in the said area.

The Appellant before the National Green Tribunal in Appeal No.23/2011 impugned the order dated 11 April 2012 on the ground that the order suffers from non-consideration of vital material and is based on errors of facts, which are apparent on the face of record.

The GCZMA through the Member Secretary passed the final order dated 29 January 2013, noticing that the construction of marine slipway for dry docks was otherwise permissible activity. However, the area was of hilly-terrain and hill cutting was undertaken by the Appellant, which could destruct ecology. The proposal for permission/consent sought by the Appellant was therefore rejected. The Principal Bench, NGT, in Appeal No.20 of 2013, set this order aside.

The Principal Bench ultimately allowed the Appeal No.20 of 2013 with costs of Rs.25, 000/- payable by the GCZMA to the Appellant and directed that the Appellant shall be re-heard and thereafter the GCZMA shall pass final order within four (4) weeks.

The issues to be culled out for adjudication of the appeal are:

1. Whether it is duly established or can be reasonably discerned from the available material that there was Hill in existence flanking neighbouring site to the Plot No.41/2, mentioned as 41 in the original Plan (TCP Department) of Sewri Vagurbem village Panchayat, which was approved on 4 March 2011, and is situated on the side of river bank?

2. If Yes, whether the Appellant has cut the ' Hill' upto 72.80 Mtrs in length above 20 M width and 3.4 M deep as alleged by the GCZMA ?

3. Whether the Appellant sought permission for construction of slip-way – Dry Dock with a water harvesting facility to repair barges, wash boats and ships and remove bio-fouled organisms from the surface of metal hulls in his Application for the activity which falls within No Development Zone (NDZ)?

The Application of the appellant was rejected for following reasons:

(a) The Project Proponent (Appellant) had caused grave ecological and geological damage, which required to be remediated;

(b) The proposal for construction of marine slip-way for dry dock was otherwise permissible activity; however, if it is allowed, then the same would cause irreparable damage to already fragile hilly-terrain,

(c) The Appellant was undertaking unauthorised hill-cutting thereby causing obstruction to environment and as such, granting permission to the construction of marine slipway for dry-dock would be detrimental to the ecology.

Apart from the reasons given above by the GCZMA it cannot be permitted to travel beyond the area of reasons.

Answering the first question the Tribunal held that the land survey No.41/2, in village Vegurbem, is shown as 'Orchard' in the revenue record. The entries in the revenue record do not show existence of any hill or even hilly-terrain or hillock in that land. The Government record itself falls short to indicate existence of any hill in land survey No.41/2.

On the other argument it is stated that from the earlier order passed by the GCZMA on 14.1.2013, which indicate that the construction of marine slip-way for dry dock is 'otherwise permissible activity' , however, was not being allowed to the Appellant, because, it would cause irreparable loss to the already fragile hilly-terrain and already the Appellant has caused hill-cutting. At the relevant time, when the rejection of Application was done on 24 January 2013, only reason ascribed was of damage or threat to the environment on account of further hill-cutting activity of the appellant. No other reason was ascribed while rejecting the Application. Obviously, the reason that the activity falls within NDZ or prohibitory category under the CRZ Notification, is rather after thought or additional reason given in the impugned order.

In addition, the material clearly shows that the GCZMA changed the venue of the hearing at the last moment without giving proper intimation to the appellant and the Appellant was deprived of the opportunity to ventilate his grievances.

From surface of the record, it is clear that the reasoning of the GCZMA is incorrect and improper, particularly when the directions of the National Green Tribunal in the final order dated May 16, 2013 (Appeal No.20 of 2013) are taken into account.

The Tribunal allowed the appeal on following directions:

(i) The Appellant shall deposit additional amount of Rs.3.5 lacs besides the amount of Rs.1.5 lacs, which was directed to be deposited earlier in the proceedings of the previous Appeals. The amounts are to be credited to the account of Environment Ministry of the Government of Goa to meet expenses of remedial measures for environmental purposes and for restoration of environment.

(ii) The Appellant shall further deposit an amount of Rs. 5 lacs with the Environment Department, State of Goa being the compensation for environmental damages.

(iii) The above amounts shall be deposited within period of four weeks in the office of Collector, South Goa, Marmugao and receipts of such payment shall be forwarded to the GCZMA by registered post alongwith a letter communication informing about the compliances done.

(iv) In the case of the compliances of the above conditions, the GCZMA shall grant Application filed by the Appellant and issue necessary authorization/permission/consent in favour of the Appellant and if so required by putting regular conditions as may be permissible under the Law within a period of two weeks, thereafter.

Someswarapuram Vivasayigal NalaVs

The Union of India and Ors.

Appeal No. 64 of 2013 (SZ) & Ors.

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

Keywords: Environmental Clearance, Water resource department, Sand Quarrying, Mining, EIA Notification, River Cauvery, Coleroon, Madras High Court, SEIAA

Dated: 24 February 2014

Common Judgement

These appeals have been filed against the grant of Environmental Clearance (for short, EC) issued by the 2nd respondent, namely the State Level Environment Impact Assessment Authority (for short, SEIAA), Tamil Nadu in the relevant orders to the Executive Engineers of the Water Resources Department of the State Public Works Department who are arrayed as 4th respondent in each appeal for quarrying operation in River Cauvery and River Coleroon, as the case may be, in Thanjavur and Tiruchy Districts of Tamil Nadu. During the course of hearings, the 3rd respondent, namely the Chief Conservator of Forests (Central), Bangalore was given up as not a necessary party. All these appeals have been preferred against the EC granted by the 2nd respondent to the 4th respondent for quarrying operation on a common ground and hence are all taken up together for adjudication by a common order.

The facts of the appellants' case are:

Madras High Court in W.P. (MD). No. 4699 of 2012 directed to stop the operation of sand quarries in operation for more than 5 years in the riverbed and the remaining quarries were permitted to operate for a period of 3 months from the date of order with further directions that the newly opened quarries should obtain EC from the SEIAA. In compliance of the said directions of the High court, the 4th respondent applied for EC for quarrying sand in the river beds of Cauvery and Coleroon in Thanjavur and Tiruchy Districts through specific orders of the 2nd respondent. The Environmental Impact Assessment (for short, EIA) Notification dated 14th September 2006 of the Ministry of Environment and Forests (for short, MoEF) has classified mining projects with more than 5 ha and less than 50 ha as 'B' category for which it is mandatory to obtain EC from the 2nd respondent. However, for projects falling under 'A' category, the clearance has to be given by the MoEF, the 1st respondent herein. The mining projects coming under 'B' category have been further sub divided as 'B1' and 'B2' categories and for categorization of projects as 'B1' and 'B2' categories, the MoEF has to issue appropriate guidelines from time to time as per the EIA Notification, 2006. In the present cases, the SEIAA has sub-divided projects as B1 and B2 without guidelines from the MoEF. The Rule 22 B of Mineral Concession Rules, 1960 has prescribed that a qualified person recognized under the

Minor Mineral (Development and Regulation) Act, 1957, shall prepare the mining plan. However, contrary to the rule, the Public Work Department officials prepared the mining plans submitted along with the application only. The clearance was granted for mining of inflated quantity which is impossible while the depth of mining is only for 1 m resulting in illegal mining and environmental degradation. Attention has to be paid to several instances where damage has been caused, including damage to lakes, riverbeds and ground water leading to drying up of water table and causing water scarcity on account of quarrying in mining leases granted under the Miner Concession Rules framed by the State Government under section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. The report on sustainable mining of minor minerals submitted in March 2010 to the Central Government clearly states that the mining of minor minerals individually is perceived to have lesser impact as compared to mining of major mines because of the smaller size of mine leases. However, the activity as a whole is seen to have significant adverse impacts on the environment. It is therefore necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments and Union Territories, location of any eco-fragile zones within the impact zone of the proposed mining area, the rules/notifications governing such zones and the judicial pronouncements, if any, is duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore, make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Minor Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States. The 2nd respondent has not considered the gravity of the issue while granting the impugned clearance.

The respondent No. 1, namely the MoEF of the Central Government stated in the common reply to all the above appeals as follows: The MoEF has notified EIA Notification, 2006 under the Environmental (Protection) Act, 1986 that deals with the process to grant EC. The projects of mining of minerals as stated in the schedule require prior EC under this notification. Category 'B' projects are being handled in the respective SEIAA notified by MoEF and following the procedure prescribed under the EIA Notification, 2006. As per the EIA Notification, 2006, the Category 'B' projects require an EIA report. As per the notification, for categorization of projects into B1 and B2, the MoEF shall issue appropriate guidelines from time to time. The SEIAA's are not empowered to categorize the Category 'B' projects into 'B1' and 'B2' projects. In the office memorandum, dated 24 December 2013, vide Annexure R-1 in the type set papers, the MoEF has issued the guidelines for consideration of proposals for grant of EC as per the EIA Notification, 2006 and its amendments regarding categorization of 'B' projects/activities into Category 'B1' and 'B2' which stated that in order to ensure compliance of order of the Supreme Court of India dated 27 February 2012, in I.A.Nos. 12-13 of 2011 in Special Leave Petition (Civil) Nos. 19628-19629 of 2009 titled Deepak Kumar vs State of Haryana and others, the MoEF issued an office memorandum No. L-11011/47/2011-IA.II(M) dated 18 May 2012 (Annexure R-2) stating inter alia that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior EC and that the projects of minor

minerals with lease area of less than 5 ha would be treated as Category 'B' as defined in EIA Notification, 2006 and will be considered by the SEIAA notified by the MoEF and following the procedure prescribed under EIA Notification, 2006.

Based on the order of Madurai Bench of Madras High court in W.P.No.4699 of 2013, dated 03 August 2012, the new sand quarries on the river beds of Cauvery, Coleroon in the respective villages in Karur, Tiruchy and Thanjavur Districts were identified with all merits of the project, the detailed project report was submitted before SEIAA on 16 August 2012. The District Collector approved the mining plan after conducting the joint inspection of Assistant Director (Mines), Revenue Divisional Officer, Executive Engineers of Tamil Nadu Water Supply and Drainage Board and the Public Works Department and other Public Works Department officials. There were no objections at all and in fact, the applicants herein who were also aware of the same did not raise any objections and now suddenly as an afterthought have filed the above frivolous case for vested interest.

The Tribunal opined that balance has to be struck on economic and social needs on one hand with environmental consideration on the other. After perusal of the guidelines and also the conditions attached to the EC, it would be quite clear that sufficient safeguards have been taken by the 2nd respondent at the time of framing the ad hoc and interim guidelines and it would be replaced by those guidelines notified by the MoEF. It is true that the MoEF has now framed the guidelines dated 24 December 2013 as per the legal mandate made in the EIA Notification 2006 and a copy of which is placed before the Tribunal. Following the said guidelines, the 4th respondents have to necessarily make applications for EC. After the applications are made they have to necessarily pass through the stages namely, screening, scoping, public consultation and appraisal before the grant of EC. It is a time consuming process, which would take not less than six months. In the larger interest of the public it would not be fit and proper to stop abruptly the operation of the ECs granted by the SEIAA, the 2nd respondent herein as an interim and ad hoc measure.

In view of the economic and social needs and public interest at large, the Tribunal is of the considered opinion that the ECs originally granted to 2nd respondent/SEIAA based on the ad hoc guidelines, can be continued for a period of six months with a direction to the 4th respondents to make necessary applications for obtained EC based on the guidelines issued by the MoEF which have come into force from 24 December 2013. Thereafter the 2nd respondent has to proceed for grant of ECs within 5 months thereafter. During the period of 6 months, while ad hoc arrangements have to continue, the 4th respondents as directed to strictly monitor the compliance of the conditions attached to the EC. This order will apply only to the sand quarries that are in operation pursuant to the grant of impugned ECs.

A striking point/feature emerging from the present litigation is the attitude and inaction on the part of the MoEF. As is evident from the EIA Notification, 2006, the MoEFis mandated to issue appropriate guidelines to categorize "B" projects into B1 and B2, from time to time. With regard to categorization of river sand mining projects, no guidelines were evolved by the MoEF from September 2006 to December, 2013. We are of the considered view that the present litigations

would not have knocked the doors of the Tribunal if only the mandated guidelines were made available in time by the MoEF. In the instant case, as discussed earlier, the MoEF did not even flash its interest in the matter despite repeated communications from the SEIAA. We are indeed at a loss to understand or comprehend the reasons for the same. Reasons notwithstanding, the fact that the MoEF, the custodian of the Environment and Natural Resources of the country, is so callous and lethargic in developing mandated guidelines in respect of one of most important natural resources, namely the river sand is, to say the least, totally unacceptable. We therefore direct the MoEF to be more accountable and vigilant in fulfilling its mandate concerning precious and most sought after natural resources and facilitate Sustainable Development of human welfare projects. We do hope that the concerned officials in the MoEF would spend quality time to ponder over such matters of National importance and Public interest.

The Tribunal disposed of all the appeals with the following direction:

In view of the economic and social needs and public interest at large, the Environmental Clearances originally granted by the 2nd respondent/State Level Environment Impact Assessment Authority based on the adhoc guidelines shall continue for a period of six months with a direction to the 4th respondents to make necessary applications for obtaining Environmental Clearances based on the new guidelines issued by the MoEF which have come into force from 24 December 2013. The authorities issuing Environmental Clearances are directed to process the applications following the new guidelines cited above as per law for the grant of Environmental Clearances.

During the period of six months, the adhoc arrangements have to continue and the 4th respondents are directed to strictly follow and ensure the compliance of conditions attached to the Environmental Clearances. This order will apply only to the sand quarries which are in operation pursuant to the grant of impugned environmental clearances.

Chandra Singh Chandar Bhan

Vs

State of Rajasthan

Original Application No. 129/2013(CZ)

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

Keywords: Land use, High Court of Rajasthan, Collector, Rajasthan Land Revenue Act, Forest Conservation Act

Application dismissed

Date: 25 February 2014

The case in hand i.e. O.A. No. 129/2013 was registered before this Bench of National Green Tribunal after its transfer from the High Court of Rajasthan vide order in D.B. Civil Writ Petition (Public Interest Litigation) No. 14695/2011 in the light of the judgment of the Supreme Court in the case of *Bhopal Gas Peedith Mahila Sangathan & Ors. Vs. Union of India*.

The principal grievance which has been raised in the writ petition, presently the application which was filed originally as a Public Interest Litigation, relates to non-observance of the provisions of the Forest (Conservation) Act, 1980 in respect of the land situated in Bharatpur in Rajasthan which has been put to industrial use contrary to the provision of the Forest (Conservation) Act, 1980.

The Respondents, to whom notices were issued by the High Court, submitted their replies before the High Court and the Respondents have chosen to rely upon the same before this Tribunal as well. The Respondent Nos. 1 to 4 have submitted in their reply that the land had been set apart for industrial use under the provisions of the Rajasthan Land Revenue Act, 1956 and Notification to that effect had been issued on 12th August, 1961. It has further been stated that on the constitution of the Rajasthan State Industrial and Investment Corporation Ltd. ('RIICO') it was assigned with the task of acting as a catalyst and developer of industrial activity in the State of Rajasthan. The old industrial area developed under the Notification of 1961 was transferred to RIICO under the order of the State Government dated 8 September 1979 and this process came to be completed in the year 1980. It was further stated by the Respondent that much prior to the coming into force of the Forest (Conservation) Act, 1980, the land had been set apart for industrial development and setting up of industries in and around the city of Bharatpur. It was handed over to the RIICO vide order dated 8 September 1979 by the State Government and as such the provisions of the Forest (Conservation Act), 1980 have no application to the present case.

It has further been submitted that these facts regarding the land having been set apart in the year 1961 for industrial use by the then Collector, Bharatpur and specifically has been handed over along with other lands to RIICO in the year 1979 by the Government, came to the

knowledge of the incumbent Collector and the Collector vide his judgment dated 4th May, 1994 passed in Case No. 46/1994 in *State of Rajasthan Vs. M/s Rajasthan Udyog Ltd, Bharatpur* through Shri Santoshilal. He had taken note of the aforesaid facts and directed that consequential entries in pursuance of the order of 1961 be accordingly need to be made in the revenue record.

The Tribunal stated: the facts of the present case as have been highlighted in the judgment of the Collector, go to show that the land in question even prior to the independence of the country was given by the erstwhile ruler of Bharatpur State on 9 March 1946 to one, Seth Raghunath Prasad and since then the land changed several hands and was put to industrial use first under the name and style of Bharat Oil Mills Pvt. Ltd. Since the aforesaid Oil Mill had to change its name on account of the pre-existing company being run in the name of Bharat Oil Mills, it decided to change its name as Bharatpur Oil Mills. Thereafter Bharatpur Oil Mills went into liquidation and under the auction sale directed by the Company Judge of the High Court, was purchased by Rajasthan Udyog Limited after the amount was so deposited. The Official Liquidator under the orders of the High Court handed over the plant and the machinery to M/s Rajasthan Udyog Ltd on 10 May 1996. It was further mentioned in the order of the Collector dated 4 May 1994 that the proceedings with regard to liquidation started in the year 1958 and culminated on 10 May 1966. During this period, the Collector, Bharatpur vide Notification dated 12 August 1961 had set apart the aforesaid land for industrial use in accordance with the provisions of the Rajasthan Land Acquisition Act, 1956. It appears that subsequently this land along with other portions of the land was converted by the State of Rajasthan vide Notification under Section 4 of the Land Acquisition Act dated 13th March, 1973 for public purpose which inter-alia was for the development of the industrial area, Bharatpur. The aforesaid Notification came to be challenged by way of a writ petition filed before the High Court. The Writ Petition was dismissed by the learned Single Judge and the acquisition proceedings were set aside. The aforesaid contest was between the State Government and the M/s Hindustan Development Corporation and ultimately they reached to an agreement according to which compensation for 145 bighas of land was determined by the learned Arbitrator and the remaining land was to remain with Rajasthan Udyog Ltd.

The Tribunal is of the opinion that by the issuance of the Notification of 12 August 1961 and setting apart the land in accordance with the provisions of the Rajasthan Land Revenue Act of the land in dispute for industrial use by the Government, the character of the land is deemd to have been altered with issuance of the aforesaid Notification of 12 August 1961. Thus so far as the Judicial Act of considering whether the land would be put to use other than for which it was recorded with the passing of order on 12 August 1961 to be concluded much prior to the coming into force of the Forest (Conservation) Act, 1961 and industries were also set up on the same even prior to 1961 as is noticed above. No doubt so far as the corresponding entries made in the revenue records pursuant to the order dated 12 August 1961 are concerned, the same it appears was not carried out and therefore the Collector under his order dated 4th May, 1994 passed the order for carrying out the necessary entries in the revenue records.

The action in so far as the passing of the judicial order with regard to altering the character of the land from forest to industrial use, was done by setting apart the same in accordance with

existing provisions of the land vide order dated 12th August, 1961 much prior to coming into force of the Forest (Conservation) Act, 1980. All that remains was the consequential ministerial act of recording and correcting the entries in the revenue records, which is the Jamabandi.

Therefore, the submission of the learned counsel for the Applicant that altering the use of the land from that of forest to industrial use post coming into force of the Forest (Conservation) Act, 1980 was impermissible and the State Government or its functionaries could not have done so without prior approval of the Central Government in the facts and circumstances of this case, has no relevance. Since the orders for altering the land use and setting it apart for industrial use has been passed as way back as in 1961 even though portion of the land has already been given for industrial use even prior to independence by the erstwhile rulers of the State of Bharatpur in the year 1946 for industrial use, cannot be lost sight of. The issuance of the notification after coming into force of the Land Revenue Act, 1956 on 12 August 1961 was enough in the circumstances of this case for changing the land use from forest to industrial. All that has been done post passing of the order of Collector dated 4th May, 1994 with the ministerial act of carrying out the entries in consequence of the order dated 12 August 1961.

In the light of the above, we are inclined to hold that the provisions of the Forest (Conservation) Act, 1980 would not apply in the facts and circumstances of the instant case and no exception can be taken to the orders passed in this behalf by the Collector in the year 1961 and the consequential ministerial act of not carrying out those orders in the records of the right after the order of 1994.

While disposing of this application, liberty is granted to the Applicant that in case the Applicant has any grievance with regard to any specific cases of violation of the environmental laws, rules, regulations or notifications by any specific industry in the industrial are at Bharatpur, he can approach the concerned authorities or raise the same before this Tribunal.

The application stands dismissed subject to the aforementioned observations. There shall no order as to costs.

Navyuvak Vikas Samaj Samiti Jaipur.
Vs
State of Rajasthan Ors.

Original Application No. 117/2013(CZ)

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

Keywords: Writ petition, High Court, factual report, contamination, water pollution, sewage, Sewage Treatment plant, Jaipur Development Authority

Application disposed of

Dated: 3 March 2014

This writ petition was transferred to the NGT. In his letter, the petitioner alleged that contaminated water was being supplied in the locality of Lalji Sand Ka Rasta where the Applicant resides in the walled city of Jaipur. It was further alleged that water is contaminated as drinking water pipelines, sewage pipelines are laid in close proximity to each other, and they get cracked due to corrosion resulting in contamination. It was alleged that this is a regular feature and complaints have been made at various levels resulting no consequent actions. It was alleged that due to consumption of contaminated water people are falling sick and few deaths have also been reported.

After the Writ Petition was transferred to this Tribunal the Counsel for, Respondents were directed to submit the replies indicating the steps they have taken for effective sewage management and disposal in the city of Jaipur.

In response to the above, the Counsel for the Rajasthan State Pollution Control Board submitted the status report indicating that four Sewage Treatment Plants (STPs) have been installed and all four STPs are in operation.

In addition to the above, it was further stated that the Jaipur Development Authority (JDA) has also installed three STPs, which are in operation.

The Counsel for the State of Rajasthan also filed a factual report indicating therein that the entire work of replacing the 'pollution prone pipelines' has been completed in so far as city of Jaipur is concerned details for which are given in Annexure 4. With respect to the walled city area under phase-I 27.40 km, under phase-II 24.80 km and under phase-III 45.10 km. of pipelines have been replaced. It is however mentioned in the statement of work completion that against 68.57 km of pipeline only 12.60 km of pipeline could be replaced. Counsel for Rajasthan is directed file an additional Affidavit as to what steps the authorities intend to take to achieve the aforesaid target of 68.57 km. or whether it has already been completed.

A perusal of the factual report submitted along with affidavit of Mr. Dinesh Sharma, Additional Chief Engineer, Public Health Engineering Department, Region Jaipur-II goes to show that the

Respondents have addressed the grievance raised by the Applicant and it is further stated that during the preceding 10 months no complaint has been received.

It has also been stated in para 6 of the factual report that steps for prevention of contamination of water and monitoring of same as well as the remedial measures wherever necessary, are also being taken from time to time. The reports for testing the samples for water quality, as directed by the High Court, have been filed according to which no adversity has been noticed.

Since the Applicant has not appeared before the Tribunal even once as also on several dates before the High Court and even the amicus curie appointed by the High Court was permitted to withdraw from the case, the Tribunal has no material to counter what the respondents have stated before it.

In view of the above, the Tribunal is satisfied that no further directions are needed to be issued with respect to grievances raised by the applicant at this stage.

The two reports submitted today by the Counsel of the State of Rajasthan as well as by the Counsel for the Rajasthan State Pollution Control Board are ordered to be taken on record.

Mr. Sandeep Singh appearing for the State shall file the required information as stated at Para 10 above clarifying the steps taken on rectifying the shortfall of the work undertaken for laying fresh pipelines as well as regarding the total quantity of sewerage being generated within four weeks from the day of judgment.

This Original Application accordingly stands disposed of subject to the direction contained in Paragraph above. On filing the required information within four weeks as ordered, the matter was listed for noting compliance on 16 April 2014.

Vijay Saini

Vs

State of Rajasthan

Original Application No. 126/2013(CZ)

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

Keywords: Concretisation, trees, Jaipur Development Authority, Aditya Prasad, High Court

Applications disposed of

Dated: 4 March 2014

M.A. No. 129/2014 - The Respondent No. 2- Jaipur Development Authority and Respondent No. 3- Jaipur Municipal Corporation seeking extension of time for at least two months for completing the task of de-concretisation at the base of the trees as directed by this Tribunal on 29 January 2014 have filed this application together.

This application is allowed. As has been assured by the counsel appearing for the Respondent that the Jaipur Municipal Corporation as well as the Jaipur Development Authority within their respective jurisdiction shall complete the aforesaid work in the aforesaid extended period of two months.

Application disposed of.

Original Application No. 126/2013- The Applicant initially filed a DB Civil Writ Petition (PIL) No. 7693/11 before the Rajasthan High Court, Jaipur Bench at Jaipur with the prayer that a direction may be issued for taking appropriate measures to safeguard and protect the trees in the city of Jaipur. The High Court heard the matter, the attention of the Court was drawn to the fact that the bark of the trees was being removed, which was harming the trees, and in many cases, and they had a premature death. Accordingly, the High Court directed the matter to be investigated and cases registered against the defaulting persons who should be taken to task.

The matter remained pending before the High Court until it came to be transferred to the NGT under the orders dated 23 September, 2013. On the said date, during the course of hearing, the orders of the Principal Bench of NGT in Original Application No. 82/2013 (*Shri Aditya N. Prasad Vs. Union of India)* issued on two separate dates i.e. on 12th July, 2013 and 23rd April, 2013 were brought to the notice of the parties.

Counsel for the Respondents on so being apprised, submitted that steps would be taken for de-concretisation in accordance with the previously mentioned directions of the Principal Bench of the NGT.

Since the relief prayed for pertains to de-concretisation as well as preventing debarking and protection of trees in the city of Jaipur as complained in the application by the Applicant and as

the matter has already been dealt with both at the level of Supreme Court and the Principal Bench of NGT. The Respondents have become alive to the issue as has been assured by them in their M.A. 129/2014, the Tribunal felt that there was no necessity of giving any detailed directions in this behalf and they have agreed to complete the work within two months.

While disposing of this petition, the Member Secretary, Rajasthan State Pollution Control Board is directed to instruct the Regional Office at Jaipur to submit a four weekly statements before this Tribunal regarding the progress made by the Jaipur Municipal Corporation and the Jaipur Development Authority for carrying out the work of de-concretisation at the base of the trees in the light of the Judgment of the Supreme Court and the Principal Bench of NGT.

So far as the problem with regard to debarking and cutting of trees is concerned, local authorities such as Municipal Corporations and Municipal Boards as well as Urban Improvement Trust and the Jaipur and Jodhpur Development Authorities were directed to carry out a locality wise census of the trees which are existing in their jurisdiction with a periodic review of their status and condition and it shall be the responsibility of the Garden/Horticulture Officer / Superintendent of the concerned local authority to ensure the protection of such trees. The Principal Secretary, Urban Development & Housing, Government of Rajasthan was instructed to file an affidavit in compliance with the Tribunal's orders dated 29 January 2014 and 4 March 2014.

The Member Secretary of the Rajasthan State Pollution Control Board shall draw the attention of NGT's order dated 29 January 2014 along with the copies of the guidelines issued by the Government of India in the year 2000 and 2013 for ensuring the compliance within the State of Rajasthan with regard to greening and landscaping of urban areas.

The Member Secretary, Rajasthan State Pollution Control Board, shall send the compliance report to this Tribunal within 8 weeks and Secretary, U.D.H., Government of Rajasthan as directed. The matter was listed before the Tribunal for reporting the compliance on 15 May 2014.

The Application 126/2013 was disposed of.

Shiva Cement Ltd.

Vs

Union of India Ors.

Original Application No. 287/2013

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani , Mr. Justice M.S. Nambiar, Dr. G.K. Pandey, Prof. A.R. Yousuf, Shri Ranjan Chatterjee

Keywords: MoEF, Public Hearing, Environment Clearance, limestone, expansion of plant, Sundergarh, State Pollution Control Board

Application is allowed

Dated: 4 March 2014

This application is filed by the project proponent challenging the letter of respondent No. 1 Government of India Ministry of Environment and Forest (MoEF) dated 22.05.2013 by which the respondent No. 1 has directed the Chief Secretary of the Government of Odisha to request the Collector Sundargarh, Odisha, respondent No. 3, to hold a public hearing conducted on the application filed by the Project Proponent seeking Environment Clearance (EC) for expansion of limestone production capacity from 0.12 MTPA to 0.3475 MTPA in respect of its mine in the lease area of 72.439 hectares located at Khatkurbahal Village, Tehsil Rajgangpur, Sundergarh District. Pursuant to the said direction, of respondent No. 1 under the impugned letter dated 24.08.2013, the State Pollution Control Board (SPCB) Odisha, respondent No.2, has directed respondent No. 3, District Collector to conduct public hearing. Both the said communications of respondent No. 1 and 3 are impugned in these proceedings.

Brief facts of the case are:

The applicant company is running a mini cement plant with captive lime stone mines over an area of 72.439 hectares at Khatkurbahal and Kulelbahal, in the District of Sundergarh in State of Odisha. The original mining capacity granted to the applicant/project proponent was for 0.12 MTPA. With an intention to enhance the said mining capacity to 0.3475 MTPA, the applicant has sent its proposal to respondent no. 1. The respondent no. 1, pursuant to the said proposal for expansion has sent its Terms of Reference (TOR) on 15.12.2009. Thereafter, with due compliance of the TOR, the applicant company has sent its report on 13.04.2011. It appears that respondent no. 2, the SPCB has intimated the respondent no. 3 to fix the venue for public hearing on 17.05.2011. Accordingly, the respondent no. 3, District Collector has fixed the venue and date of public hearing as 18.01.2012. In the meantime it appears that the Mining Department has directed the applicant to stop operation from 15.11.2011. As the proceeding for grant of EC was pending with respondent no. 1 at the stage of public hearing which was fixed on 18.1.2012 and in the meantime, the period of mining lease was to expire on 14.1.2012, the Mining Department in the letter dated 4.1.2012 has ordered closure of mines unless EC is obtained by 15.1.2012. As

against the said order of the Mining Department, the applicant had filed an Appeal before this Tribunal on 15.1.2012 in Appeal no. 3 of 2012 which has granted an order of status quo.

It is stated that when no decision was taken as per the final judgment passed by the Tribunal stated above, the Applicant approached this Tribunal by filing M.A. No. 118 of 2012 in appeal no.3 of 2012 which was disposed off on 1.11.2012 with a direction to the SPCB to send the communication of the District Collector to MoEF along with its recommendations within 2 weeks and thereafter, the MoEF to take a decision as per paragraph 7.2 of the EIA Notification 2006 stating that the entire exercise shall be completed within a period of 6 weeks.

It appears that as public hearing was not possible due to various reasons, public consultations have been obtained by way of representations and opinions from the public along with the videography and was sent to respondent no. 1 followed by a letter of respondent no. 2 SPCB dated 15.1.2012 that the respondent no. 1 may pass suitable orders based on the said public consultations. It is stated that the Impact Assessment Division of the Expert Appraisal Committee (EAC) for Environmental Appraisal of mining projects, in the meeting held on 21/23.11.2012 has recommended issuance of EC for the proposal for expansion of the project made by the applicant. The complaint of the applicant is that in spite of such decision having been taken by the Expert Appraisal Committee on 21/23.11.2012, the respondent no. 1 who has to take a final decision under EIA Notification 2006 for grant of EC, without taking any such decision has issued the impugned letter dated 22.5.2013 to the Chief Secretary of the State of Odisha directing the District Collector to conduct public hearing and consequently the respondent no. 2 SPCB has issued the impugned letter dated 22.5.2013 requesting the District Collector to conduct public hearing.

The impugned letters are challenged by the applicant on various grounds including that they are not in accordance with law; that the letter of respondent no. 1 dated 22.5.2013 has no authority of law; that on the Expert Appraisal Committee (EAC) recommendation issued on 21/23.11.2012, within 45 days the respondent no. 1 should have taken a decision either way, failing which the EIA Notification 2006 mandates that on expiry of 45 days the respondent no. 1 is deemed to have granted EC and thereafter, there is no question of convening public hearing once again; that in the absence of such power to convene public hearing after the deemed clearance under the EIA Notification 2006, both the impugned letters cannot stand the test of law and that in any event the respondent no. 1 has no authority under the EIA Notification 2006 to write such letter to the Chief Secretary of the State.

The issues that arise for consideration in this case are:

1. As to whether respondent no. 1, MoEF has any jurisdiction to address such a letter to the Chief Secretary of the State as per the Environmental Impact Assessment Notification2006 and

2. As to whether by long delay the applicant company is deemed to have been granted EC as per the Environmental Impact Assessment Notification 2006.

As per EIA 2006, prior EC is required from the MoEF, Government of India, in respect of Category A projects of the Schedule and State Level Environment Impact Assessment Authority (SEIAA) in respect of the projects falling under Category B. The same is contained in regulation no. 2 of 2006.

Regulation 8 (iii) of the Notification states:

In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) , as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

Appendix No. IV of the EIA Notification 2006, which speaks about the details of the procedure for conducting public hearing specifically states in para 7.2 while explaining the time period for completion of public hearing, that if the SPCB fails to hold public hearing within the stipulated 45 days, the Central Government in cases of Category A projects and State Government in cases of Category B projects shall engage any other agency or authority to complete the public hearing process.

These extracts are sufficient to show that while public hearing is a mandatory requirement to be conducted by the SPCB, in respect of Category A, it is not as though the Central Government in the MoEF is without any power in completing the said process. Further, as stated in regulation 7 stage 3 (v) If the public agency or authority nominated to conduct public hearing reports to the regulatory authority that owing to the local situation, it is not possible to conduct the public hearing, the regulatory authority after due consultation may decide that the public consultation in the particular case need not include the public hearing. If in spite of such a clear mandate, the regulatory authority failed to follow the time schedule for whatever reasons, the regulation 8, abundantly makes it clear that on the expiry of the period, the EAC recommendation either recommending the grant of EC or not, enable the applicant to proceed as if the Environment Clearance sought for has been granted or denied in terms of the final recommendations of the EAC or SEAC which would be final.

If such an event takes place as per the statutory regulation, there is no question of subsequent revival of public hearing, either in the garb of MoEF directing the Chief Secretary of the State Government to ask the Collector concerned to do the same or otherwise. Once the statutory effect of the regulation has taken place, no other executive authority shall retain any power. Therefore, it is simple that if on the facts and circumstances of the case and on the effect of regulation No. 8 of EIA Notification 2006, there is finality to the recommendations of the EAC or SEAC, the EC is deemed to have been granted.

In the context of the present case, it is true that there was some reconsideration regarding the necessity of public hearing as per the regulation and afterwards it was decided to request the Chief Secretary to conduct public hearing through the District Collector. There is a copy of notice on 25.03.2013 to the effect that it must be referred back to EAC. However, there is nothing

on record to show that it has been done. In the absence of such record, the Tribunal has no other way than accepting the plea made by the Counsel appearing for the applicant that the recommendation of EAC made between 21.11.2012 to 23.11.2012 has attained finality and on the failure of the MoEF to send the matter back to EAC for re -consideration within the time frame as per the regulations, the Tribunal is unable to conclude on the facts and circumstances of this case that the respondent no. 1 is entitled to refer it for public hearing once again either through the Chief Secretary of the State or otherwise. The provisions of the EIA Notification 2006 have worked themselves out and there is no question of going back at this stage.

There is one other aspect, which is relevant to be considered in this case. On a reference to the presentation submitted to the EAC on 22.11.2012 by the project proponent, the entire aspect and mitigating measures apart from the Impact Assessments like land and environment, solid waste management, air environment, water environment, biological environment, socioeconomic environment have been analysed in detail and in such event when the EAC on application of mind has recommended EC and that has attained finality as per regulation, there is absolutely no jurisdiction on the part of respondent no. 1 MoEF to write the impugned letter to the Chief Secretary of the State Government.

Further it is not as if the Central Government is not empowered under the provision of Environment (Protection) Act and Rules made there under to impose further stipulations and conditions in the event of its finding that the applicant is violating Environmental norms.

Therefore, looking from every angle the impugned letters are not sustainable in law and as per the EIA Notification 2006 the applicant is deemed to have been granted environmental clearance in accordance with the recommendations of the EAC dated 23.11.2012 along with the conditions both specific and general stipulated in the draft EC put up by the Director MoEF in March, 2013 based on the notes of the Deputy Director, MoEF dated 12.03.2013.

Accordingly, the impugned order stand set aside and application allowed. However, it is made clear that the Central Government can always invoke the provisions of the Environment (Protection) Act and rules made there under, whenever there is any environmental violation by the applicant industry. The MoEF is directed to ensure that the project proponent implements the conditions stipulated in the draft EC and reproduced above and it is always open to the MoEF to impose any further conditions if the same are justified and subject to the principles of natural justice.

While parting with this case, the Tribunal hopes that in the interest of public and transparency the department would henceforth maintain files in an appropriate manner as laid down in the Manual of office Procedures. In addition, relevant documents such as minutes of EAC meeting should be kept in full, not in part, in the file as has been done in the present case.

The Application stands allowed. No cost.

Sayar Engineering

Vs

Rajasthan Pollution Control Board

Original Application No. 7/2014(CZ)

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

Keywords: Rajasthan High Court, Writ Petition, withdrawal, Consent, Environment Protection Act

Application disposed of

Dated: 5 March 2014

This Application came to be first registered before the Rajasthan High Court, Jaipur Bench, Jaipur as. S.B. Civil Writ Petition No. 3375/2007 alleging that the Respondent No. 3 was running a stone crushing unit without having valid permission and consent which is in violation of the Environment (Protection) Act, 1986, The Air (Prevention & Control of Pollution) Act, 1981 and as such a writ may be issued for the closure of the said unit. The High Court vide its order dated 8th May, 2007 issued notice to the Respondents. However, the matter remained pending before the High Court till it was transferred to the NGT.

The Tribunal received a letter dated 17th February, 2014 from the Director of the Applicant's company Sh. Mahender addressed to the Registrar of the NGT Central Zone Bench, Bhopal in which it has been stated that the Director of the Applicant's company namely Inderchand Jain, who filed the writ petition, has since expired and a copy of his death certificate issued by the Registrar, Births & Deaths, Beawar, District Ajmer recording the death of Inderchand Jain on 29th January, 2010 has also been filed.

In the aforesaid letter, it has also been stated that the unit of the Respondent No. 3 M/s J.G. Micros has been closed down and the production has been stopped. As such, it has been prayed that the matter may be dropped in view of the fact that the Applicant has died and the unit, which was allegedly causing environmental pollution, has stopped production.

The Tribunal has considered the aforesaid letter as M.A. No. 115/2014 and in view of the above it does not deem it necessary to proceed with the matter and accordingly the O.A. 07/2014 stands disposed of having become infructuous.

However, liberty is granted to the Applicant or any other persons that in the event of the said unit re-starting or commencing its production and if there is any grievance on that account, the Applicant or any other person may approach this Tribunal for appropriate relief.

In the above terms, this application stands disposed of along with M.A. No. 115/2014

Shri R. Balan Begepalli Post

Vs

The District Collector Krishnagiri and others

Original Application No. 79/2013(SZ)

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

Keywords: fabrication of iron, Noise pollution, disturbance, District Environmental Engineer, Tamil Nadu Pollution Control Board

Application disposed of

Dated: 6 March 2014

The case of the applicant, in short, is that the applicant is a native of Begepalli, residing at Door No. 1/380 Ezil Nagar which is classified as residential area. The 5th respondent owns a plot in No. 25 in Ezil Nagar is carrying on an industry in the name and style of "Sandhya Engineering Works" where he is does fabrication works employing 25 people. The said unit is carrying on fabrication of irons, i.e., iron windows, iron doors and supplying the same to other companies.

Because of the noise pollution, the people of the said Ezil Nagar could not sleep peacefully and even the children of the said Ezil Nagar are also affected. A detailed representation was made to the respondent Nos. 1 to 4, complaining of the same but to no effect.

On appearance, all the respondents filed their respective replies.

The 5th respondent has flatly denied all allegations made by the applicant. In order to ascertain the facts of the situation, a direction was issued to the District Environmental Engineer concerned to inspect the noise level. Pursuant to the inspection made by the District Environmental Engineer on 30.07.2013, a report was filed and a perusal of which indicated that the noise level has exceeded to some extent. When a query was raised, the counsel for the 5th respondent submitted that 6 machines were available and in order to bring the noise level within the permissible limits, the 5th respondent was ready to remove one or two machines as instructed by the authorities. Following the same, the District Environmental Engineer concerned made another inspection and necessary instructions were given to the fifth respondent for removal of two machines out of the 6, which was carried out, by the 5th respondent. After making another inspection, the second respondent filed a report stating that the noise level was within the permissible limits.

At this juncture, it was brought to the notice of the Tribunal by the counsel appearing for the applicant that the renewal application for consent was pending in the hands of the Tamil Nadu Pollution Control Board. Now the renewal has been made. A copy of the consent to operate for a period of 2 years commencing from March 2014 was also filed before the Tribunal. A perusal of it would indicate that necessary and reasonable conditions are attached to in the order of

consent to operate and hence under the circumstances, the Tribunal is unable to notice anything further for the applicant to pursue in the grievances originally ventilated in his application. Hence there cannot be any impediment for the 5th respondent to carry on operation of his unit within the noise level as permitted by the officers of the Tamil Nadu Pollution Control Board and found in the last report dated 04.12.2013.

However, the authorities of the Tamil Nadu Pollution Control Board are directed to monitor the noise level in future. With the above direction, the application is disposed of.

No cost.

Lower Painganga Dharan Virodhi Sangharsha Samithi Anr.

Vs

State of Maharashtra Ors.

Appeal No. 13/2013(THC)(WZ)

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

Keywords: Irrigation project, Godawari River, Environment Clearance, Maharashtra, Environmental Impact

Application disposed of

Dated: 10 March 2014

Lower Painganga Irrigation Project was planned in 1971. Somewhere in 1975, a dispute over right to draw water from Godawari River was settled an Award of Godawari Water Dispute Tribunal. By that, Award the Special Tribunal settled the dispute in terms of Agreement signed by State of Maharashtra and State of Andhra Pradesh in October 1975. Both the States reached common understanding that Lower Painganga Project shall be an Inter State Project. A major part of the said project covered the area in State of Maharashtra, whereas a small part thereof covered the area of State of Andhra Pradesh, situated in Adilabad district. This major Irrigation Project was granted Environment Clearance (EC) in 2007. The Project work could not, however, commence within the EC period of five years. Govt. of Maharashtra accorded administrative approval to its part of the project on June, 26, 1997.

By filing Writ Petition No.4025 of 2011, the Applicants challenged revival of EC dated May, 17, 2007, as well as FC dated January 7, 2009, granted by the MoEF (Respondent No.7). The Applicants challenged the EC and FC, on various grounds, including procedural irregularities, viability of the project, violation of doctrine of public trust, absence of proper R&R plan, major threat to environment due to large number of tree cutting activities, so on and so forth.

The Applicants have come out with a case that they are interested in welfare of the farmers and villagers, who are likely to be adversely affected due to proposed Irrigation Project. The Applicants alleged that implementation of proposed project will cause irreversible damage to ecology and environment and as such, the project shall not be allowed to be made operational.

The Tribunal marked the following issues to be decided:

1. Whether the proposed Project is in keeping with principle of sustainable development and whether other alternatives have been duly considered?

2. Whether the diverse environmental impact of this Lower Painganga Project is properly studied and understood?

3. Whether the public hearing conducted as part of the EC process is bad in law?

4. Whether the Forest Advisory Committee (FAC) has taken a justifiable decision to grant forest clearance inspite of the fact that on earlier two occasions the same was refused?

5. Whether the Project Proponent has proposed adequate environmental safety measures in the proposal and whether any additional safeguards are required to be satisfied if the project is allowed to continue?

The project has been evaluated by the Expert Appraisal Committee (EAC) of the MoEF for environmental impacts and the FAC for forest clearance. These Expert Committees are expected to review in detail the project proposal for decision on grant of EC based on environmental appraisal of project activities. The Tribunal listed some of the environmental and ecological factors which are of concerned for such a large scale project:

1. Excessive sedimentation of the Reservoirs.

2. Water logging due to excess use of water for irrigation.

3. Increase in salinity of ground water, groundwater recharge.

4. Health hazard – water bound diseases, Industrial Pollution etc.

5. Submergence of important minerals and monuments and environmental flow in the river.

6. Fish cultural and aquatic life.

7. Seismicity due to filling of reservoirs.

8. Micro climate changes.

9. Plant life and migratory birds.

The Tribunal then went on to give the advantages and disadvantages of Irrigation dams that affect the ecology of the river and adjoining areas. While it was important to keep in mind the damage large dams cause, the principle of sustainable development has to be given its due importance.

From the rejoinder of the Applicants, it is gathered, that the Applicants on their own showing, do not have any background or knowledge about Environmental Laws, various norms and the 31 parameters, which are required to be applied at the time of assessment of the project, particularly a project like the irrigation project of present magnitude. They have raised general objections, procedural objections and objections based upon contemplated problems on account of proposed rehabilitation plan. They have not made any independent environment impact study, nor are a separate EIA Report prepared through any expert Agency. In other words, any other EIA Report filed by the Applicants does not counter the EIA Report of the Respondent No. 6 (VIDC). The Tribunal cannot brush aside the ground reality that it has no complete and in-depth specialized knowledge of engineering aspects, pertaining to the branch of construction of

big Dams. They also do not possess highly scientific knowledge in the field of Geology to assess seismicity impact of the proposed irrigation project. The Applicants have not given details of seismic potentials at project site. The EAC Committee cannot treat mere absence of a particular report in this behalf by itself as serious fault in the process of evaluation of the project.

Coming to the objection raised by the Applicants as regards the public hearing, Clause 3.1 of the Notification requires the Member Secretary of the PCB to publish public notice of the hearing by giving minimum 30 days period to members for furnishing their responses. In the present case, copy of the Executive Summary was made available to the Members of the public. It is also matter of record that 30 days notice was given prior to the first scheduled date of hearing, second scheduled date of hearing and there was marginal less number of days available in the third scheduled period of hearing. In such circumstances, the question is whether the procedural lapses would invalidate the public hearing.

True, the public hearing was postponed on first two (2) scheduled dates; first on account of changes in the project concept plan and second, due to administrative convenience. It is also true that on third occasion, there was somewhat shortfall of few days in thirty (30) days period of Notice prior to the public hearing, which was held on May 6, 2006. The record, however, shows that there was sufficient notice available much in advance for furnishing responses by members of the public. In fact, a large number of public members gave written representations. It cannot be overlooked that the public hearing was conducted for nearly seven hours. The views in favour and against the Project were expressed during the public hearing. The proceedings were fairly recorded by the competent officers of the MPCB. The process was completed in justifiable manner.

The dams as large infrastructure have a high potential for development, they can balance hydrological variability by storing water for all sectors of the society and serve for controlling the floods. The Applicants have raised serious concerns over the environmental safeguards which need to be adopted by the Project Proponent and which are being stipulated and monitored by the Environmental Regulatory Authority. No doubt, right to have a clean environment is fundamental right. On the other hand, the right to develop is also equally important one and therefore, concept of Sustainable Development has emerged in last few decades and which is one of the principle on which this Tribunal needs to work.

At this juncture, it may be noted that the irrigation project envisages benefits to the tribals, farmers of socially and economically backward area of Vidarbha, and aims to generate employment in that area. Nobody will deny that a major irrigation project is likely to give booster dose to the economy of the region. Availability of irrigation facilities in the area will help cultivators to minimize or curtail dependency on annual rainfall, which is many times unpredictable.

The Tribunal is of the opinion that the irrigation project satisfy the principle of “Sustainable Development”, as required under the Environmental norms and Section 20 of the National Green Tribunal Act, 2010. The Application is without much substance. Still, however, the Application cannot be dismissed without giving directions in conformity with the guidelines set

out by the Apex Court in the case of *Narmada Bachao Andolan*, and ensuring due compliances of certain conditions like implementation of rehabilitation package, Pari-passu with commencement of the project. In other words, the project and some of the conditions must be pari-pasu in nature. Having regard to these aspects, the Tirbunal dismisses the Application and vacate interim orders.

The Application is disposed of.

Charoen Pokphand (India) P. Ltd.
Vs
Santosh Pohare Adv

Original Application No. 5/2014(WZ)

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

Keywords: Poultry, NOC, pollution, hazardous waste, Tahsildar, permission

Application allowed

Dated: 12 March 2014

By this Application, Applicant has challenged order dated March 30th, 2013, passed by Respondent No.1-Tahasildar, giving direction to stop the construction of hatchery/poultry breeding farm in the agricultural land Survey Nos.45/1,45/2 and 45/3, admeasuring 6 Ha 88R, situated at village Suregaon (Ganga), taluka Newasa, district Ahmednagar.

The Applicant claims that a poultry and breeding farming unit was sought to be established in the said agricultural land and therefore, NOC was obtained from the Village Panchayat, Suregaon (Ganga). The Applicant further claims that a certificate from Town Planning department was also obtained and likewise NOC from the Directorate of Industries was duly obtained. After due compliances, the Applicant commenced construction activity at the site.

Without any substantial reason, some of the villagers raised objections and therefore, the Tahasildar, made inquiry. By the impugned order, the Tahasildar, held that, "the Applicant had not deposited the amount of fees as directed for the purpose of conversion of agricultural land to Non-agriculture use". He also recorded that the project was likely to cause foul smell in the area which will adversely affect the health of residents of the villager.

The Respondent states that he had taken all the permissions required for the poultry unit.

The Tahsildar in his affidavit stated "the company has started NA use land, without permission, denied to pay NA assessment. This is only main object of the order; therefore, say of the Applicant in this part is not correct."

In the meanwhile, third party by name Badrinath Shinde has filed Intervention Application on the ground that the Applicant has projected wrong facts, in order to go ahead with the project, which is improper and illegal. The material points, which need to be determined in the present matter, are:

(1) Whether impugned project activity falls within eco sensitive zone of Jayakwadi bird sanctuary and is prohibited under the Law?

(2) Whether impugned activity of poultry farming unit is shown to be detrimental to the environment and is likely to cause substantial damage to health of the villagers in the vicinity or otherwise likely to cause adverse impact on the environment and ecology of the area?

The Tribunal stated that the activity had not commenced as yet and the Respondent has only taken permissions. If in the course of time, there is any illegal activity that risks the residents, they can find recourse in the NGT. There is nothing on record, to show that impugned activity falls within declared eco sensitive zone of bird sanctuary. In case, third party is having any record of authentic nature to show that activity of the Applicant falls within eco sensitive zone, then third party may take appropriate action for which liberty is granted. Once it is noticed that activity undertaken by the Applicant does not prima facie require consent/approval from the Regulatory Authority, like Tahasildar, except and save, observance of procedure for conversion of land use, the Tahasildar, has no legal authority to pass impugned order on the ground that project is likely to cause adverse impact on the health of residents of the vicinity, or is otherwise illegal, because it falls within eco sensitive zone. In other words, the Tahasildar exceeded his jurisdiction in passing such order.

Considering foregoing reasons, the Tribunal stated that the impugned order is unsustainable and is bad in law. Hence, the Tribunal allows the Application and hold that the impugned order is liable to be set aside.

Accordingly, the Application is allowed and the impugned order is quashed. The Tribunal directs, however, that the Applicant shall commence impugned activity only if environment norms are fulfilled and the guidelines of MPCB shall be strictly followed for the purpose of commencement of activity of the poultry farming/breeding as may be undertaken by the Applicant. In case, the Applicant undertakes any other activity, the intervener is at liberty to take appropriate action as indicated in this Judgment. This option is kept open in view of the request made by the intervener and Intervention Application is accordingly disposed of. The main Application is allowed in above terms.

Dadhu Bhai Sharma

Vs

State of M. P. Ors

Appeal No. 9/2013(CZ)

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

Keywords: Environment Clearance, Captive Thermal Power Plant, public hearing, notice

Application Dismissed

Dated: 13 March 2014

This is an appeal filed by the Appellant against the prior Environmental Clearance (EC) dated 5th August, 2013 granted to the Respondent No. 8 M/s Birla Corporation Ltd. for establishing Captive Thermal Power Plant (35 MW) at village Bela, Tehsil Raghurajnagar, District Satna, Madhya Pradesh for its existing cement plant at the same location

After hearing the counsel for the Appellant on 12th November, 2013 notices were issued to the Respondents on the ground that the public information that was notified in the Newspapers stated that the plant is to be located at village Ghoordang whereas, in fact the said plant was proposed to be set up at village Bela. It was also alleged by the counsel for the Appellant that no Public Hearing, at all, took place prior to the grant of the EC and the Appellant came to know this fact based on the information provided to him by the Gram Panchayat under the provisions of the Right to Information Act, 2005.

The Respondent No. 8 (M/s Birla Corporation Limited) in its reply stated that all the required information had been correctly furnished by the Project Proponent and that it is wrong to submit that the Public Hearing did not take place as alleged by the Appellant.

On behalf of the Respondent No. 3 and 4 i.e. the State Level Environment Impact Assessment Authority (SEIAA) and the State Level Expert Appraisal Committee (SEAC) reply was submitted with the affidavit of Dr. R.K. Jain, Officer-in-Charge of the SEIAA, M.P. In the previously mentioned affidavit, it has been stated that the Public Hearing was conducted under the Chairmanship of the Additional Collector, District Satna on 11 November 2011 at the Government Primary School, village Bela, Tehsil Raghurajnagar, District Satna and copy of the proceedings of the Public Hearing has been annexed along with their reply as Annexure R-3. The Tribunal, therefore, finds that the averments made by the Respondent No. 8/Project Proponent in its reply regarding holding of the Public Hearing find corroboration from the documents placed on record by the Project Proponent in the form of Annexure R8-2 and from the reply filed by the Respondent No. 3 and 4 and the documents filed along with their replies in the form of Annexure R-3.

The submission made by the counsel for the Appellant that the Village Panchayat has informed the Appellant that it has no intimation regarding holding of any Public Hearing on 11th November, 2011 for the establishment of the Captive Thermal Power Plant by the Respondent No. 8, has no consequential effect on the merits of the present case.

In view of the above, the Tribunal finds no merit in the contention of the Appellant that no Public Hearing took place before granting the EC in favour of the Respondent No. 8. The aforesaid contention thus, has no merit.

The second submission made by the Appellant is that in the publication made through daily Newspapers for the general information of public it was stated that the Project Proponent was granted EC dated 5th August, 2013 to establish a 35 MW Captive Thermal Power Plant at village Ghoordang, Tehsil Raghurajnagar, District Satna whereas in fact the EC was in respect of establishment of the plant at village Bela, in District Raghurajnagar. The Respondent No. 8 in its stated that the aforesaid mistake was unintentional and on realising the aforesaid mistake, a corrigendum was also issued by way of information that the said Captive Thermal Power Plant was being established at village Bela, Tehsil Raghurajnagar, District Satna and by mistake in the earlier notice, village Ghoordang had been mentioned and the correct location is village Bela and it may be understood as such.

The Tribunal therefore inclined to hold that the previously mentioned mistake of the wrong mention of the village in the public notice issued post EC cannot be said to warrant interference for declaring all actions post granting of EC to set at naught. 'This mistake in our view may be construed as an irregularity which could not have led any person interested to be misled as other options for gaining the information were available to any person interested based upon the information provided in the said notice itself by way of seeking the information on the website of SEIAA.'

10. In view of the above, the Tribunal finds no merit in the previously mentioned contention of the counsel for the Appellant and the same deserves to be rejected.

Another objection that was raised by the counsel for the Appellant was that the distance of the nearest town was also incorrectly mentioned as 8 km. whereas in fact the residential area of Satna town extends to within 300 mtrs of the site.

Counsel for the Respondent No. 8 submitted that the distance measured was on the basis of the milestone on the National Highway No. 75 and since the distance of the town is taken from the point already determined and not from the outskirts, the Project Proponent has mentioned the aforesaid distance based upon the recorded distance.

Counsel for the Respondent No. 8 submitted that furnishing of the aforesaid information was not by way of any deliberate suppression or mis-statement of facts so as to prejudice the rights of any persons and in any event the Appellant did not even attend the Public Hearing despite issuing public notices and in case any such objection would have been raised with regard to the aforesaid point, it could have been clarified during the Public Hearing. It was further submitted

by the Respondent No. 8 that the aforesaid contentions have been raised only by way of afterthought.

The Tribunal has considered the aforesaid submission and satisfied that in the light of the explanation submitted by the counsel for the Respondent No. 8 with regard to the information regarding the nearest railway station based upon the railway sliding available for the project proponent for its cement works and also with regard to the distance from the nearest town, the same are bona fide not being deliberate mis-statement of facts so as to warrant interference.

In the facts and circumstances of the present case, no merit is found in this case. This appeal is consequently stands dismissed. No order as to costs.

M.P. Patil
Vs
Union of India
Appeal No. 12/2012

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

Keywords: Environment Clearance, Thermal Power Plant, Public Hearing, rehabilitation, agriculture, Karnataka

Application disposed of

Dated: 13 march 2014

In the present appeal, the appellant has raised a challenge to the order dated 25th January, 2012 passed by the Ministry of Environment and Forests (for short the "MoEF"), Government of India, granting Environmental Clearance (for short the "EC") to the project for setting up a 3x800 MW Stage-I Kudgi Super Thermal Power Project near village Kudgi, in Bijapur District, Karnataka. The necessary facts giving rise to the present appeal can be summed up as under:

The appellant claims to be a public-spirited citizen and the President of Parisara Raksana Seva Vedike, a Registered Society. The appellant has a property in the said village and the project proposed by the respondents is feared to have devastating effects - both long term and short term - in the region.

The project proponent, the National Thermal Power Corporation Limited (for short the "NTPC") on or around 28th January, 2009 submitted a proposal for seeking EC for setting up a 3x800 MW Stage-I project of ultimate capacity of 4000 MW. Based on this project proposal, the MoEF stated the Terms of Reference (for the "TOR") vide letter dated 30th March, 2009. According to the applicant, while seeking the EC, the NTPC had stated that the land is mostly barren & rocky and partly agricultural with single crop cultivation. The Expert Appraisal Committee (for short the "EAC") recommended the project for EC subject to certain stipulations and specific conditions stated by it. On the basis of the recommendations of EAC, MoEF, which is the Regulatory Authority, accorded EC for the project under the provisions of the Environmental Clearance Regulations dated 14th September, 2006 (for short the "EIA Notification"). The total land required for Stage-I was stated to be 2440 acres and the total land notified for acquisition at an elevation of 580 to 590 metres was approximately 2398.36 acres.

A number of other facts have been specified in the petition on the basis of which it is stated that grant of EC to the NTPC is ecologically and socially disastrous and will have dangerous impact on future generations in violation of the environmental laws. It is also stated that there was no Rehabilitation and Resettlement (for short the "R&R") scheme in place at the time of public hearing to enable the public at large, particularly the project-affected persons, to put forward their views in that behalf.

The appellant is challenging the EC granted to the NTPC on, inter alia, the following grounds:

(i) The EC was obtained from MoEF by making misrepresentation with regard to the land use/land cover of the project area and nature and categorisation of the land, claimed to be mostly barren and rocky, as opposed to mostly agricultural and fertile land.

(ii) The 'public hearing' was not held in accordance with the prescribed procedure. Material information was withheld from the public and the objections raised during the public hearing have not been considered by the EAC. It has completely frustrated the advantages of the public hearing, as contemplated under the EIA Notification.

(iii) Various terms of the TOR have not been adhered to. Even the AAQ data collected for grant of EC was not from proper locations, as required under the TOR. Monitoring stations have not been set up to check pollution levels from the downward wind direction, as contemplated under the TOR/EC.

(iv) The EC had been granted without R&R plan being in place. The R&R plan was not put up before the public during the public hearing thus depriving a fair opportunity to the affected parties to examine objectively the pros and cons for establishment of the thermal power project even though prescribed at TOR Stage by MoEF. The R&R plan, in fact, was not ready at the relevant time and was not prepared covering all aspects even at the time of grant of EC to the NTPC. This has entirely vitiated the process of grant of EC.

(v) The coal source and its quality were changed several times including at the stage of EAC recommendations as also at the stage of EC. This factor was also ignored by different authorities at the relevant time.

On the basis of the facts of the case, the Tribunal decided to take the issues one by one.

On the question of the effect of the Writ Petition filed in the High Court, the Tribunal states that the challenge in those Writ Petitions was to the MOU dated 12th January, 2009 entered into between Respondents No.2, 3 and 6 for setting up the coal based STPP at Kudgi with the prayer to stop acquisition of the land for the same purpose, though there was no specific challenge to the process of acquisition. However, the quantum and purpose of acquisition was raised as an issue in the Writ Petitions. The High Court, after considering some of the issues, did not find merit in the challenge to the decision of setting up the power project. However, it made it clear that the dismissal of the Writ Petitions by the High Court would be without prejudice to the contentions of the parties and pendency of the appeal before this Tribunal.

In view of the facts, the Tribunal does not find any merit in the objections raised on behalf of NTPC in regard to the maintainability of the present appeal.

Issues in regard to land use/land cover –whether any misrepresentation has been made by the ntpc in regard to the nature and categorisation of the land required for the purpose of the project in question:

According to the NTPC, the site comprises of mostly barren and rocky land. The NTPC had informed the MoEF at the stage of TOR that the land proposed to be acquired (about 3000 acres) was mostly barren and rocky and partly agriculture with single crop. This statement appears to be doubtful as it is clear from the proceedings of the public hearing held on 25th March, 2010 that Kudgi is well known for its betel leaf crop for more than the last 100 years. The appellant, in his submissions, has stated that even during the public hearing, it was mentioned that the area was irrigated and was producing a number of agricultural and horticultural products. He further stated that in the area, a number of pumps had been installed by the farmers for the last 40 years which were evident as per the records of Hubli Electric Supply Company. Further, it was brought to our notice by Mr.Ritwick Dutta, Counsel for Appellant, that satellite imagery appended to the EIA report did not indicate that major part of the site was barren. Thus from the above, it may be concluded that the land in question is not mostly barren & rocky as informed by NTPC to MoEF, which may be taken as wilful suppression of facts.

Issue with regard to rehabilitation and resettlement policy with reference to the facts of the present case:

R & R is an essential feature of any project which comes up for consideration before the competent authorities in accordance with the EIA Notification. If one examines the scheme of the EIA Notification, it becomes evident that at the time of preparation of the TOR, the NTPC had to place all relevant material before the EAC.

Particularly in the facts of the present case, we may notice that the TOR given by MoEF required for preparation of R&R plan, which was an integral part of the DEIAR, which inturn, was the basis for organising public hearing, as required under EIA Notification. But the DEIAR did not contain a detailed R&R plan at the time of the public hearing, and as such, it amounts to non-compliance of TOR. Even the EAC,while considering the project, has noted that the R&R plan is too general but the EAC recommended the project for EC and in fact R&R plan was submitted to MoEF only a few months (5 to 6 months) after the EC was granted to the project.

The authorities concerned should have taken into consideration the impact of establishment and operationalisation of the project upon the persons who were likely to be displaced, even though not the owners of the acquired land at the relevant stage, particularly at the time of public hearing, for formulation of a desirable R&R scheme.

Thus, from the above discussion, it can be concluded that there was no comprehensive R&R as required under EIA Notification, and other policies even though the project entails acquisition of large private land.

Location of AAQ monitoring stations and variation in coal quality - effects thereof:

The next contention that is raised on behalf of the appellant is that the AAQ monitoring stations are not located in the downward wind direction so as to provide correct AAQ analysis. Furthermore, the coal quality has been varied at different stages i.e. at the stages of submission of application, the preparation of EIA report and the grant of EC. The variation of coal quality would result in higher sulphur emission causing air pollution. There would be significant difference in the emission rate and the 24-hour maximum incremental value would be higher.

Opposed to this, the submission on behalf of the NTPC is that at no stage, coal quality and its source were changed so as to bring the sulphur content higher than 0.5%, which is the maximum value taken into consideration by the authorities concerned at any stage till the grant of EC.

From the above discussion, it is clear that some changes may be called for in so far as the question of providing AAQ monitoring stations is concerned. The downward wind direction, predominantly being south-east, is evident from the documents placed on record. These changes have to be effected upon due visit to the site and ensuring that the AAQ monitoring stations including on the downwind direction are situated at such locations that provide a true and correct picture of AAQ through all the seasons. However, changes in source and quality of coal may not result in any prejudice to the environment. It is evident that the worst scenario of sulphur content in coal has been taken into consideration i.e. at 0.5%. The change in source of coal or its quality has not gone above such percentage of 0.5%. Thus, we cannot find fault with the overall impact on AAQ and the consequential grant of EC on this ground, which has taken into account a higher level of sulphur content (0.5%) in coal and has put a condition accordingly.

To an extent, there is a right to development. However, even this right is not free of limitations and regulations. It is not an unfettered right so as to completely give a go-by to the 57issues of environment. Development may be carried out to satisfy the need of a developing society but it has to be regulated so as to satisfy the requirement of preservation and nurturing of the natural resources, which are the real assetsof the society.

In light of the above principles, we have to ensure that the establishment of thermal power plant does not unduly hamper the means of livelihood of the residents. Wherever acquisition of land and displacement is an inevitable factor in the establishment and operationisation of the project, there it must be supported by an appropriate compensatory and R&R scheme. It must provide reasonable chances of employment and earnings to the displaced persons becoming unemployed as a result of acquisition of the land and establishment of the project.

Public hearing or public consultation:

Public hearing/public consultation is one of the most significant requirements which the authorities concerned are required to satisfy before an EC could be issued in accordance with law.

From a reading of the issues discussed during the public hearings, it is clear that an appropriate R&R scheme was not available at the time of the public hearing. Also, the other objections raised at the public hearing were not properly answered during the public hearing. The Committee concluded that major issues had been noticed but it is evident that the nature and category of the land, location of monitoring stations, shifting of coal and deficiencies in the R&R plan were not dealt with in consonance with the TOR. The R&R plan, which was to be prepared within four months, in fact, had not been placed before the competent authorities at the time of consideration or even after the grant of the EC.

The objections raised at the public hearing were intended to bring to the fore the problems and difficulties which the affected persons were to face as a result of the establishment of the project which may be even beyond the environmental issues. The Public Hearing Committee is expected to hear and record its opinion so as to bring before the EAC the essence of the public hearing and providing pros and cons of the project in question. If this is not strictly adhered to, the EAC would be kept in the dark in relation to the actual position or ground realities at the site in relation to the project. This, besides being a legal flaw in the compliance with the EIA Notification, also deprives the affected persons of a valuable right.

Relief:

The above discussion on the various legal and factual aspects of the present case brings us to the last issue as to what relief can the Tribunal grant in the facts and circumstances of the present case. The defects in the process of grant of EC crept in right at the initial stages and have proceeded till the end. The Tribunal has already held that there was an improper declaration in regard to the nature and category of the land acquired for the project. Furthermore, during the public hearing, there was non-declaration and non-disclosure of material factors like R&R scheme, source and quality of coal and location of AAQ monitoring stations. It had adversely affected the interests of the persons likely to be affected by the project. The EAC, while recommending the establishment of the project, did not seriously dwell upon these very material issues and even permitted that the R&R scheme could be declared within four months of the recommendation.

While keeping in mind the precautionary principle and principle of sustainable development, the Tribunal has to pass directions which will ensure compliance with all the conditions that may be imposed for protection of environment, ecology and prevention of pollution in the proposed order granting the EC. There has to be a definite and unambiguous R&R scheme in place before the project can be permitted to be fully established and completely made operational. Thus, while partially allowing this main application, the Tribunal passes the following order & directions for their strict compliance by all concerned in the given facts and circumstances:

a) The order dated 25th January, 2012 is hereby remanded to the MoEF to pass an order granting or declining environmental clearance to the project proponent afresh in accordance with law and this judgment. Till then, the said order shall be kept in abeyance.

b) MoEF, in turn, shall refer the matter to EAC for its re-scrutiny and imposition of such conditions, as the expert body may deem fit and proper, inter-alia but primarily, in relation to R&R scheme, effects of improper disclosure in relation to nature and categorization of the land in question, providing of AAQ monitoring stations keeping in view the downward wind direction to ensure continuous adherence to the prescribed standards of emission and providing of early warning system near the human settlements.

c) The EAC shall make its recommendations on all relevantmatters of the proposed project, as it may consider necessary, whether or not specifically covered under this judgment.

d) Furthermore, EAC shall be well within its jurisdiction to recommend imposition of compensation or any other sumpayable for causing environmental degradation, and/or for improper disclosure of facts in its application and noncompliance of the terms and conditions of the TOR, the EC, including non-timely furnishing of R&R scheme by the NTPC.

The authorities concerned, while considering the conditions to be imposed in relation to R&R scheme, shall include all project-affected persons in the R&R scheme, irrespective of the fact whether they have already received compensation or not, wholly or in part, or are still to be paid compensation for acquisition of their land, including the persons otherwise displaced.

e) The EAC shall visit the site in question, give public noticeand hear the project-affected or displaced persons individually or in a representative capacity and then proceed to record its findings.

f) The EAC may impose such additional conditions to the order dated 25th January, 2012, as it may deem fit and proper, unless the EAC comes to the conclusion that the project ought not to be granted EC.

g) The additional conditions shall be imposed in relation to environmental protection, providing of such anti-pollution devices, as may be necessary and particularly for complying with the R&R scheme so formulated, in terms of this order.

h) The entire above process shall be completed by the EAC within six months from the date of passing of this order.

i) During this period or till fresh order is passed by the MoEF, whichever is earlier, the project proponent shall maintain status quo as of today in relation to the project in question.

The application is disposed of with the above directions. However, in the facts andcircumstances of the case, the parties are to bear their own costs.

Babu Lal Jajoo
Vs
Chief Secretary to Govt. of Rajasthan and Ors.

Original Application No. 8/2014 (THC) (CZ)

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

Keywords: Extended Producer Responsibility, Plastic Waste (Management & Handling) Rules 2011.
Application Disposed Off

Dated: 14 March 2014

This Application has been filed by the Applicant with the prayer for a direction to the Respondents to take effective steps with regard to complete ban and prevention of the use of plastic carry bags.

The tribunal noted that it had dealt with the aforesaid issue in the O.A.No.04/2013 titled as Sandeep Lahariya Vs. State of M.P. & Ors wherein it had issued directions to the three states of Rajasthan, Madhya Pradesh and Chhattisgarh with regard to the plastic carry bags and the observance of the Plastics Waste (Management & Handling) Rules, 2011 as also the implementation of the concept of Extended Producer Responsibility (EPR) which has been introduced in the aforesaid Rules.

Vide the above judgment the State of Rajasthan was directed to submit the compliance report by 31st May 2014.

As the previously mentioned judgment has already been delivered on 11th November, 2013, the tribunal did not issue any fresh direction in this matter.

This Original Application, accordingly, stands disposed of.

Dyaneshwar Gadhve
Vs
MoEF and Ors.

Application No 6/2014(WZ)

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

Keywords: Apex Court Judgment, Mines, e-auction, Environmental Clearance, Ad-interim order, EIA report, EIA notification 2006

Application Disposed of

Dated: 14 March 2014

The applicants through this application sought reliefs for the following issues:

(i) Quash and set aside the auction of sand beds of Nagpur & Bhandra districts, which are contrary to the Supreme Court Judgment and the policy framed by the State Government & O.M. dated 24/12/2013.

(ii) Direct the concerned authorities to obtain Environment Clearance for mining projects that are within 1 km distance on any side, as cluster & B1 category with EIA study

(iii) During pendency of the present application stay all further process of e-auction and work on ground, for Nagpur & Bhandara mines as being held by respondent no.5 & 6, on 6/12/2013 & 7/12/2013

The Application is filed under Section 18 (1) read with Sections 14 and 15 of the National Green Tribunal Act, 2010.

The applicant was aggrieved mainly due to non-compliance of the directions of the Apex Court in the case of "*Deepak Kumar Vs State of Haryana* and ORs, 2012 4 SCC 629. The case enumerated mining policy expected to be followed in view of guidelines of MoEF. Model guidelines were, however, not adhered to when environmental appraisal was done in respect of pockets of the sand beds for the purpose of e-auction of Nagpur and Bhandara districts by the State Government. EIA notification dated September 14, 2006 was to be followed before granting clearance by SEIAA. However, it was alleged that there was an absence of SEAC in the state and so EC could not grant SEIAA.

It was further alleged that the mapping pockets/ blocks of the sand bed were not done properly. It was argued that SEIAA did not properly consider the fact that blocks are contagious and some of them do not qualify the parameters for the purpose of eligible criteria to be applied in the context of e-auctioning process.

Tribunal on examining the record, rival contentions, affidavits of the parties, as well as relevant maps produced by them concluded that:

- It is not necessary for the tribunal to decide whether the recommendatory Committee was authorized to make recommendation or that the Committed headed by Mr.Buddiraja, could have made such recommendation, when it was dealing with some other subject like dealing with construction activities in the territory of Mumbai Metropolitan Region (MMR). The decision of SEIAA is of relevance and recommendatory Authority, where one Authority or other, is not significant in the process because ultimate decision-making Authority is accountable in the legal parameters. On this ground the entire process of e-auction cannot be said to be illegal and void

- The first objection was with relation to finding distance of two blocks/ pockets of the sand bed. The maps produced by the Mining Authority appear to have been considered by the SIEAA while deciding. However, there was contention about the authenticity of the maps. The appellant's counsel submitted that contagiousness visa-a-visa, location of the riverbed is relevant and the distance visa-a-visa of village is irrespective for the purpose of consideration of auctioning process.

Judgment of Apex Court in *Deepak Kumar Vs State of Haryana and Ors*, the order dated February 27, 2012, reveals that by way of interim order the direction has been issued for leases of mining minerals, including renewal for area of 5 Ha be granted by the State/Union Territory, only after getting Environment Clearance (EC) from MoEF. However, the Tribunal held that applicant is at liberty to initiate competent proceeding against the authority and that it was not an executing agency. Furthermore, it was held that the directions were issued to the State Authority and that the tribunal did not have a mechanism to know whether such model guidelines are really complied with by the State Authority. The Tribunal cannot proceed on assumptive basis that such guidelines have been flouted by the State Authority.

However, in the interest of justice, Tribunal is of the opinion that it would be appropriate for SEIAA to consider representation and maps prepared by the Applicant and re-visit the proposal before final action. The process, however, shall be completed within period of one week. The Applicant may immediately submit representation or copy of the present Application along with maps before SEIAA and within one (1) week, decision regarding approval of beds may be taken, if so required by affirming earlier decision, or as may be deemed proper.

Ad-interim order (under Section 151 of the Code of Civil Procedure) to continue for period of ten (10) days and thereafter it will automatically deemed as vacated without any order.

The Application is accordingly disposed of. No costs

Shree 1008 Raj Rajeshwari

Vs

Sunil Sharma Ors.

Original Application No. 57/2013 (CZ)

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

Keywords: Mining Operations, Air Pollution, Noise Pollution, Stone crushing Units, Dust, Environment Protection Rules 1986, Sarva Shikhsha Abhiyaan, MP State Pollution Control Board
Application Disposed Of

Dated: 18 March 2014

This application was filed by the Sansthapak of a public trust, which manages the religious institution of the Applicant with the allegations that the previously mentioned temple and the building of the trust are situated in the Village Bilua, Tehsil Dabra, District Gwalior.

The application was filed in view of hardship caused by environment pollution (dust & noise) arising from Stone Crushing Units to the devotees, local residents and nearby settlements. Pointing out the constant fear of injury to the residents and the children the application seeks a direction for ; the units to be closed/ shifted elsewhere and MP State Pollution Control Board (MPPCB) to enforce conditions of the permission and the guidelines issued in this regard against the Stone Crushing Units.

Notice of the Application was issued after admitting the petition vide order dated 21st August 2013. Subsequently, it was also considered necessary on the applications submitted and the prayer made by the Applicant, to implead the Central Pollution Control Board (CPCB) as party vide order dated 18 September 2013. Replies were filed and during the course of hearing, Miscellaneous Applications along with documents came to be filed by various parties, which were ordered to be taken on record.

During the course of hearing it was revealed on 26 September 2013 that this matter had previously come up for consideration before the Principal Bench, National Green Tribunal at New Delhi in Original Application No. 85/2012.The Principal Bench had found that out of 44 Stone Crushing Units only 18 were operating and 18 which were found to be non polluting had installed pollution devices and were allowed to continue operations. It was however, alleged before the tribunal that despite the aforesaid order several other units had also started operations

In pursuance of the request of the parties, a joint inspection by CPCB and MPPCB officials to determine the compliance with the conditions of consent & parameters and the impact of their functioning was ordered. The inspection team was also directed to record the noise pollution levels and the ambient air quality. It was directed that the inspection should be carried under notice to the units.

On 30 September, the MPPCB and CPCB put forth that 3 crushing units were found to be non complying and they had been issued notices accordingly. The Bench accordingly directed their closure particularly since the Principal Bench had already directed that the Crushing Units which do not comply with the conditions, should not be permitted to operate. Furthermore, it was also submitted that the air pollution levels and ambient air quality with regard to SPM and other parameters got aggravated owing to the heavy vehicular traffic to & from the Stone Crushing Units. The kaccha roads particularly up to NH-75 was the prime cause of dust and pollution and so the case that metalled/ concrete roads could substantially reduce the pollution was presented.

Another grievance raised was the safety of the children adversely affected by pollution owing to the proximity of the school to the site of the Stone Crushing Units and mines.

It was directed that MPPCB shall constitute a team to visit the area and study various aspects including maintenance of the standards by the Stone Crushing units under various parameters contained in Schedule-I, entries 11 & 37 of the Environment (Protection) Rules, 1986 with regard to the air and noise pollution and also looking to the fact that closure of units is leading to shortage of raw material for infrastructural and development works in the area as was submitted. Parties were directed to give suggestions in the light of the principle of sustainable development and the precautionary principle to ensure the health and welfare of the children particularly those going to the school such that their right to education is protected and at the same time Stone Crushing activity is allowed to continue.

The District Collector, Gwalior informed the tribunal that the plans for the construction of the road by the PWD from the 'T' junction at National Highway-75 to the site have been prepared and the MPRRDA has been contacted for the construction of the road falling in their jurisdiction. The Learned Counsel for the parties were generally in agreement that air pollution levels would be considerably reduced if proper Metalled roads / CC roads are constructed for plying of the heavy vehicles instead of existing Kachha roads which generate lot of dust. The District Collector, Gwalior assured us that the work with regard to construction of the roads would start at the earliest by the PWD. It is in general consensus that if proper roads are built then air pollution levels particularly with regard to SPM shall be reduced considerably in the area as it was being caused by heavy vehicular traffic and hence was required to be begun at the earliest.

The Collector also submitted that there was no identification or information regarding lowering of water levels due to the operation of the Stone Crushers in the area.

Tribunal was also faced with issue of existence of a school newly constructed under the 'Sarvashiksha Abhiyan' by the State Government at the 'T' -junction known as "Nakta pata" which was in close proximity of less than 500 mts from the Stone Crushing Units.

Association of the Stone Crushing Units submitted that the Association would be willing to purchase private land if no Government land is available within the prescribed parameters of locating the school within 1 km. from the village / basti under 'Sarvashiksha Abhiyan' Scheme and also construct the school building of the same specifications and design as was constructed at "Nakta pata" T-junction by the Government so that the existing school at "Nakta pata" can be closed and the Stone Crushing units are permitted to be operated. The District Collector, Gwalior accordingly constituted a team of officials headed by SDO, Dabra consisting Tehsildar Dabra, Asst. Mining Officer, Gwalior and District In-charge Gwalior Regional Office of the MPPCB to inspect the proposed alternate site at the instance of the Association of the Stone Crushing Units.

On 18th March, 2014 the District Collector, Gwalior submitted report dated 16th March, 2014 in which it has been stated that the land which is proposed of Khasra No. 3562 & 3563 with a total area of 0.188 hectares is 800 mts away from the Stone Crushing Units and less than 1 km. from the 'Natho Ki Basti' which is also the requirement under the 'Sarvashiksha Abhiyan' and the nearest residential area is also more than 300 mts. away from the mines and more than 500 mts. from the Stone Crushers. Accordingly, the proposed site at Khasra No. 3562 & 3563 may be approved for the construction of the school, in place of the existing school at "Nakta pata" by the Association. Tribunal directed that the Association shall deposit an amount of Rs. 20,00,000/- (Rupees Twenty Lakhs) in the Treasury with the District Collector, Gwalior for the aforesaid purpose by way of guarantee within two weeks of this order to be utilized for the construction of the school building and its boundary wall.

Tribunal held that District Collector may appoint an officer to supervise the construction and ensure quality of the material and construction. It is therefore directed that while issuing the blue prints the District Collector, Gwalior shall pass necessary orders deputing an officer for the aforesaid purpose. The said officer shall be responsible for maintenance of the quality and for supervising the construction. It shall also be the responsibility of the District Collector, Gwalior to release the funds out of the amount of Rs. 20, 00,000/- at different stages of construction such as laying foundation, construction up to plinth level, laying roof, construction of walls, plastering etc. Shri Ajay Gupta who appears on behalf of the Association has also undertaken that the Association shall dig a tube well to meet the requirement of water in the school, which may also be utilized for watering the plants to be planted in the school compound by the Association. The District Collector, Gwalior shall ensure that necessary directions are issued to the Electricity Department for providing electricity connection to the school building including to the tube well without any delay.

Tribunal directed the school to be completed within 6 months period and that the present building may be put to use as deemed fit by the District Administration duly meeting the requirement given in the guidelines issued by the MPPCB in the year 2004.

During the aforesaid period of the construction of the new school building the aforesaid 8 Stone Crushing Units which were ordered to be closed down in our order dated 24 February 2014 shall be permitted to resume operations on fulfilling the following conditions.

(i) That the Association of Stone Crushing Units shall deposit with the District Collector the amount of Rs. 20,00,000/- for the construction of the school building within two weeks of order.

(ii) The Stone Crushing Units shall not operate between 8 am to 2 pm as was suggested by the committee constituted by the District Collector. The aforesaid condition of non operation of the Stone Crushing Units from 8 am to 2 pm shall stand waived during the summer vacations for the school on permission of the District Collector after the dates are notified. The order shall however be imposed till the completion and shifting of the school building.

(iii) The Association of the Stone Crushing Units shall undertake planting of trees duly ensuring their protection and maintenance.

(iv) Till such time the construction of Pucca roads by the PWD and MPSRRDA is not completed vehicles shall be allowed to ply only to and from the crushers on such Kachha roads and such country tracks as identified by the District Collector in consultation with the Regional Officer of the MP State Pollution Control Board, Gwalior. These identified routes shall be regularly sprinkled with water through tankers to be operated by the Association of the Stone Crushing Units to minimize the air pollution in the area and compliance shall be ensured.

(v) Apart from the above conditions the Mines and Stone Crushing Units are required to have valid permissions and licenses and shall also abide by the norms and conditions contained in the 'Consent to Establish' 'Consent to Operate' and Environmental Clearance as the case may be.

(vi) Each of the Stone Crushing Units shall submit an undertaking before this Tribunal within two weeks of this order that they shall abide by the aforesaid conditions in addition to the ones already in force and in case violation of any of the conditions is reported they shall not be permitted to operate and even the electricity connection shall be liable to be disconnected.

(vii) The Stone Crushing Units which are operating with the help of Diesel Generator (DG) Sets, such DG sets are required to be of the specifications as provided under Environment (Protection) Rules, 1986 and the MPPCB shall carry out inspection of such sets on a regular basis, and also monitor the air and noise pollution levels as well as the ambient air quality on a periodical basis and submit the report before this Tribunal on all issues and points which have been mentioned herein above.

In case it is found that despite the aforesaid measures air pollution and noise pollution levels are not reduced and ambient air quality does not improve, the MPPCB shall be free to suggest additional measures for being applied and adopted in this area, particularly in view of the fact that the area in dispute has a large cluster of mines and Stone Crushing Units which may require the MPPCB to take into consideration the cumulative effect also. The MPPCB and any of

the parties shall be at liberty to approach this Tribunal in case any difficulty arises in the implementation of the above directions or any modification or clarification is necessary.

With the aforesaid directions this application stands disposed of.

Tribunal however pointed out that in the event of non-observance or non-compliance of any of the conditions, the Applicant or the Respondents i.e. State of MP MPPCB & CPCB would be at liberty to approach this Tribunal for seeking any further directions or orders.

While disposing of this application it was made clear that since the Respondent Association of the Stone Crushing Units has sought 6 months time for the completion of the new school building at the alternate site and since the District Collector, Gwalior has also submitted that it may take some time for the construction of Pucca roads, with a view to ensure compliance of our order, tribunal directed that the matter be listed in Court on 13th October, 2014 for recording compliance. It shall be the duty of the District Collector, Gwalior to ensure the construction of good quality roads and the new school building at the earliest and take all necessary steps for the previously mentioned purpose.

Tribunal states that it would while disposing of this application like to record the appreciation of the Bench towards the positive approach adopted by all the parties so that an order beneficial to all could be passed.

This application stands disposed of as above. There shall be no order as to costs

Mr. Manuel F. Rodrigues
Vs
State of Goa Ors.
Original Application No. 21(THC)/2013(WZ

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

Keywords: Coastal Regulation Zone, Illegal Construction, Writ, Mandamus, High Tide Line, No Development Zone

Application disposed of

Dated: 19 March 2014

Petitioner Manuel F. Rodrigues, had filed Writ Petition No.18 of 2009 in the High Court of Bombay at Panaji, Goa seeking invocation of Writ jurisdiction of the High Court for issuance of Writ of Mandamus directing Respondent No.1 to 7 to demolish illegal construction carried out by Respondent No.8 in land Survey No.54/3 of village Velsao in Marmugao Taluq. The other reliefs sought by him were of incidental nature. The writ petition has been transferred by High Court of Bombay Bench at Goa vide order dated 17th October 2013. The Writ Petition has been transferred to this Tribunal mainly for the reason that contention of the petitioner inter-alia is that construction of the Hotel raised within Survey No.54/3 by 8th Respondent is in violation of CRZ Regulations and as such substantial dispute relates to breach of environmental norms.

The tribunal held that the 8th Respondent (M/s. Kyle-san Holidays Pvt. Ltd.) violated the CRZ Notification, 1991 and further CRZ Notifications applicable to regulate the Coastal Zone Management. The construction was held to cause damage to environment and ecosystem. It was further stated that the situational response to case of illegal construction should be of Zero tolerance. The impugned construction was held liable to be immediately dismantled/ demolished and the land to be restored its original position. Exemplary costs were imposed on the 8th Respondent as he proceeded with the illegal construction, in total disregard to pre-warning given by the High Court.

It was also decided to make the 8th respondent pay restitution cost to the State of Goa which is to be used to for environment restitution.

Furthermore, it was decided to impose appropriate cost on the Village Panchyat, for illegally granting the construction licence**.**

In the result, the Application is allowed with the following terms:

i) The Tribunal directed the 8th Respondent to immediately demolish/dismantle standing structure of the K.H.R.C. within period of three weeks and remove all the debris, filth etc. from the site at his own costs, if it is not so done, the same shall be demolished by the Collector, South Goa, without any delay at the cost and risk of the 8th Respondent and for recovery of such cost, the provisions of the land Revenue Code may be followed.

ii) The 8th Respondent was further directed to restore the original position of the site in question after demolishing of the structure of K.H.R.C. within period of two weeks of such demolition.

iii) The 8th Respondent was directed to pay costs of Rs. 20,00,000 as litigation costs which shall be deposited with the Goa Legal Services Authority if it is accepted on condition that the State Authority will permit legal aid to indigent litigants or the litigants appearing before this Tribunal who are in need of legal assistance, under the scheme by utilizing said amount and if such amount cannot be accepted by the Legal Service Authority, the same may be deposited for such probable use with the office of the Advocate General, Goa who may use his good Office to make the funds available for legal aid sought by the needy litigants or as directed by this Tribunal to the litigants, in regard to the litigation arising from territory of Goa State.

iv) Tribunal directed the 8th Respondent to further deposit amount of Rs.10,00,000/- (Rs. Ten lakhs) with the Collector, South Goa for restoration of the environment in the proximity of the land in question by plantation of trees/beautification through Social Forestry Department.

v) Tribunal directed the 8th Respondent to deposit the above amounts within period of four weeks hereafter or else the Collector, South Goa shall immediately take steps to attach the property of the 8th Respondent for the purpose of recovery about which further directions may be sought from this Tribunal.

vi) Tribunal directed the Collector, South Goa to report compliances of the above directions within period of four weeks hereafter.

vii) Tribunal further directed Village Panchyat, Velsao to pay amount of Rs.1, 00,000/- (Rs. One lakh) towards costs of litigation with the Collector, South Goa within four (4) weeks which may be utilized for the purpose of betterment of environment/plantation etc.

viii) Tribunal directed MoEF to take necessary steps for correction of internal lapses in order to avoid such lapses in future. The Application is accordingly allowed and disposed of.

Application allowed and disposed off.

The Misc. Application No. 17 of 2014 stands rejected

Paryavaran Avam Manav Sanrakshan Samity
Vs
Union of India Ors.

Original Application No. 107/2013 (CZ)

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

Keywords: Environment (Protection) Rules, 1986, Water pollution, Water (Prevention & Control of Pollution) Act, 1974, Narmada River, Gaur River, Dairy hub, Waste disposal

Application Disposed Of

Dated: 19 March 2014

In the petitions two petitions (Original Application No. 107/2013 (CZ) and Original Application No. 109/2013 (CZ)) a common issue has been raised and therefore heard together.

The Applicant has raised the issue with regard to the pollution in River Gaur that merges into the River Narmada leading to the issue with regard to polluting the water of rivers Gaur and Narmada. It was alleged by the Applicant that in the city of Jabalpur on the banks of River Gaur which merges into the river Narmada at Village Jamtara a dairy hub has been developed and thousands of cattle and buffalos are being maintained in these dairies in the aforesaid area. As a result of this dairy hub, untreated dairy waste is being allowed to flow into the river Gaur and eventually into the river Narmada thereby polluting the river water in violation of the provisions of Water (Prevention & Control of Pollution) Act, 1974. The previously mentioned activity is hazardous to the environment and more particularly by polluting the water in the rivers and since no steps are being taken to prevent the same, these unlawful activities are going on unchecked. It is prayed to direct the Respondents to take action including removal/shifting of these dairies from the waterfront of the banks of the river Gaur.

Tribunal noted that the High Court is already seized of the matters since 1998 and several orders in this behalf have been issued from time to time.

Regarding various violations as were pointed out in the applications against individual dairy owners located alongside the River Gaur and Narmada, who are alleged to be polluting water in the aforesaid rivers without establishing regulation mechanism for the disposal of waste generated by their dairy farms, Respondent Nos. 3 and 4 i.e. MPPPC and Regional Officer of PCB at Jabalpur have given out that they have already conducted inspection of various dairies and issued notices to the defaulting dairy owners under the provisions of the Water (Prevention & Control of Pollution) Act, 1974. Some of these dairy owners have also been issued with notices with regard to the closure of their dairies in terms of Section 33(a) and they were asked to rectify else their electricity and water connection shall be disrupted.

Tribunal held the view that the Regional Officer of the MPPCB shall carry out required inspection particularly of those dairies, which were found to be defaulting, and to whom notices have already been issued. In case the concerned dairy owners have failed to rectify and remove the deficiencies and irregularities and failed to check the discharge of waste and untreated sewage, the Regional Officer shall take immediate action in accordance with law. The Pollution Control Board should regularly monitor the standards of parameters prescribed for dairy farms listed in Schedule –I under Environment (Protection) Rules, 1986 and take action against the defaulters till they are relocated at the proposed alternate site.

The action taken report by way of compliance of the order was to be filed before the Tribunal within four weeks from the date of judgment.

Another issue that has been raised in the Application is the alleged encroachment by the Respondent No. 7, the owner of Sripal Dairy on the banks of the river Gaur of more than 20 acres of Government land. The Tribunal held that this did not fall strictly within the purview or jurisdiction of the Tribunal. However, learned counsel for the State submitted that since the State/Respondent No. 6 Collector, Jabalpur, has filed no reply before the Tribunal and the reply of Respondent No. 3 and 4 has been adopted, this issue was not examined. He would get the factual report and place the same for record of the Tribunal and in case any action is required to be initiated he would inform the District Collector to take action in accordance with law.

The issue which has been raised with regard to the non-observance of the provisions of the Environment (Protection) Rules, 1986 causing pollution of water in the aforesaid two rivers by the dairies by not taking adequate measures for removal and treatment of the dairy waste, Tribunal stated that it expected the State Government and particularly the Department of Animal Husbandry which is now going to create new dairy hub on the proposed land which the Revenue Department seeks to transfer to it, frames a proper scheme in consultation with MPPCB which would include the required infrastructure for effective management of the dairy farms and scientific disposal of the dairy waste.

When the Tribunal was informed that before the High Court the proposed scheme has been submitted. In view of this Tribunal decided not to proceed with this matter any further. The Applicant is at liberty that in case he is aggrieved to approach the High Court in this behalf.

In the above terms, these applications stand disposed of.

P. Chandrakumar
Vs
The District Environmental Engineer Tamil Nadu Pollution Control Board
Original Application No. 274/2013 (SZ)

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

Keywords: water pollution, groundwater pollution, surface water, canal, dyeing, Erode

Application Disposed Of

Dated: 20 March 2014

This application has been filed praying for directions to the respondents to ensure that the environment in the Kongampalayam village in Erode District is free from pollution and to take immediate measures to stop pollution of the canal and ground water.

The counsel for the respondents seeks time to file replies. After looking into the averments made and also the relief sought for in the application and in order to avoid the avoidable delay, in the considered opinion of the Tribunal this application can be disposed of by issuing necessary directions as hereunder.

The applicant is a farmer holding an agricultural land with an extent of 1.67 acres in S.F.No. 80/1, 4, 5 Gangapuram in Erode Corporation. The lands of the applicant are being irrigated by the water drawn from a surface well and the canal located on the southern size of his lands. Some dyeing factories were established in Kongapalayam village in Erode Taluk and nearly 15 to 20 units are operating in the area without proper effluent treatment plant and discharging the untreated coloured trade effluent into the canal and in the vacant land located within the dyeing unit. Due to seepage and percolation, the untreated trade effluent there is ground water and surface water pollution. It has affected quality of well water of the applicant.

Many a representations were placed before the respondent authorities, but they have not taken action. In some of the dyeing units, the electricity service connections were disconnected only to be restored with a month and the units are in to operation. The applicant was hence forced to approach the Tribunal seeking directions to the respondent authorities to take immediate measures to stop pollution of the canal and ground water.

In response Tamil Nadu Pollution Control Board (for short 'Board') submitted that periodic inspection by the authorities of the Board are being carried out, necessary directions are given to the units and compliance of the directions are being monitored and that the last inspection was in January 2014. The counsel for the Board would submit that necessary instructions have been issued to the units after the inspection of the units in the month of January 2014.

Tribunal opined that it would suffice to issue a direction to the authorities of the respondent Board to make inspection of the dyeing units situate at Kongampalayam village and issue necessary directions as required by law. It is also directed that, if necessary, the authorities of the Board may make an inventory and also in order to ensure that the environment is free from pollution, take necessary action against the units and close those units for non compliance of the directions issued by the Board and carry on the monitoring to ensure that the units are operated without causing environmental pollution. The applicant is given liberty to approach the Tribunal after a period of 3 months, if he has any grievance to be ventilated.

The application is disposed of with the above directions and observations. No cost.

Appaso Satappa Tambekar
Vs
Appellate Authority Environment Dept Ors

Original Application No. 37/2014(WZ)

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

Keywords: Limitation, Supreme Court precedent, Water Pollution, Condonation of Delay

Application Dismissed

Dated: 20 March 2014

This Appeal filed on 13th February, 2014, was against order dated October 25th, 2013, passed by Respondent No.1, under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and Air Prevention and Control of Pollution) Act, 1981, The impugned order was forwarded to the Appellant along with forwarding letter dated October 25th, 2013. The Appellant has come out with a case that the impugned order was received by him by post on October 30th, 2013.

According to the Appellant, the Appeal had to be filed up till November 30th, 2013, but delay in filing of the Appeal was due to his medical problem. He was suffering from mental depression between 25 November 2013 until 30 January 2014 and was directed by medical practitioner to rest. Hence, he could not prepare the Appeal Memo. Consequently, filing of Appeal is delayed by twelve days. It should be condoned owing to the 'sufficient reason'.

The three Judgments cited by the Appellant are based on observations in the case of "Shaikh Salim Haji Abdul Khayumsab vs. Kumar and others," reported in 2006(1) Mh.L.J.(S.C.) 178=2006(1) Bom.C.R.57."

It was observed by the Apex Court in paragraphs 10 and 14 as below:

All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedural is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administrative of justice"

"Sev Mon Region Federation and Anr Vs Union of India and Ors" (MA No.104/2012, arising out of Appeal No.13/2012), by order dated 14 March 2013, elaborately discussed the scope of Section 16. The Principal Bench, held that "such period cannot be extended by the Tribunal." This Bench in the Order passed in Appeal No.2/2013 - "Gram panchayat Tiroda & Anr vs MoEF & ors", expresses similar view. This Bench held that the Tribunal has no power to extend limitation period beyond the period prescribed under the specific provision enumerated in the enactment. It may be referred to observations of this Tribunal as enumerated in paragraph 25 of the said order Tribunal on considering the view taken consistently by the Principal Bench and this Bench, held without any hesitation that the present Appeal is barred by limitation and delay cannot be condoned. The case law relied upon by the Advocate for the Appellant, is not applicable to the facts of the present case and in view of the legal position enumerated above.

The Application was dismissed, the Appeal also was dismissed. No costs

Nasik Fly Bricks Association
Vs
The MoEF Ors

Original Application No. 16/2013(WZ)

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

Keywords: Fly Ash, Coal, MoEF Notifications, Water (Prevention and Control of Pollution) Act 1974, Air (Prevention & Control Pollution) Act 1981, Costs, Nashik Thermal Power Plant, Maharashtra Pollution Control Board

Application Disposed Off

Dated: 21 March 2013

The Applicant - Nashik Fly Ash Association claims to be an Association working on issues related to the fly ash and has filed this Application being aggrieved due to non-implementation of MoEF Notifications, related to fly ash utilization issued time to time. The Applicant claims that the respondents have individually and collectively failed in effectively implementing these notifications, resulting in inadequate utilization of fly ash, which has resulted into over exploitation of natural top soil of earth, causing damages to the environment. It is also pleaded that due to non-utilization of fly ash for brick manufacturing, the traditional red bricks are continued to be used and though there are norms for use of fly ash, even for manufacturing of the red bricks, yet same are not followed. The brick kilns manufacturing red bricks are also polluting activities as they emit air pollutants.

The Applicant submits that the Respondent 1 is Ministry of Environment and Forest, Govt. of India, which has issued the Fly Ash notifications and is overall responsible for protection of environment in the country. Respondent No.2 and 3 are operating Nashik Thermal Power Station which is one of the major fly ash generators and needs to comply with the provisions of fly ash Notifications issued from time to time. Respondent 4 and 5 are responsible for urban development activities in Nashik Municipal areas including the regulating construction activities, where fly ash bricks are required to be used as per the Notification. Respondent 6 is Collector, who is responsible for regulating the fly ash use in brick manufacturing units. The Respondent No.7, Maharashtra Pollution Control Board, (MPCB), has given consent to operate to the Respondent Nos.2 and 3, under the provisions of the Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention & Control Pollution) Act 1981, and has stipulated that the Respondent No. 3 shall provide full-fledged mechanized arrangements for collection, transportation, loading and unloading of fly ash generated from various activities in the premises and to achieve 100% fly ash utilization on or before 31st March, 2013.

The Tribunal held it proper to hold that the Application deserves to be partly allowed with certain directions. The Application is, therefore, partly allowed with following directions:

a) The Respondent Nos. 2 and 3, shall hereafter maintain record of fly ash generation and utilization category-wise, as mentioned in the MoEF Notification dated November 3rd, 2009 and publish such data on their website on monthly basis, apart from furnishing the same to other Regulatory Authorities, and

Shall put the same in the public domain, by the end of each month.

b) The Ministry of Environment and Forests (MoEF) and State Pollution Control Board (MPCB), shall conduct joint inspection of Thermal Power Plants, especially of Respondent Nos. 2 and 3 per month to verify fly ash utilization, as per categories stipulated in the above referred Notification and take suitable action in case of non-compliance for six months hereafter and thereafter verification shall be done on quarterly basis in future, till necessary compliance is achieved.

c) The Respondents, including Respondent Nos. 2 and 3, shall take measure for disposal/ process or utilization of 20% fly ash to be made available to eligible units, free of cost, in accordance with the mandate of MoEF Notification dated November 3rd , 2009, prior to sale or otherwise, disposal of remaining 80%, of stock. In case of balance stock of dry ESP ash, further disposal also shall be in terms of MoEF Notification referred to above, and not as per discretion of the Respondent Nos.2 and 3.

d) The Respondent Nos.2 and 3 shall publish all the information related to fly ash use, including the annual reports on their website. Respondent 1 and 7 shall also keep such annual reports submitted by the thermal power stations and also actions taken by them for enforcement of the notification on their website.

e) The Respondent Nos.4, 5 and 6 shall immediately take action for compliance of fly ash notification at the demand side i.e. brick kiln, construction activities etc. Necessary conditions shall be incorporated in consent/permits given for these activities which shall be enforced through necessary visits, document verification etc. They shall conduct joint awareness program for utilization of fly ash in next six (6) months for the potential users regarding the fly ash notification, with the help of Respondent Nos.3 and 4 and also, the Applicant.

f) The Respondent Nos. 2 and 3 shall pay cost of Rs.10,000/- to the Applicant. All the Respondents to bear their own costs. The Application is disposed of in above terms.

Anil Kumar
Vs
State of Rajasthan

Original Application No. 152/2014 (CZ)

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

Keywords: Mineral and Grinding Mill, Residential Area, Environment (Protection) Act, 1986 and the Rules, PIL, Rajasthan, High Court

Application Disposed Of

Dated: 24 March 2014

M.A. No. 152/2014

The letter petition sent by the Applicant along with the copy of the order of the SDO, Rajgarh dated 24th February 2014 is registered as Miscellaneous Application No. 152/2014. The said M.A. having been allowed along with the documents is ordered to be taken on record and stands disposed of.

Original Appeal No. 146/2013 (CZ)

The Applicant had initially preferred Writ Petition No. 21147/2012 in the form of Public Interest Litigation (PIL) before the High Court of Rajasthan. Hanuman Mineral and Grinding Mill, Tehla Road, Rajgarh was ordered to be impleaded as party submitted that the unit was located near the residential area and was causing pollution to the residents, to the educational institutions located in the area and nearby tourist places like Sariska Wildlife Sanctuary.

Tribunal held that since industrial work of M/s Hanuman Mineral and Grinding Mill, Tehla Road, Rajgarh itself is located at Tehla Road in Khasra No. 1714 and 1715 which has been ordered to be converted from industrial use to residential use on the application submitted by the proprietor of M/s Hanuman Mineral and Grinding Mill, Tehla Road, Rajgarh, the running of the aforesaid unit in the residential area and on residential land would be impermissible. Tribunal found from the order of the SDO that there was a material placed before him in the form of report of the Revenue officials that the unit was causing pollution in the area and for this even the Principal of Rajkiya Mahavidhalaya vide his letter No. 7790 dated 14th February, 2014 has raised the issue with regard to its closure and shifting. Since the disputed site is no more an industrial site and has been converted into a residential area, tribunal was of the view that the grievance which has been raised by the Applicant stands redressed and the Applicant shall approach Respondent No. 4 i.e. Regional Officer of the Pollution Control Board, Rajasthan at Alwar who shall take necessary action in accordance with law against Respondent No. 7 i.e. M/s Hanuman Mineral and Grinding Mill, Tehla Road, Rajgarh in the light of the order passed

by the SDO, Rajgarh dated 24th February, 2014. It is made clear that before passing any order, a notice shall be given by the Regional Officer to the Respondent No. 7.

Since the main issue raised in the petition on the concern of pollution being caused by the Respondent No. 7 has been taken care of by the orders passed by the SDO, we are of the view that no further directions are required to be issued apart from what has been stated hereinabove with regard to the pollution being generated by the Respondent No. 7.

We, however, find from the petition that the Applicant had raised certain grievances with regard to mining and operation of stone crushing units in Khasra Nos. 1712 and 1713 in Rajgarh, Village Ramawala Kuwa. Since before the High Court, the Applicant has confined his grievance by moving an application for impleading the Respondent No. 7 and the aforesaid grievance has been redressed in the light of the order passed by the SDO which only requires a follow up action at the hands of the authorities of Pollution Control Board to take note of the changed circumstance, we are inclined to dispose of this petition with liberty to the Applicant that in case the Applicant has any grievance with regard to the Khasra No. 1712 and 1713 he may approach this Tribunal. In case there are any illegal mining or operation of stone crushing units contrary to the orders of the Hon'ble Supreme Court or the notifications/regulations issued under the Environment (Protection) Act, 1986 and the Rules framed there under, the Applicant would be at liberty to approach this Tribunal.

Accordingly, this petition stands disposed of. Respondent No. 4 is directed to forward a copy of this order along with the order of the SDO dated 24 February 2014 to the Respondent No. 4/ Regional Officer of the Pollution Control Board, Alwar for compliance.

Sudiep Shrivastava

Vs
Union of India Ors.

Original Application No. 73/2012

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

Keywords: Chattisgarh, Forest (Conservation) Act 1980, Forest Advisory Committee, Mining, Biodiversity, Elephants, Parsa East, Coal Blocks

Application Allowed and disposed of

Dated: 24 March 2014

Facts leading to the present appeal are as under:

Tara, Parsa, and PEKB Coal Blocks are part of Hasdeo-Arand Coal Fields of Chhattisgarh, which fall in South Sarguja Forest Division. PEKB Coal Blocks ad measure 2388.525 hectares. Initially, the proposal dated 12th January, 2009 for diversion of 1898.328 hectares of forest land in PEKB Coal Blocks was forwarded by the State Government- the Respondent no. 1(State of Chhattisgarh) to MoEF- Respondent no.2 on 20th April, 2010. The Respondent no.3- Project Proponent, on its own submitted a revised proposal regarding sequential mining of coal in two phases on 02nd March, 2011. Such revised proposal was the subject matter for deliberations before FAC on 10th March 2011. The FAC appointed a sub-Committee to inspect, enquire into and to submit its report giving its findings in relation to Tara, Parsa and PEKB Coal Blocks. This sub-committee inspected some locations situated within the above coal blocks on 14th and 15th May 2011 and submitted its observations/findings before the FAC. In its meeting convened on June 20th and 21st, 2011, the FAC considered the sub-Committee's observations/findings and took decision not to recommend the diversion of proposed forest area. In the said meeting, the FAC also dealt with the proposals for diversion of forestland falling in neighbouring coalfields, namely, Tara. On 22nd June, 2011 the final recommendations of the FAC rejecting the proposals for opening of Tara and PEKB Coal Blocks for mining were placed before the Minister of State, Environment and Forest. The Minister preferred to disagree with the final recommendations of FAC, rejecting the proposal and decided to give stage-I approval in respect of the said proposals for forest clearance on 23rd June 2011.

Tribunal observed that Forest Advisory Committee (FAC) did not examine all the relevant facts and circumstances while rendering its advice and to cap it the Minister acted arbitrarily and rejected the FACs advice for the reasons having no basis in any authoritative study or experience in the relevant fields. In short, the reasons adduced by the Minister fail to outweigh the advice rendered by the FAC. This calls for quashing of the Minister's order dated 23 June 2011 rejecting the FACs advice and consequential order dated 28th March, 2012 passed by the

Respondent no. 1 in order to have holistic reappraisal of the entire issue. It is therefore, just and necessary to remand back the entire case to the Minister with appropriate directions to get a fresh advice from the FAC on the material issues in the present case and to reconsider the entire matter afresh in accordance with law.

Hence, the order:

1. Order dated 23rd June, 2011 passed by the Respondent no. 2 and consequential order dated 28th March, 2012 passed by the Respondent no. 1 under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;

2. The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the proposal discussed herein above with emphasis on seeking answers to the following questions:

(i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question.

(ii) Is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna.

(iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need.

(iv) Whether the area of PEKB Block has that significant conservation/protection value so much, so that the area cannot be compromised for coal mining with appropriate conservation/ management strategies.

(v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora?

(vi) What is their opinion about the Wildlife Management plan finally prescribed.

(vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.

The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.

All work commenced by the Respondent no. 3 and Respondent no. 4 pursuant to the order dated 28th March, 2012 passed by the Respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.

No order as to costs

Sachin S/o Sakharam Potre
Vs
State of Maharashtra Ors

Original Application No. 13/2013(THC)(WZ)

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

Keywords: Great Indian Bustard, de -reservation, Writ, mandamus, High Court, Wildlife (Protection) Act 1972

Application disposed of

Dated: 25 March 2014

Originally, Applicant – Sachin and others have filed the Writ Petition No.4343 of 2008 in the High Court of Judicature at Bombay, Bench at Aurangabad.

The requests made under the application are that:

The reserving of the entire Karjat Taluka is unconstitutional, illegal, arbitrary, violative of Article 14, 19 (1) (g) and 21 of the Contitution and hence liable to be quashed.

- Issue mandamus or any other necessary writ, order or direction in the nature of writ of mandamus thereby directing the respondent No.1 to de-reserve Karjat taluka from the limits of the Great Indian Bustard Sanctuary.
- Necessary order for the State of Maharashtra to de-reserve Karjat Taluka.

Perusal of the pleadings in the Writ Petition, go to show that the entire grievance of the Petitioners relate to declaration of certain area as "Reserved Sanctuary for Great Indian Bustard". The challenge is to the validity of Notification issued by the State of Maharashtra, in the context of such declaration.

Tribunal examined Section 14 of the National Green Tribunal Act, 2010, for ready reference, in order to amplify scope of jurisdiction available to the Tribunal.

A bare reading of Section 14, quoted above, will make it clear that jurisdiction available to this Tribunal, is in respect of only the enactments, which are stated in Schedule-I, appended to the NGT Act. Those seven enactments mentioned in the Schedule-I, do not cover the Wildlife (Protection) Act, 1972. It is explicit, therefore, that question pertaining to Sanctuary of Great Indian Bustard, falls outside jurisdiction of this Tribunal. In other words, this Tribunal cannot

examine whether a particular Sanctuary can be declared or cannot be declared as 'reserved' for a particular species of wildlife.

Under these circumstances, we cannot examine legality of the Notification in question. It goes without saying that the Writ Petition transferred to this Tribunal, will have to be remitted to the High Court, for want of jurisdiction to the Tribunal.

The Writ Petition is remitted to the High Court Bench at Aurangabad. The Application is, accordingly, disposed of. The Registrar was directed to immediately take necessary action for transmitting the Record and Proceedings to the High Court Bench at Aurangabad.

Application is disposed of.

Ajay Shivajiroa Bhonsle
Vs
Ministry of Environment Forests (MoEF)

Original Application No. 41/2013 (WZ)

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

Keywords: Limitation, Condonation of delay, Environmental Clearance, Section 14

Application allowed

Dated: 26 March 2014

Through this, the Applicant sought condonation of four days delay, caused in filing of the main Application. The main Application is filed under Section 14 of the National Green Tribunal Act, 2010.

The contention of the Applicant is that after perusal of the Judgment of this Tribunal in Appeal No.2/2013 (WZ), he came to know that Environment Clearance (EC) was subject to compliance of condition Nos. (xiv) to (xvi), enumerated in the order of revival dated August 12th, 2013, of which copy was received by him under the provisions of Right to Information Act, 2005 (RTI).

Appellant alleges that since the Respondent No.5, (Project Proponent) had not complied with the conditions, the cause of action for filing the Application under Section 14 of the National Green Tribunal Act, 2010, first arose on November 25th, 2013, when the Tribunal recorded findings regarding non-compliance of such conditions by the project proponent. The Application should have been filed thereafter within period of six months, as provided under Section 14 (3) of the National Green Tribunal Act, 2010. However, the Applicant took time in going through the order and Judgment of this Tribunal, as well as understanding the legal complications with the help of legal advice of competent Counsel. Therefore, four days delay has occurred in filing of the Application for which condonation is sought.

Tribunal held that there is no serious challenge to delay condonation Application. The delay is of marginal nature. The delay is unintentional. There is no reason to dislodge version of the Applicant that he required time to seek legal opinion before filing of the Application and as such, delay of four days is occurred in filing of the Application. Tribunal decided to condone the delay.

In view of foraging reasons, Misc Application No.41/2013 was allowed. Delay is condoned.

Mr. Ajay Shivajirao Bhonsale
Vs
The MoEF Ors.

Original Application No. 41/2013 (WZ)

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

Keywords: Iron ore mine, Tiroda, Environment Clearance, Maharashtra, Adjourned sine-die

Application adjourned sine-die

Dated: 26 March 2014

By filing this Application, the Applicant has sought following reliefs:

i. "Direct the Respondent No.1 (MoEF) to withdraw the order of revival vide letter dated 27.5.2013 reviving the Environment Clearance dated 31.12.2008 (No.J-11015/1026/2007-IA, II(M) in terms of Clause 6 of the said environment clearance;

ii. Direct the Respondent No.1 (MoEF) to withdraw Environment Clearance dated 31.12.2008 (No.J-1105/1026/2007-IA, II (M), for the project Tiroda iron Ore Mine (Ml area 34.4812 ha and production capacity 0.40 MTPA) at village Tiroda, in Sawantwadi Taluka, in Sindhudurg Dist. in Maharashtra in favour of M/s Gogte Minerals in terms of Clause 6 of the said environment Clearance. "

The Application is filed under Section 14(1) of the National Green Tribunal Act, 2010 with a case that applicant had been prompted to file the Application, in order to raise substantial question relating to environment on account of non-compliance of conditions pertaining to Environment Clearance (EC), revised vide letter communication dated May 27th, 2013, issued by MoEF for the project of Tiroda Iron Ore Mine, at village Tiroda, (Sawantwadi taluka in Sindhudurg district), in favour of M/s Gogte Minerals i.e. the Respondent No.5.

Tribunal held that further hearing of the present Application deserves to be kept in abeyance. The Application is adjourned sine-die and the parties were informed to give intimation to this Tribunal, as regards outcome of the Appeal pending before the Supreme Court against the Judgment of this Tribunal, in Appeal No.2/2013, in the context of Civil Appeal No.10843/2013. M.A No.41/2013 is accordingly disposed of and MA No.36/2013, stands adjourned sine-die. It be registered as Regular Application.

Smt. Mithlesh Bai Patel
Vs
State of Madhya Pradesh Ors

Original Application No. 41/2013(CZ)

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

Keywords: Laterite mining, Prospective Licensing, Forest (Conservation) Act 1980, NOC, Mining Lease, PIL, Environmental Clearance, Environment Impact Assessment,

Application Dismissed

Dated: 26 March 2014

This Application has been filed by Smt. Mithlesh Bai Patel who claims that she is an elected Sarpanch of Village Pratappur, Tehsil Siroha, District Jabalpur in larger public interest on behalf of the villagers of Pratappur. She is challenged the order dated 15th May, 2013 in Reference No. F3-7/07/12/2 (Annexure P/8) issued by the Under Secretary, Department of Mines, Government of Madhya Pradesh whereby a Prospecting License (in short referred to as 'PL') for prospecting laterite mineral has been granted in favour of Respondent No. 6 (Ashok Khare) over an area of 5.42 hectares out of the total extent of 9.85 hectares land in Khasra No. 413 of village Pratappur, Tehsil Siroha, District Jabalpur. It is stated that this is a government land under the control of the Revenue Department, there is dense tree growth with approximately 397 Mahua trees standing in the area allotted for PL, and the villagers have Nistar rights over the land. It falls under the definition of 'Forest' as given under Section 2 of the Forest (Conservation) Act, 1980. She further states that No Objection Certificate (in short referred to as 'NOC') was not obtained from the Forest Department before granting the PL. Initially an application for granting PL for mining iron ore, filed by one, M/s Anand Mining Corporation was recommended by the Government of Madhya Pradesh and PL was granted in their favour but having objected by the villagers, the leaseholder could not commence any mining work. Subsequently M/s Ind Synergy Ltd. filed an application seeking grant of Mining Lease (in short referred to as 'ML') for mining of iron ore over a period of 30 years. However, as the villagers objected, that application was not considered by the Government of Madhya Pradesh for recommending the case to the Central Government and in this regard a Public Interest Litigation (in short referred to as 'PIL') by way of Writ Petition No. 830/2009 was filed by one, Shri Anadilal Sen before the High Court of Madhya Pradesh (Annexure P/1) wherein the High Court vide order dated 4th March, 2009 (Annexure P/2) issued notice to the Respondents and ordered that in case the Central Government grants approval for ML, the Petitioner is at liberty to move the Court for appropriate interim relief.

Tribunal concluded that though it is for the State Government to examine the issues in totality including the resolutions passed by the Gram Sabha and objections raised by the villagers before granting the PL it is left to the authorities to take the aforesaid observations into account if subsequently ML is granted based on the result of the prospecting of mineral.

In the existing circumstances since it does not come under the category of 'Forest' there is no law prohibiting PL in the said piece of land in Khasra No. 413. It was noted that no information was produced as to how much quantity of usufruct is being obtained from the Mahua trees by the villagers and how much dependence they have on these trees for their livelihood and it is for the authorities to examine how to compensate in case the villagers' livelihood is going to be affected if in future these trees are permitted to be cut at the time of granting ML, if granted. The EIA Notification, 2006 requires the Applicant to seek Environmental Clearance (EC) from MoEF/SEIAA at the time of seeking granting of ML and therefore Environment Impact Assessment (EIA) study may be required to be conducted and Original Application No. 41/2013 (CZ) all the aspects related to the environment and ecology including the existence of Mahua trees on the land in question will have to be examined by the concerned authorities which will take care of the concerns of the Applicant.

While the objective of granting PL for mining is for systematic development of minerals, which forms part of the development process of the country, it is the duty of the Central Government and the State Government to take steps to protect the environment, maintain the ecological balance, and prevent damage that may be caused by prospecting and mining operations.

It is mandatory on the part of the authorities to apply the principle of Sustainable Development and therefore any person applying for undertaking mining operations for both major and minor minerals is required to take prior EC from the authority concerned i.e. MoEF at the central level or State Environment Impact Assessment Authority (SEIAA) at the State level. Hence, in future if ML is going to be granted over the land in question after the prospecting is done, the authorities shall take into account of the issues raised by the Applicant in this OA along with the EIA report.

The Tribunal dismissed the Original Application. No order as to costs.

The Applicant has full liberty to approach the appropriate forum/authority/court of law if ML is granted to the Respondent No. 6 based on the outcome of the prospecting of mineral in violation of any law.

Vanashakti Public Trust

Vs

MPCB Ors.

Original Application No. 71/2014 (WZ)

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

Keywords: Small Scale Industries, Medium Size Industries, Water Pollution, discharge, Maharashtra Pollution Control Board

Application Disposed Of

Dated: 1 April 2014

Misc. Application No.70/2014 filed by the Small Scale Industrialists sought grant for re-starting industries, which have been allegedly closed down by the M.P.C.B.

Misc. Application No.71/2014 was filed (Medium Size Industrialists) for re-starting of the industry which is closed down as per order of the M.P.C.B.

Contention in both the Applications is that the Applicants do not discharge polluting effluents in river "Waldhuri" or River "Ulhas" and their activities should not have been stopped by the M.P.C.B.

Appellants allege that their applications for allowing them to re-start the industries are not processed by the M.P.C.B. nor have they been given hearing.

Tribunal held that it could not give approval or express any opinion on merits about the nature of the effluents discharged by the present industries. It was further clarified that it would be unfair to grant time of 2/3 weeks to the original Applicants for filing of their reply as even those units, which do not discharge any effluent of polluting nature, may be adversely affected due to the closure orders, for want of lifting such orders.

Tribunal provided clarification to the earlier order dated 13-03-2014, that instead of "approval of the National Green Tribunal", the M.P.C.B. may process the applications of the industries, and if the parameters are satisfied then with the approval of the Committee appointed by Environment

Department under Government Communication dated 6-12-2013 as per Para 3(b), restart orders may be issued on ad-hoc basis subject to any further orders. Application disposed of.

O. Fernandes, CAN Chennai

Vs

The Union of India

Original Application No. 86/2014(SZ)

Judicial and Expert Members: Mr. Justice M. Chockalingam, Mr. R. Nagendran
Keywords: CRZ, public hearing, Interim Order, Coastal Zone Management Regulation Notification, 2011

Application Disposed Of
Dated: 1 April 2014

Application was filed seeking direction to the respondents and in particular to the 4th respondent, namely the Tamil Nadu Coastal Zone Management Authority ('TNCZMA') to prepare Coastal Zone Management Plans in accordance with the Coastal Zone Management Regulation Notification, 2011 and conduct a public hearing in accordance with law after wide publicity and include the views of the stake holders.

Tribunal on hearing both parties felt that it would be fit and proper to issue a direction as hereunder, which would avoid the avoidable delay.

A public hearing in respect of the District Coastal Zone Management Authority of Villupuram District was scheduled to take place on 17.02.2014 and at that juncture the instant application was filed by the applicant herein alleging that the respondents had violated CRZ Notification, 2011 dealing with the preparation of Coastal Zone Management Plans as envisaged in Clause 6 of the CRZ Notification, 2011. Since it has not only taken into consideration the exhibition of its original plans of 1996 which were not uploaded in the website, but also had kept the common man in dark from raising objections at the time of public hearing.

The Tribunal made an interim order on 06.03.2014 whereby the public hearing scheduled to take place on 07.03.2014 was stayed by an interim injunction. Thus, by the said order the original public hearing scheduled to take place on 07.03.2014 could not be held and it was necessarily to be postponed.

The Tribunal further held that the authorities are duty bound to strictly adhere to the CRZ Notification, 2011 while preparing the Coastal Zone Management Plans and conduct the public hearing including the mandates stipulated therein. The public hearing would be scheduled in future only after making wide publicity that too after preparation of Coastal Zone Management Plan in accordance with the CRZ Notification, 2011. While doing so, the averments and allegations made by the applicant

in the application and other observations made by the Tribunal at the time of granting the interim order should be taken into consideration.

With the above directions, the application is disposed of.

Tarun Patel
Vs
The Chairman, Gujarat Pollution Control Board

Original Application No. 34/2013(WZ)

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

Keywords: Small Scale Industries, Chemical Oxygen Demand, Bio-Chemical Oxygen Demand, Common Effluent Treatment Plan, Gujarat Pollution Control Board

Application Disposed Of
Dated: 1 April 2014

The Applicant has challenged the decision of Gujarat Pollution Control Board (GPCB), through this Application filed under Section 14 of the National Green Tribunal Act, 2010, for the prescribed Chemical Oxygen Demand standards of 1000 mg/lit for the Small Scale Industries (SSI), which are members of the Common Effluent Treatment Plant (CETP) at Vapi, Gujarat.

Tribunal noted that CETP at Vapi is continuously not meeting with the norms and, therefore, any relaxation of inlet standards to the units, which are covered under CETP inlet effluent quality standards, needs to be viewed in that context. Tribunal did not issue any specific order for relaxing standards for SSI industries (on economic criteria) of applicable parameters of Bio-chemical oxygen Demand (BOD) and Chemical oxygen Demand (COD) as CETP is not performing as per the standards and any further relaxation would further deteriorate the quality of CETP treated effluent. The CETP inlet and outlet standards need to be complied simultaneously, obviously, with a more emphasis on outlet standards considering the impacts on environment on Precautionary Principle. Tribunal granted liberty to the Applicant to approach GPCB with the request along with duly technical justification that the enhanced pollution load due to such relaxed standards will not affect operations of CETP, and also, the safeguards to ensure that the apprehensions raised by GPCB and plant operators like release of shock load by Small Scale Industries units, discharge of untreated effluent, change in characteristics of effluents etc., are fully addressed. However, such representation can only be made after six months of continuous compliance of standards of CETP outlet.

Tribunal held that the Application deserves to be partly allowed with following directions:

(a) The effluent discharge standards prescribed by GPCB for all industries generating more than 25 Kl/Day shall be as per the schedule VI or the Industry specific standards

as per the Environment (Protection) Rules, 1986, whichever is stringent, or more stringent as stipulated by GPCB, prescribed as per the law.

(b) These above standards shall be notified for individual units by GPCB in next four weeks and communicated to all concerned units. The industries are required to provide necessary treatment plant including any upgradation required within next six months. GPCB shall obtain time bound program for such up gradation within next fifteen days.

(c) In case these industries do not comply with the required standards stipulated as noted above, GPCB is at liberty to take necessary action as per Law against erring industries.

(d) GPCB can use the BG regime as per the defined policy of the Board to ensure the time-bound and well-defined improvements in pollution control systems and the BG forfeiture shall not be done as a substitute for penal actions separately prescribed under the law. The Amount of BG forfeiture shall be strictly used as described in judgment of Principal Bench, NGT in Appeal no. 68 of 2012.

The Application is disposed of.

Krishna Devi
Vs
Union of India Ors.

Original Application No. 156/2013

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Mr. Justice M.S. Nambiar, Mr. G.K. Pandey, Mr. A. R. Yousuf

Keywords: Trees, Sustainable Development, Highways, Public Interest, The Air (Prevention and Control of Pollution) Act, 1981, Afforestation.

Application Disposed Of
Dated: 1 April 2014

The Applications were filed in NGT against the proposed widening of sectoral roads involving cutting of number of trees in front of National Media Centre (NMC). The Project Proponents stated to be involved in the project are Haryana Development Authority (HUDA) and DLF Ltd. The main contention of the applicants is that there will be significant air and noise pollution problems due to movement of traffic in the area due to cutting of trees, which were acting as a buffer and reducing noise & dust pollution. Incidentally, an email was received by NGT from Haryali Welfare Society addressed to the Chief Minister of Haryana and the Copy was sent to NGT raising the similar issues pertaining to the cutting of trees by DLF/HUDA, which was treated as an Application no. 120/2013. Regarding this Application No. 120/2013, NGT passed the order restraining the Respondents from cutting/felling or uprooting any tree on the site in question on 2/08/2013. Besides these two applications, other two applications were registered i.e. Application No. 156/2013 filed by Mrs. Krishan Devi and Application No. 155/2013 filed by Mr. Rajpal Yadav & Ors. Vs Union of India & Ors.

The Tribunal, based on the contentions and banking upon the Principles of Sustainable Development and recognizing the need of the project in question which will serve the larger public interest by way of resulting in smoother flow of traffic, formed the opinion that the project in question may be allowed subject to the environmental safeguard which would keep the likely adverse impacts to the bare minimum. It felt that the following directions are required to be issued for implementation of the project without causing any significant adverse impacts on environment.

The project proponent must have a proper plan with time frame and financial commitment to undertake afforestation work according to the permission given by the Forest Department. Local plant species should be preferred involving small, medium and large trees to be forming part of the green belt. The Forest Department must ensure that the project proponent implements the conditions so stipulated by them and the

periodical check up/ verification be undertaken. In case it is found that the project proponent has done any violation with respect of raising of green belt, a penalty of upto five Crores will be imposed on DLF/HUDA.

Tribunal directed HUDA to internalize environmental issues at the project planning stage and all efforts should be made to cut bare minimum number of trees and undertake massive afforestation works wherever possible in the urban areas.

Afforestation - As was stated by Ld. Additional Advocate General, Haryana that not more than 26 trees will be cut in the area in question (in front of NMC) after re-orientation of alignment of sectoral road, Tribunal directed HUDA/DLF not to cut more than 26 trees in the project area. The Forest Department will supervise the cutting operation and maintain record. They shall submit a status report on the total number of trees cut at the project site along with the details of afforestation done by the Project Proponent within six months.

In case of Noise Prevention - The project proponent should provide adequate and effective acoustic barrier in front of NMC and other nearby human settlements to avoid any noise pollution problems to the residents. In addition, this stretch of land in question should be declared as "No Honking Zone". The Haryana Pollution Control Board and Traffic Police through Superintendent of Police, Gurgaon, will ensure that such measures are provided and there is no violation of the noise standards as per the provision of The Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986.

With reference to Internalization of Environmental Issues- In order to internalize environmental issues at the planning stage of the projects, it will be desirable for DLF & HUDA to have an Environmental Adviser who would report to the top Executive, say Chairman or Managing Director so that environmental issues get addressed quickly by way of policy interventions and financial commitments at the initial stage of the projects.

The above directions shall be implemented pari passu with the construction work of the proposed project.

The applications are disposed of with the above directions.

The concerned Departments are required to submit compliance report within 6 months before the Registry.

Srijan Ek Aasha
Vs
State of MP Ors.

Original Application No. 2/2014 (THC)(CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P.S. Rao
Keywords: Writ Petition, PIL, High Court, Forest Land, Forest (Conservation) Act 1980, Res judicata, Municipal Solid Waste (Management & Handling) Rules, 2000

Application Disposed Of
Dated: 2 April 2014

This application was registered after the original Writ Petition No. 1851/2013 filed by way of PIL was transferred to this Tribunal by the High Court of Madhya Pradesh at Jabalpur.

The Applicant has raised an issue in the application with regard to the construction of a hotel by the Respondent No. 3, M.P. Tourism Development Corporation (in short 'MPTDC') in the Dumna area near Jabalpur city alleging that precious forest land has been diverted for non forest activity in violation of the provisions of the Forest (Conservation) Act, 1980. It is alleged in the petition that the Dumna area belongs to the Jabalpur Municipal Corporation and a Nature Park has been developed in a portion of the forest. It is a mixed forest with various species of trees such as Teakwood, Khair, Tendu, Khamer, Umar (Goolar), Bamboo, Palas, Sajha, Baheda, Aonla, Semal, Amaltas, Mango, Neem, Pingara, Arjun etc and is rich in wild animals such as Spotted Deer, Barking Deer, Sambhar, Wild Boar, Hare etc. in sufficient numbers. There is also movement of Panthers in the area.

It is alleged that part of the aforesaid Dumna forest land was allotted for the establishment Indian Institute of Information Technology and Data Management (in short 'IIIT DM') Some portion of the land also came to be allotted to Respondent No. 3, MPTDC measuring about 5 hectares by the State Government for construction of hotel. It is also submitted that in Dumna forest area land was also allotted for construction of the Airport at Jabalpur. Large number of trees was felled for allowing the construction of the hotel by MPTDC. Applicant had been informed that the land in question is not a Reserved Forest. However, they sought the information from the Respondent No. 3, whether any permission to use the aforesaid land for construction of the hotel as required under Section 2 of the Forest (Conservation) Act, 1980, had been sought from the competent authority. Petitioner furthermore submits that the Respondent No. 3 is reported to have informed the Applicant that since the area is not a notified forest and

allotment has been made by the State Government no such permission under the Forest (Conservation) Act, 1980 is necessary.

Tribunal noted that in the instant case the applicant failed to produce any record prepared in pursuance of the report of the expert committee to show that land in question could be considered a 'forest'. Tribunal having noticed the order of the High Court dated 16.01.2012 dismissing the earlier Writ Petition cannot take a different view from the one already taken by the High Court.

The High Court in its order dated16.01.2012 has observed:

"We fail to understand how the petitioner could be aggrieved with the transfer of land of the Municipal Corporation to IIIT and the Madhya Pradesh Tourism Development Corporation. If the Municipal Corporation is aggrieved with the transfer of its land, it is free to resolve the dispute with the IIT and Madhya Pradesh Tourism Development Corporation or with the State Government. The Municipal Corporation also does not suffer from any disability from approaching the court for relief.

The High Court also noted the fact in the earlier part of order dated 16.01.2012 as follows:

"It is to be noted that the IIT on the transferred land after substantial construction work worth many crores has already become functional and is serving larger public interest. The Madhya Pradesh Tourism Development Corporation has also constructed a Cafeteria on the transferred land, which is running successfully with the cooperation of forest department. It is serving larger public interest by providing substantial tourism."

The High Court had earlier in its order has also noticed the fact that Division Bench of the High Court despite having heard the matter on 16.12.2011 did not consider it necessary to stop the construction work which was being carried out as it was informed that 'that there is no proposal to fell any tree.'

Since in the present matter, as have been noticed herein above, the issue was raised before the High Court and it was finally decided regarding the ownership and status of the land and also the fact that no damage to any standing tree was going to be caused and no trees were to be cut on the area on which the construction was being raised, the High Court declined to interfere and dismissed the petition. This Tribunal therefore looking into the facts and circumstances of the case is unable to proceed in the matter in view of the aforesaid judgment and the principle of res judicata.

In the facts and circumstances, this Original Application No. 02/2014 accordingly stands dismissed.

However, as has been noticed in the order of the High Court it has been stated by the Counsel appearing before the High Court that no trees are going to be felled. The aforesaid undertaking shall be observed and it will be the responsibility of the Forest Department to ensure that no damage is caused either by any of the Respondents or by the guests visiting the hotel constructed by the Respondent to any flora and fauna and no disturbance is also caused to the wildlife habitat in case as sufficient number of wild animals exist in the area. The Respondent No. 3, MPTDC shall place hoardings and sign boards indicating to the guests and other person & visiting the area cautioning them not to disturb wildlife or cause damage to the vegetation in the area. All such necessary directions shall be taken in consultation with the Divisional Forest Officer, Jabalpur who shall also ensure regular patrolling in the area by the Forest Guard for the previously mentioned purpose and the expenses to be borne by MPTDC. Tribunal found from the photographs placed on record as Annexure P-3, that apart from the area over which the construction was sought to be raised, certain patches of land were found bereft of any vegetation. The MPTDC along with the Forest Department shall undertake extensive plantation of trees of local species to maintain greenery and improve the environment in the surroundings.

The MPTDC shall strictly follow the Municipal Solid Waste (Management & Handling) Rules, 2000 and dispose the solid waste and sewage in the premises duly following the prescribed norms. Precautions for controlling fire and declaring it as a non-smoking zone and prohibiting carrying of match boxes / lighters, and fire arms shall be taken up. Putting of proper fencing around the hotel premises or even construction of compound wall all round, shall be undertaken.

Furthermore, If MPTDC closes down the hotel at any point of time; it shall not transfer or sublet the same to any third party without obtaining NOC from the Forest Department.

The Forest Department shall conduct census of all the existing trees in the premises and surroundings and it shall be the duty of the MPTDC to ensure their protection and survival. The Forest Department is to monitor the protection of all such trees and wildlife in the area.

With the aforesaid precautions to be taken by the Respondent No. 3 & 4, Tribunal disposed of this Application ex-parte.

Salim Khan
Vs
Union of India 6 Ors

Original Application No. 38/2014(CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh, Mr. P.S.Rao
Keywords: Writ petition, High Court, Wildlife (Protection) Act, 1972, Plantations, Satpura Tiger Reserve, ex-parte.

Application Dismissed

Dated: 4 April 2014

These two applications were registered in the National Green Tribunal, Central Zonal Bench, Bhopal on transfer from the High Court of Madhya Pradesh, Principal seat at Jabalpur where they were dealt in Writ Petition Nos. 15467/2010 and 7405/2013 and on transfer, they were registered as Original Application Nos. 38/2014 and 34/2014, respectively. Since the issues involved in both the petitions filed before the High Court are identical, these two Original Applications are taken up together for hearing and decided together.

Both the Applicants are residents of Village Premtala, Post Bagra, Tehsil Babai, District Hoshangabad, Madhya Pradesh. They claim to be social workers and environmentalists deeply concerned with the larger public interest especially with reference to the environmental and ecological issues and they strive for protection of environment and forest. They stated that in the year 1980, the State Government has spent huge amount of money and raised plantations over an extent of 1400 acres with different species of trees i.e. Mahua, Harra, Bahera, Sagoan, Aawla and other valuable species in the villages Dolaria Khurd, Kharda, Ghoghari Kheda in Compartment Numbers 15 and 17 and Khasra Nos. 183 & 185 which fall in the Reserved Forest. They averred that the forest land where the aforesaid plantations have been raised, has been allotted to the outsiders who started cutting the trees and establishing dwelling units for residential purpose by raising constructions in violation of the guidelines laid-down by the Supreme Court in the case of "*T.N. Godavarman Thirumulkpad Vs. Union of India* (1997) 2 SCC 267". They have filed the petitions out of concern for the destruction of these plantations, before the Madhya Pradesh High Court in the larger interest of protection of environment and forest.

Tribunal is satisfied that the action taken by the Respondents in getting the permission from the MoEF for relocation and rehabilitation of the villagers displaced from the core area of the Satpura Tiger Reserve by selecting the degraded PF in Hoshangabad Division is as per the statutory requirement under the Wildlife (Protection) Act, 1972

and as per the guidelines issued by the NTCA as well as the State Government. The tribunal was also satisfied that the averments made by the Applicants do not contain any substance and the action taken by the Respondents is in accordance with law. In addition, there is no evidence that the Respondents are allowing illegal and unauthorised felling of trees or occupying the forest land.

The Tribunal held that these two Original Applications no longer require further hearing as sufficient opportunity was already given to the Applicants to bring on record to substantiate their allegations. Both these Original Applications were dismissed ex-parte.

Maharishi Shiksha Sansthan
Vs
M/s Trans-story (India) Ltd

Original Application No. 32/2014THC(CZ)

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

Keywords: Road Construction, Air Pollution, Noise Pollution, High Court, Educational Institutions, Bhopal

Application Disposed Of

Dated: 4 April 2014

This application has been filed by the Applicant stating that he is running a school as well as an institution accredited for professional courses with strength of 500 students at Village Lambakheda in District Bhopal. It is alleged that in front of the school, across the road, the Respondent Nos. 1 (M/s Transstroy (India) Ltd.) and 3 (M.P. Road Development Corporation) have established a plant for storage and preparation of road construction material used for ongoing construction of bye-pass road. It is also alleged that the aforesaid plant after its installation and due to its operation, is causing air and noise pollution in the nearby area which is detrimental to the activities within the educational institutions of the Applicant and more particularly to the students as well as to the local residents of the area. It is further contended that the pollution is affecting the health of the school children. It was also alleged that while the Respondent No. 1 has obtained the necessary certificate and permission from the Respondent No. 2 (M.P. Pollution Control Board) on the assurance that no pollution would be caused however contrary to the conditions, the running of the said plant is causing air and noise pollution and damaging the environment.

Initially the Applicant approached the High Court of Madhya Pradesh at Jabalpur by filing a Writ Petition on 20th February 2013. Subsequently after registration of the Writ Petition No. 2811/2013 the High Court on 9th January, 2014, directed transfer of the petition to the NGT, Central Zonal Bench at Bhopal.

The Tribunal noted that the grievance, which has been raised by the Petitioner in the petition before the High Court, now stands redressed. As there is a stoppage of operations there is no need for directions to be passed by this Tribunal. However, since the Respondent No. 1 has already given out that they would be shifting the

Mr. Shirish Barve Ors.
Vs
The Union of India Ors.

Original Application No. 38/2013 (WZ)

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

Keywords: Road Construction, NHAI, farmers' livelihood, change in land use, by-pass, Public purpose

Application disposed of

Dated: 4 April 2014

The Applicants have filed the present Application under Section 14, 15, 17 and 18 of the National Green Tribunal Act, 2010 challenging the proposed Jalgaon bypass road of the National Highway No.6 which has been proposed by Respondent No.2 i.e. National Highway Authority of India (NHAI). The Applicants claim that the present Application has been filed to salvage the high fertile and productive land from the proposed bypass road which is not required and this unnecessary proposal of having a by-pass which would create livelihood problems for many farmers and change in land use thereby affecting the environment.

On hearing the contentions of both appellants and respondents the Tribunal held that;

It would partially allow the Application with following directions to Respondent No.1 and 2:

- Respondent-2 (NHAI) shall submit a detailed upgradation proposal for the existing road passing through Jalgaon city by proper laning and strengthening of road, provision of traffic aids etc. within next three months.
- This project shall be undertaken along with the proposed bypass project and this work will be given priority over the proposed bypass to ensure that it is commissioned and made operational before the approval and implementation of proposed bypass road.
- Respondent-3 (The Collector, Jalgaon) shall ensure the compliance of these directions of the Tribunal.

Accordingly, the Application is disposed of.

Tribunal at its own motion
Vs
Ministry of Environment Others

Original Application No. 16/2013(CZ)(Suo Moto)

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

Keywords: Suo-Moto, Times of India Article, Bhopal, mining Lease, Environmental Impact Assessment, Dolomite, Ambient Air Quality, Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981, Forest Act

Application disposed of

Dated: 4 April 2014

In the Bhopal edition of daily newspaper 'Times of India' dated 10 April 2013, a news item was published on the front page under the caption "Dolomite mining a threat to Tiger corridor in Kanha - Foresters want ban on mining in Mandla District". Considering the gravity of the news item suo-motu cognizance was taken by this tribunal and notice was issued to the Respondent Nos. 1 to 6 on 10th April, 2013 with a direction to place on record the particulars of Mining Leases (in short 'ML') mentioned in the news item. In response to the above notice, the Respondent No.5, Madhya Pradesh State Pollution Control Board (in short 'MPPCB') submitted reply dated 29th April, 2013 stating that the officials of the MPPCB inspected the Dolomite mines in Mandla District and monitored the Ambient Air Quality (in short 'AAQ') in different locations where Consent to Operate the mines was granted to 36 ML holders. Out of 36 mines, 26 mines are having valid Consent to Operate and during the inspection, they were found to be under operation. Of the remaining 10 mines for which Consent to operate has expired, it was found that two mines are still under operation which is irregular and eight mines are closed. Therefore, show cause notice was issued for closure of the aforesaid two mines. With regard to AAQ it is reported that the standards are within the permissible limits and no pollution is observed. However, not satisfied with the above reply of the MPPCB, during the hearing of the case on 1 May 2013 this Tribunal directed the MPPCB to furnish full particulars of all the Dolomite mines in Mandla District.

After considering the arguments of both the parties the Tribunal directed that a meeting be convened immediately at the highest level under the chairmanship of the Chief Secretary to the Government of Madhya Pradesh involving the officials of the State Forest Department, National Tiger Conservation Authority, Officer in-charge of Regional Office, MoEF, Bhopal, Principal Secretaries, Environment and Mines and

Minerals, Government of Madhya Pradesh, Chairman, State Pollution Control Board, Madhya Pradesh, District Collector, Mandla and examine and take following actions in accordance with law duly fixing a time limit for each of the issues to be taken up and completed with promptitude by the authorities concerned.

i) Necessary penal action shall be initiated against those ML holders who were found violating the provisions of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 as well as the ML conditions and Forest Act and even revoking their license if repeatedly found violating the provisions of law.

ii) Though, ML area of most of the mines is limited and below 5 hectares, they are located in clusters in the limits of discussed 6 villages. Heavy human activity in these clusters involving high concentration of labour, deployment of machinery, movement of trucks to and from the mine sites shall definitely have a cumulative impact. Therefore, it may be examined whether these mines require cumulative Environment Impact Assessment (EIA) study and then only granting EC under cluster approach as envisaged in EIA Notification, 2006 and amendments made therein from time to time and in accordance with guidelines issued by the MoEF from time to time. In the meanwhile, movement of vehicles and mining activities shall be regulated in consultation with the Forest Department to not disturb the wildlife in the area.

iii) The reply filed on behalf of the State Govt. functionaries reveal that there is no coordination between the Mining and Forest Departments at least in case of those mines which are located in the Forest area and which are in close proximity to the forest boundary. In the reply filed on behalf of the Respondents No. 2, 3, 4 and 6 it was stated that the local Forest officials have expressed their deep concern pertaining to the mines sanctioned in the Reserved Forest and mine operators are required to obtain transit passes from the Forest Department. It was also stated that the ML conditions are not informed to the Forest Department and the ML holders are also reluctant to provide the information to the Forest Department. There is a need to put full stop to this state of affairs and streamline the entire procedure of sanctioning & operating the mines. The Government should evolve a suitable mechanism to avoid such conflicting situation and ensure coordination among all the law-enforcing authorities in the state.

iv) The irregularities pointed in the reply filed by the Regional Office, MoEF shall be taken up seriously and all the mines found violating the provisions &

ML conditions as well as Environmental laws should be dealt with seriously in accordance with law.

v) Keeping in view the concern expressed by the NTCA in their affidavit dated 25.02.2014 dealt herein, all the necessary caution needs to be taken before reviewing the existing MLs and granting / renewing EC and also before granting the Consent to Operate the mines.

vi) Even though the mines are under operation for a long period, it is surprising to note that such grave irregularities have been noticed only during the inspection of mines by the officials of the Regional Office, MoEF that too after the case was taken up suo motu by this Tribunal and no record was placed before us to the effect that any severe action has been taken against the defaulting ML holders. The Chief Secretary shall get the whole issue enquired and initiate action against the erring officials if it is found that they indulged in dereliction of duty by allowing the mines to continue to operate violating the law.

vii) With regard to those mines which are located on the boundary of the notified forest itself the issue may be examined in details and action may be taken to revoke their license in accordance with law, if no such provision of granting MLs touching the notified forest boundary, exists.

With the above directions, Tribunal disposed of this Application. To ensure compliance of the order, it was directed that the matter be listed in the Court on 31 July 2014.

Smt. Kausiya Dheemer
Vs
State of M.P. Seven Ors.

Original Application No. 43/2014 (THC) (CZ)

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

Keywords: Stone crushing unit, blasting operation, movement of trucks, precautions, High Court, renewal of mining license

Application is dismissed
Dated: 16 April 2014

The aforesaid Original Application came to be registered before this Tribunal after the Original Writ Petition No. 8708/2009 filed by the Applicant, Smt Kausiya Dheemer by way of PIL, came to be transferred by the High Court of Madhya Pradesh, vide order dated 16 January 2014 to the Tribunal. The Tribunal considered it appropriate to direct the Learned Counsel for the Respondent No. 2 & 3, MP State Pollution Control Board (in short MPPCB) to file an affidavit of their responsible officer on the following points.

- The distance that exists between the area of the stone crushing unit and the nearest human habitation.
- Whether the stone crushing unit, in dispute, has a valid consent to operate in existence.
- Whether the stone crushing unit is under operation as of today.

In the Writ Petition the Applicant has made the following prayer :

i. That the Stone Crushing operation being illegal, it should be ordered to be immediately closed.

ii. Illegal blasting operation should be immediately stopped.

iii. The letter of granting consent dated 04.06.2009 be quashed and set aside as also the letter issued by the Collector dated 26.7.2009.

iv. That the Respondent No. 1 (The State of Madhya Pradesh through Principal Secretary, Department of Mines & Mineral) & 2 (MPPCB) be directed to take legal and

penal action against the Respondent No. 6 for operating illegal stone crusher since 1984 without license and carrying out dynamite blasting, since 2002.

The principal ground for challenging the operation of the mines in the stone crushing unit is that, it is located within a distance of 500 mtrs. from the inhabitated area and therefore the consent has been granted to the Respondent No. 6 (Nishant Sahu) in violation of the guidelines. As far as the blasting being carried out in the mines is concerned, the allegation is that the Respondent has been carrying out illegal mining and without permission in that behalf.

Tribunal held the following

- Be that as it may, since the distance of the mine and the crushing unit is more than prescribed distance from the boundary of the notified in habitat area, the consent which was granted to the Applicant, post the order dated 04.04.2012, cannot be found to be contrary to the provision of the guidelines as contended by the Applicant.

- The Exh. P-2 prayer made by the Applicant with regard to the earlier letters Exh.P-61 dated 04.06.2009 of the grant of consent by the MPPCB and the letter of the Collector dated 26.07.2009 Annexure P-64 have become infructuous in view of the subsequent order dated 04.04.2012. Both these above prayers are accordingly rejected.

- With regards to illegal blasting it has already come to the notice of the High Court that no blasting was being carried out in the mine by the Respondent No. 6 and this fact has also been found in the two inspections which were carried out by the joint inspection committees constituted under the orders of the High Court. The aforesaid prayer made by the Applicant has not been substantiated and accordingly the aforesaid prayer is also refused and rejected.

Tribunal held:

Question of pollution being caused in the area and the compliance report submitted before the tribunal stating that adequate precautions have been taken by the Respondent No. 6, have been raised. As per the inspection report, vibrating screen was duly covered with hood and for purposes of sucking dust, 5 HP I.D Fan has also been installed and the dust sucked was collected in water spray chamber. The water spray chamber is made of concrete wherein two water sprinklers are installed. A boundary wall of 100 mtrs. long and 15ft high with a 15 ft gate in the East direction for conveyance of trucks has also been built along the stone crushing unit. It has also been found that tree plantation has been carried out at the site of stone crushing unit in sufficient numbers

No material proof showed that any air pollution is being caused or pollution of any other kind by the stone crushing unit i.e the matter to be taken into consideration by the MPPCB since tribunal was notified that the consent to operate of the Respondent No. 6 is due to expire by 30.06.2014 and would be liable to renewed thereafter. MPPCB was directed to take into consideration matters pertaining to pollution and the other factors relevant for the aforesaid purposes for grant of renewal shall in the event application for renewal of the application is submitted before them. If at any point of time, the MPPCB finds that there is violation of any of the condition or any additional conditions are required to be imposed for renewing the consent to the Respondent No. 6 for operating the stone crushing unit they would be free to do so in public interest.

As far as the Mining Lease is concerned Tribunal added that the Mining Department shall take into consideration the question with regard to renewal of the mining lease and operation of the mines in pursuance of the valid mining lease. The Respondent No. 6 based upon the conditions of the mining lease and in case there is any violation or breach of the mining lease conditions the Mining Officer shall be free to take action in accordance with law against the Respondent No. 6.

Original Application is dismissed with no order as to costs.

Shivendra Singh
Vs

Union of India and Ors.

Original Application No. 42/2014 (CZ)

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

Keywords: Writ Petition, High Court, PIL, Petrol pump, Green belt, No Objection Certificate

Application Disposed Off
Dated: 16 April 2014

The Application was registered before the Tribunal after the Writ Petition No.7286/2008 filed before the High Court of Madhya Pradesh at Jabalpur by way of PIL was transferred by the High Court vide order dated 8th January, 2014. The Writ was sought for restraining the establishment and operation of the petrol pump at the site in question, which was alleged to be in the Green belt. On 28th March, 2014 the case was adjourned to 16th April, 2014 in the interest of justice to enable the parties to appear and make their submissions.

Tribunal found that the High Court had not issued any interim order and an opportunity was granted to the Respondent No. 8 (Ms. Dimple Tharwani) to file her response, vide order dated 12th September, 2011. However, despite the aforesaid opportunity having been given to the Respondent No. 8, the Respondent No. 8 did not choose to file any reply before the High Court of MP though the Respondent No. 6 (M.P. Pollution Control Board) & 7 (Municipal Corporation, Rewa) have submitted their reply.

Tribunal noted that despite the process of having invited the applications and selection of Respondent No. 8 for establishment of the petrol pump has been completed, the petrol pump has not been established till date. Respondent No. 7 has categorically stated that it does not intend to give the No Objection Certificate for the establishment of the same on the disputed site of Khasra No. 422 and 427. The Respondent No. 8 chose not to contest the matter before the High Court by filing reply or appearing before this Tribunal after notice. Tribunal held that no further directions are required to be issued in the matter.

On the issue of No Objection Certificate for establishing the petrol pump on the disputed site the petitioner / applicant or any other person interested would have the right to approach the Tribunal or any other competent Court of law in the matter.

Tribunal made it clear that the matter was decided not on merits but based upon the facts that are on record as none had appeared for the Applicant and the Project Proponent to contest the matter.

Tribunal disposed of the application. No order as to costs.

Punamchand S/o Ramchandra Pardeshi and Anr
Vs
Union of India and Ors

Original Application No. 10/2013(THC) (WZ)

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

Keywords: Forest land, Diversion of forest land, Non forest purpose, Felling of trees, re-forestation, plantation of trees

Application Disposed Off
Dated: 16 April 2014

The Applicants filed Writ Petition in the High Court of Judicature of Bombay Bench at Aurangabad, alleging that certain forest lands were being illegally diverted for non-forest purposes, which would cause felling of trees to the extent of 2.5 to 3 lakhs and that would be a great loss to the environment. By order dated October 1st, 2003, Division Bench of the High Court, transferred the Writ Petition to this Tribunal in view of Judgment of the Apex Court in the case of "Bhopal Gas Peedith Mahila Udyog Sangathan & Anr Vs Union of India" (2012) 8, SCC 326.

The case of the Applicants, as can be gathered from the pleadings of the Writ Petition, is that there are ten projects as stated in the petition, which are Irrigation Projects of large scale, minor scale, Percolation Tank etc. For the purpose of these irrigation projects, the Respondents have planned to divert forest area, without taking due Forest Clearance (FC) from the competent Authority. They are likely to cut down large number of trees in the range of 2.5 to 3 lakhs, which will cause severe environmental damage. The Applicants further allege that some part of Yawal sanctuary is likely to be submerged in irrigation project called "Handya-Kundya"Project, which will affect the wildlife in the said sanctuary. So also, it will affect Teak wood and Bamboo trees within the area of said sanctuary.

The Respondent Nos.2 to 6 (2.The State of Maharashtra, 3. The Chief Conservator of Forests, Seminary hills, Nagpur, 4. The Conservator of Forests, Dist. Dhule, 5. The Deputy Conservator of Forests, Jalgaon Division 6, The Deputy Conservator of Forests, Yawal Division), resisted the petition on various grounds. According to them, total land covered by the said ten projects is 6,394.18 Ha. All the projects are for public welfare and the cost benefit ratio is more than the loss of number of trees, which is estimated during the study that was undertaken before planning of the projects. They submit that by way of compensation equal area of non- forest land was received and shall be utilized for afforestation. They further submit that they will plant large number of trees over the available land of 1423.8 Ha. The felling of trees is 133179, whereas 2562966 seedlings are

sought to be planted. The project will solve the water scarcity problem faced by the local public members. It will also cause benefit to the Agriculturists, because irrigation facility will be available to them for irrigation of their lands. It is denied that wildlife is likely to be disturbed due to the projects or any part thereof.

After hearing the matter, the Tribunal gave the following directions:

- The Respondent Nos.2 to 6 shall monitor plantation of adequate number of trees, as far as possible of 1:8 ratio and make serious endeavor to protect the plants to improve survival rate of the trees.

- The projects shall be implemented peri pasu with the process of plantation, proper maintenance, rearing, monitoring, watering and protecting of plants, to ensure that when the projects are completed, the plants will be transformed as trees.

The Application was disposed of. No costs.

Pramod Sharma
Vs
State of Rajasthan

Original Application No. 114/2013 (CZ)

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

Keywords: Brick Kiln, Bundi district, Air Act, Water Act, Fly Ash, Mining, Orange category, Central Pollution Control Board, Licence

Application Disposed Of
Dated: 21 April 2014

This Original Application was originally filed as DB Civil Writ Petition (PIL) by Shri Pramod Sharma and seven others in the High Court of Rajasthan, with the prayer to direct closure of brick kiln activities in Bundi District and in areas adjacent to Bundi city in the State of Rajasthan. The High Court of Rajasthan transferred the writ petition to the Central Zone Bench, Bhopal of National Green Tribunal. Upon its transfer, the writ petition was registered and notices were issued to all the parties vide order dated 5th December, 2013. Later on, the case was heard on 27 January 2014, 18 February 2014, 14 March 2014 and finally on 21st April, 2014. None appeared for the Applicants on all the aforesaid dates of hearing.

In the writ petition, it has been stated by the Applicants that they are residents of District Bundi, involved in various social activities and participating in various programmes to spread environmental awareness in larger public interest .They stated that Bundi city is having more than seven centuries of history with rich heritage. It is rich in agricultural activities and is surrounded by the famous Aravali Hills attracting foreign and local tourists. It is also rich in water resources and forests giving a look of a mini hill station. Of late, many brick kilns for manufacturing bricks for commercial purpose, have been started around the city of Bundi and other parts of the district without following the safety norms leading to environmental pollution and causing damage to the health of the citizens. The Applicants averred that the Respondents without following the prescribed procedure allowed the brick kiln owners to continue their activities in violation of various state and environmental laws.

The Applicants further contended that under Section 3 of the Rajasthan Land Revenue (Allotment & Conversion of Land for Establishment of Brick Kilns) Rules, 1987 there is a provision for allotment of unoccupied Government land and conversion of agricultural land by Khatedar tenant for the establishment of the brick kilns in the whole of the State of Rajasthan with the condition that the land should not be situated within one kilometre of the village Abadi, the kiln owner shall obtain Mining Lease (in short ML)

from the Mining Department and also NOC issued by the concerned village/ municipal/local authority who while issuing NOC shall ensure that the proposed brick kiln shall not cause any pollution or fire hazard to village Abadi and storage godowns or places of religious worship or places of historical or tourist importance. However, in the case of brick kilns located in Bundi District and around Bundi city, above said Rules are not being followed and brick kilns are allowed to mushroom in the area. The kiln holders have started digging brick earth in valuable agricultural lands in the vicinity of Bundi city in an illegal and impermissible manner causing damage to the environment.

The Tribunal, after hearing the parties gave the following orders;

- In compliance of the directions issued under section 18 (1) (b) of the Water Act by the Central Pollution Control Board (in short CPCB), the RSPCB ordered categorization of the industries/processes/activities/mines in the state of Rajasthan for the purpose of consent mechanism and brought Brick kiln industry (excluding fly ash brick manufacturing using lime process) under Orange category. Tribunal noted that as per the records produced there is nothing to indicate anything about evolving a policy and prescribing guidelines to regulate and monitor the Brick Kilns activities in the state of Rajasthan though the measures required to be taken by the brick kiln industry for control of Air and Water Pollution warrant consideration of applications for granting Consent under the Air Act and the Water Act. Therefore, a few points were suggested to be taken into account by RSPCB, District Administration and Mining Authorities.

- It was directed that an immediate spot survey of all the brick kilns be undertaken jointly by a senior officer of the Revenue Department nominated by the District Collector, Bundi and by the concerned officer of the RSPCB in each Tehsil of the District Bundi and verify whether the units are established in accordance with law and whether they have obtained licence from the Revenue Department and Consent from the RSPCB. In case those units which had already obtained the licence and consent to operate, the Pollution Control Board shall verify whether the prescribed norms are followed and standards are maintained and if there is any violation, action shall be taken immediately under the Air Act/EP Act.

- In case of those units which are sanctioned by the District Administration/ Revenue Department but not obtained consent from the RSPCB immediate action shall be taken to give notice to them to obtain the consent within 60 days from the date of this order and in case no consent is obtained within 60 days, the kilns shall be ordered to be closed in consultation with the District Administration/ Revenue Department and the District Administration shall provide all the necessary assistance in this regard to the PSPCB.

- As directed by the Supreme Court in Deepak Kumar & Ors. Vs. State of Haryana & Ors., Environmental Clearance (in short EC) is required even in those cases where mining lease is granted for borrowing/excavation of brick earth in area less than 5 hectares. Therefore, the guidelines issued in the Office Memorandum No. L-11011/47/2011-IA.II(M) of Ministry of Environment and Forests (in short MoEF), Government of India as well as amendment made to EIA Notification 2006 and guidelines stipulated in MoEF Office Memorandum No. J-13012/12/2013-IA-II(I) wherein category 'B' projects were further sub-categorised into 'B1' and 'B2', shall be strictly followed and mining projects of brick earth are permitted to be established and operate only after obtaining EC from the competent authority. Brick earth mining projects having lease area less than 5 hectares shall be considered for granting EC as per the guidelines issued in MoEF Office Memorandum No. L-11011/47/2011-IA.II (M).

- If in case, the mining lease area for brick earth is 5 hectares or more than 5 hectares but less than 25 hectares, they shall be appraised as Category 'B2' projects and the guidelines issued in MoEF Office Memorandum No. J-13012/12/2013-IA-II dated 24th December, 2013 shall be followed.

- Wherever fly ash is available from the Thermal Power Plants located near the existing or proposed brick manufacturing units, the guidelines issued from time to time by the MoEF on utilization of fly ash, shall be followed for production of fly ash bricks and manufacturing of bricks by digging brick earth particularly in valuable agricultural lands, shall be discouraged.

- With regard to the allegations made by the Applicants that brick kilns are allowed in the Abadi areas in violation of Rajasthan Land Revenue (Allotment & Conversion of Land for Establishment of Brick Kilns) Rules, 1987, Rajasthan Land Revenue (Conservation of Agricultural Land for Non-Agricultural Purposes in Rural Areas) Rules, 2007 and Rajasthan Minor Mineral (Concession Rules), 1986 did not go into the merits stating that mandate given to this Tribunal is with regard to the adjudication of cases pertaining to environmental laws only.

With the above directions, Tribunal disposed of this Application. However, to ensure compliance of the order it was directed that the matter be listed in Court on 31st July 2014

Deshpande Jansamsya Nivaran Samiti
Vs

State of Maharashtra Ors.

Original Application No. 32(THC)/2013(WZ)

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

Keywords: PIL, Municipal Solid Waste, Bhandewadi Municipal Solid Waste, dumping yard, Municipal Solid Waste, Nagpur, Unscientific Waste Disposal, Public Health,

Application Disposed Of
Dated: 22 April 2014

The present Application was originally filed as Public Interest Litigation (PIL) No.44 of 2011, in the High Court of Judicature of Bombay, Bench at Nagpur, which was transferred to this Tribunal vide High Court order dated October 9th, 2013. The Application has been filed by five residential Colony Societies, seeking to ventilate their long standing grievances regarding improper and unscientific operations at the Bhandewadi Municipal Solid Waste (MSW) dumping yard complex resulting in serious air and water pollution, posing a serious health hazard to the large and dense population, residing in the vicinity of said plant. The Applicants submit that area of Bhandewadi was reserved for MSW dumping yard since 1966. The subsequent development plans (DP) also show the area as compost yard. The Corporation of City of Nagpur (NMC) is utilizing said area for dumping of entire solid waste generated in the city. As a matter of fact, the Respondent No.2, i.e. NMC was expected to provide necessary processing and treatment plant for the solid waste and operate the same scientifically so that operations would not create pollution and health hazard. It is case of the Applicants that the Respondent No.2- NMC and its contractor – Respondent No. 7, have not provided adequate machinery and plant for the said purpose and are not operating entire process of MSW management in scientific manner, in compliance with the Municipal Solid Waste (M&H) Rules, 2000, hereinafter referred as MSW Rules. The Applicants, therefore, claim that such unscientific operations of MSW management by the Respondent No.2 and Respondent No.7, is causing air pollution, odour nuisance, pollution of water, soil and groundwater, besides the adverse health impact on the nearby residents. The Applicants submit that they have regularly approached the Authorities including the Respondent No.2 – NMC, Respondent No.5- MPCB and the Respondent No.6, the Collector, pointing out such nuisance and pollution, however, the Authorities have failed to take necessary corrective measures to control air and water pollution.

The Tribunal allowed the present Application is partly allowed in following terms,

- The Secretary, Urban Development, Government of Maharashtra was directed to review the MSW management status in Nagpur city within next four weeks and to prepare a specific action plan and shall ensure that the MSW processing plant is operational to its original capacity of 550MT/d (200+200+150) within sixteen weeks without fail, and waste accumulated at the site is also properly processed and treated in a time bound program.

- In the meantime, Secretary, Urban Development, Government of Maharashtra and Commissioner NMC was required to take suitable steps to identify suitable agency to perform this work if the operator fails to achieve the time limit, at the cost and risk of the operator.

- Chief Secretary, Maharashtra was required to enquire into above mismanagement of MSW by Respondent Corporation and more particularly, about why the MSW processing and treatment plant at Nagpur was not put back in operation to its full capacity immediately after the fire incident, and also, whether appropriate penal action as per contract was taken against the operator for the non-performance, within three months hereafter, and take further necessary action.

- Secretary, Urban Development shall examine and decide the need and extent of the buffer no-development zone aspect as per the MSW Rules, in the present case, in particular and as a common strategy for all municipal areas in three months hereafter. MPCB shall provide all scientific assistance including specialized monitoring data, if required, for this purpose.

- MPCB shall conduct monthly monitoring as per MSW Rules and STP performance at the cost of Respondent Nos. 2 (Corporation of City of Nagpur) and 7 (M/S Hanjer Biotech Energies (Pvt) Ltd), and submit the reports to Secretary Urban Development and Collector, Nagpur on monthly basis till the MSW Rules are complied with. MPCB is at liberty to take necessary action, including the prosecution/s as indicated, against the non-compliances as per provisions of law. Respondent Nos. 2 and 7 shall deposit Rs. 20 lakhs each, with Collector, Nagpur within 4 weeks as environmental damages for not operating the MSW processing plant to its capacity since February 2012 till date. Collector Nagpur shall use this money for environmental programs like plantations, health camps etc. in the localities near MSW plant within two years hereafter.

- In Case, Respondent Nos. 2 & 7 fail to deposit the above amounts in time, The Collector, Nagpur shall recover amount of Rs.20 lakhs from Respondent initially by issuing a show cause notice of fifteen days and if no response is received, then immediately by issuing Warrant of Recovery and causing attachment of the

property of the said Project Proponent, which may be sold in auction. The properties be attached as stock and barrel for the purpose of such sale, including the Machinery, Shares and the concerned Bank Accounts, may be directed to be frozen.

Application was accordingly disposed of. No costs.

Himanshu R. Barot
Vs

State of Gujarat Ors.

Original Application No. 109/ (THC)/2013

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

Keywords: PIL, Unscientific Waste Disposal, Starch manufacture, Public Health, Factory, Air (Prevention & Control of Pollution) Act 1981, Water (Prevention & Control of Pollution) Act 1974, M.S. University Baroda

Application Disposed Of
Dated: 22 April 2014

Anil Products Limited is a Private Limited Company incorporated under the Companies Act 1956. This Company manufactures glucose, medicines, biscuits and other products by using starch derived after processing maize. The Biscuits are having brand name "Kokay biscuits" The factory has its unit at Kalyan Mill, Naroda Road, North Gujrat estate, Ahmedabad. (For the sake of brevity, it will be referred hereinafter as "Anil Products".) In the Application, "Anil Products" is arrayed as Respondent No.3. The first two (2) Respondents are Environment Department of the State of Gujarat and Gujarat Pollution Control Board respectively. They have been arrayed in the Application for the reason that they are the regulatory authorities to enforce environmental laws, particularly, the Air (Prevention & Control of Pollution) Act 1981 and Water (Prevention & Control of Pollution) Act 1974 as well as Environment (Protection) 1986. The Applicant's case is that "Anil Products" does not follow safety measures and environment Laws in the process of manufacturing the starch and other products. The factory premises of Anil Products are situated in the thickly populated human locality. For manufacturing of the glucose and other products, harmful chemicals are used as raw material. Anil Products also uses Hydrogen gas during course of the process of production. The Hydrogen gas is stored in a big tank and is used while processing maize. The wet starch, the putrefied starch, the starch under process, which is stacked in the factory premises of Anil Products, spread out foul smell in the area. The white ash generated by the factory is emitted in the air and causes air pollution. The Air Pollution has resulted into health hazards caused to residents of the area. The factory of Anil Products discharges large quantity of effluents of polluting nature, so also poisonous gas is evaporated from sewage line and therefore, the adverse environment impact is caused due to running of the factory.

The Tribunal allowed Application partly.

- The Respondent No. 3 (Anil Products) was directed to pay compensation of Rs. 10,00,000/- being compensation in general due to pollution cost on account of odour and pollutants emanated from the mercers and stack of the factory during the past period.
- The amount was to be deposited in the office of the Collector, Ahmedabad within period of four weeks. A duly authenticated copy of the receipt was to be placed on record after four weeks. The Collector, Ahmedabad was to utilize the amount for the public purposes as mentioned in the Judgment.
- The G.P.C.B. (Respondent 2) was directed to specify the recommendation and the control measures as per the recommendations of the Department of Engineering, M.S. University, Baroda and issue separate directions to Anil Products.
- Anil Products were directed to comply with the recommendations of department of Civil Engineering, M.S. University, Baroda which are stated at point No.4 in the report and as per the direction which will be issued by the G.P.C.B.
- Further, directions were given to Anil Products to comply with the recommendations of the Department of Civil Engineering, M.S. University, Baroda within period of nine months under supervision of the G.P.C.B. The G.P.C.B. was required monitor compliances of such recommendations, periodically at end of each month by Anil Products and shall submit status report of till completion of nine months.
- In case of failure of Anil Products to comply with the recommendations of the Department of Civil Engineering, M.S. University, Baroda, the G.P.C.B. was directed to issue minimum closure order and not to allow operation of Anil Products without further approval of this Tribunal.
- Anil Products shall pay costs of Rs.25, 000/- to the Applicants within period four weeks and shall bear its own cost.

The Application is accordingly disposed of.

Sanjeev Dutta Ors.

Vs

National Thermal Power Corporation Ltd. Ors.

Original Application No. 4/2014 (THC)(CZ)

Judicial Member: Mr. Justice Dalip Singh

Keywords: Writ Petition, transfer of land, NTPC, Thermal Power Plant, Disputed land, allotment of land, Diversion of forest land

Application Disposed Of
Dated: 23 April 2014

The Writ Petition No. 105/2001 was filed by way of PIL by the Applicant in the High Court of Chhattisgarh at Bilaspur with the prayer for quashing the transfer of lands to the NTPC for non observance of the provisions of Forest (Conservation) Act, 1980 and the M.P. Panchyayat Raj Adhiniyam, 1993. On transfer from the High Court of Chhattisgarh to the Central Zonal Bench of National Green Tribunal at Bhopal, the Writ Petition was registered and renumbered as Original Application No. 04/2014.

It has been submitted by the Counsel for the Applicants that the Thermal Power Plant of the Respondent No.1 has already been constructed and commissioned on the disputed land. As such the initial prayer with regard to the quashing of the allotment of land has become infructuous. However, the issue with regard to diversion of forest land for the purpose of construction of Thermal Power Plant of the Respondent No.1 remains to be considered as was set out by the Applicant in the Misc. Application that was filed before the High Court of Chhattisgarh at Bilaspur for the aforesaid purpose.

It has also been pointed out by the Counsel for the parties that the High Court of Chhattisgarh at Bilaspur vide its order dated. 27.02.2001 had initially directed while granting permission for felling of the trees for the purpose of construction of the plant on the condition of depositing an amount of Rs. 65,00,000/- with the State Government for the development of forest and green belt which was said to be in progress as given out by the Advocate General. It was further submitted that subsequently vide order dated. 31.10.2001 of High Court of Chhattisgarh an additional amount of Rs. 65,00,000/- was deposited. As it was given out that the project of the Respondent No.1 at Sipat has already been constructed with an investment of Rs.600 crores. The Counsel for the Applicants in view of the subsequent development, submitted that as regards the initial prayer on allotment of the land and restraining the Respondent No. 1 from utilising the same for the purpose of construction of the plant, the same has already become

infructuous in view of the fact that the plant has already come up on the disputed site with a huge investment as mentioned above. With regard to the issue of diversion of the forest land and the utilisation of the total amount of Rs. 1.30 Crores (Rs. 65 lakhs + Rs. 65 lakhs) deposited as per the orders of the High Court of Chhattisgarh at Bilaspur, he may be directed to file a fresh Original Application. The aforesaid issue itself would require determination as it is contested by the Respondent whether the area in dispute was a forest land as averred by the Applicant who contended that even though the plantation was raised under social forestry the site would be covered under the forest laws as applicable in the State of Chhattisgarh, more particularly under the Forest (Conservation) Act, 1980 in terms of the order of the Supreme Court in the case of T.N. Godhavarman vs. Union of India (1997) 2 SCC 267 order dated. 12.12.1996. Since these were not the issues as originally raised it may not be possible to decide the same on the basis of the original pleadings as they have been raised by way of subsequent events.

In view of the above, the Tribunal disposes of the Original Application No. 04/2014 arising out of Writ Petition No. 105/2001 filed before the High Court of Chhattisgarh as having become infructuous in the light of the facts stated above. However liberty is granted to the Applicants to raise the issue with regard to the diversion of forest land and the alleged violation of Forest (Conservation) Act, 1980 and the question with regard to utilisation of the amount deposited as directed by the High Court of Chhattisgarh by the order dated 27.02.2001 and dated 31.10.2001 by means of a fresh petition.

The Original Application No. 04/2014 accordingly stands disposed of with liberty to the applicants to seek condonation of delay in accordance with law in case fresh petition is filed.

Rama Shankar Gurudwan

Vs

NTPC Ors.

Original Application No. 12/2014 (THC)(CZ)

Judicial Member: Mr. Justice Dalip Singh, Mr. P.S. Rao

Keywords: Writ Petition, NTPC, State Pollution Control Board, MoEF, Environmental Clearance, Condonation of delay

Application Disposed Of
Dated: 23 April 2014

The Tribunal has heard the counsel for the parties and perused the record.

This O.A. was registered after having been received from the High Court of Chhattisgarh at Bilaspur where Writ Petition No. 778/2001 was filed by the Petitioners alleging that the NOC dated 5th March, 1997 issued by the State Pollution Control Board in favour of the NTPC project, is bad in law and prayed to quash the site clearance for the stage one given by the MoEF as also to quash the Environmental Clearance.

It is not in dispute, as was submitted by the counsel for the parties, that during the pendency of the writ petition, the plant of the NTPC has already been commissioned and power generation has been going on for quite some time.

Counsel for the Applicant submitted that in view of the above, before the High Court, the Petitioner in June, 2013 had filed an M.A. No. 185/2014 pointing out certain violation of the conditions of the Environmental Clearance by the Project Proponent and with the prayer for issuing appropriate directions against the Respondents and the NTPC for strict compliance of the conditions of the State Pollution Control Board and the mandatory conditions imposed by the MoEF.

Counsel for the Applicant submitted that in view of the subsequent developments and the present facts with regard to the plant having been already commissioned, the original prayers made in the petition have become infructuous. However, so far as the prayers made in the M.A. with regard to the non-observance and violation of the conditions of the permission granted to the NTPC is concerned, the counsel requested that he may be permitted to file a fresh application in that behalf so that the issues

which have been raised in the MA can be dealt with in an appropriate manner by the Tribunal.

Having considered the matter, The Tribunal is of the view that the prayer made deserves to be allowed as prima facie the two causes of action are different. The original application itself in view of the subsequent development, is disposed of having become infructuous and the M.A. No. 185/2014 is permitted to be withdrawn with liberty to file a fresh Original Application, if so advised.

The Tribunal made it clear that since the M.A. was filed in June, 2013, the Applicant would be at liberty to seek condonation of delay in accordance with law if the same is filed against the matter of non-compliance of the conditions of EC as is alleged in the MA No. 185/2014.

The OA No. 12/2014 and MA No. 185/2014 are disposed of accordingly

Karam Chand Anr
Vs
Union of India and Ors

Appeal No. 68/2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Mr. Dr. D.K. Agrawal, Mr. B.S. Sajwan, Dr. R.C. Trivedi

Keywords: Hydro-power plant, The Forest (Conservation) Act, 1980, EIA Notification 2006, National Board for Wildlife, sustainable development

Application Disposed Of
Dated: 24 April 2014

The appellants are residents of the remote Holi Sub-Tehsil of Chamba district in Himachal Pradesh. In the present appeal, they are challenging the grant of forest clearance granted by the respondent authorities to the GMR Bajoli Holi Hydropower Limited Respondent No. 3, for setting up of 180 MW Bajoli-Holi Hydroelectric project on the basin of river Ravi in between Bajoli and Holi. This clearance was conveyed to the project proponent by a letter. However, during the course of arguments, it was conceded that the said letter is dated 28th January, 2013 and was passed under Section 2 of the Forest (Conservation) Act, 1980 The challenge to the impugned forest clearance dated 28th January, 2013 is inter alia, but primarily, on the following grounds;

- The change from the Tail Race Tunnel along the right bank of the river to the left bank of the river is a material change and no proper EIA study or report was prepared in that regard.
- As per the EIA notification of 2006, the terms of reference were prepared with reference to the Tail Race Tunnel being along the left bank of the river. This change has been allowed without any application of mind.
- The right bank area of the river is uninhabited with barren rocky landscape, whereas, the left bank area is inhabited and a number of villages are located in that area with agriculture and horticulture as major activities.
- No permission from the National Board of Wildlife has been obtained. The dam site of the project is within 10 kms radius of Dhauladhar Wildlife Sanctuary and as such is in violation of the directions passed by the Supreme Court in the matter of Goa Foundation v. Union of India.

- The Forest Advisory Committee (for short the 'FAC') had desired that a study to assess the cumulative environmental impact of various hydroelectric projects particularly on the river eco system and its land and aquatic biodiversity, should be done by the State. This condition had been waived without any basis.

Tribunal found no substance in the plea and lack of merit in the various contentions raised by the appellants. Tribunal decided to adopt the reasoning of the High Court as given in its judgment to reject all these contentions. The principle of sustainable development pre-supposes some injury to the environment. Of course, such injury must not be irretrievable or irreversible. In the present case, the project sought to be established and operationalised on the river Ravi is an attempt to generate electricity, better the economy of the area, provide service opportunities and also to implement and restoration and rehabilitation scheme for the benefit of the people in the area. If one balances the advantages of the project as opposed to the disadvantages, the scale would certainly tilt in favour of establishment of the project. Tribunal hardly find any merit in the various contentions raised by the appellant except to the limited observations afore recorded. Thus, the present appeal is dismissed, however, with the direction to the project proponent to seek clearance from the National Board for Wildlife in accordance with law.

Appeal was disposed of without any order as to costs.

Lok Maitri
Vs

M.P.P.C.B. and Ors.

Original Application No. 51/2014(CZ)

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

Keywords: Hazardous Waste storage, Supreme Court, High Court, Writ Petition

Application Disposed Of
Dated: 25 April 2014

This Application was received by way of letter petition from the Applicant Lok Maitri through Dr. Gautam Kothari, Programme Coordinator of Lok Maitri in the matter of establishment and disposal of hazardous waste material through incinerator at the Treatment, Storage and Disposal Facility of M/s Ramky Enviro Engineers located at Pithampur, near Indore.

From the replies filed by the Respondent Nos. 1, 2 & 3, it was clear that the matter pending before the High Court of Madhya Pradesh as also the Supreme Court is seized of the matter in the SLP No. 9874/2012 from the judgment and, order dated 5th March, 2012 in Writ Petition No. 2802/2004 of the High Court of Madhya Pradesh at Jabalpur in the matter of Union of India vs. Alok Pratap Singh & Ors.

The Respondents Nos. 2 & 3 along with their replies have also placed the orders passed by the Supreme Court on various dates of hearing on record.

Tribunal disposed of this petition with liberty to the Applicant to approach the High Court of Madhya Pradesh at Jabalpur in the pending matter or the Supreme Court in the SLP filed by the Union of India against the order of the High Court dated 5th March, 2012 as may be advised.

This petition, accordingly, stands disposed of.

Vijay Singh
Vs
Balaji Grit Udyog (Unit I and Unit II) Ors

Original Application No. Appeal No. 2/2014

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Mr. Justice M.S. Nambia, Dr. G.K. Pandey, Prof. Dr. P.C. Mishra, Prof. A.R. Yousuf

Keywords: Stone Crushing unit, Air Act 1981, Water Act 1974, Supreme Court State Pollution Control Board, Consent to Operate

Application is Dismissed
Dated: 25 April 2014

The Appellant in the present appeal was the original complainant before the Haryana State Pollution Control Board (HSPCB) and the Respondent No. 3 before the Appellate Authority. He has filed the present appeal before this Tribunal against the order of the Appellate Authority dated 20.12.2013 under Section 31-B of the Air (Prevention and Control of Pollution) Act 1981 and Section 35-B of the Water (Prevention and Control of Pollution) Act 1974.

The Impugned order of the Appellate Authority was passed in the appeal filed by respondent no. 1, the project proponent, under Section 28 of the Water (Prevention and Control of Pollution) Act 1974 and Section 31 of the Air (Prevention and Control of Pollution) Act 1981. By such appeal he Challenged the order of the HSPCB dated 31.03.2013, in and by which the State Pollution Control Board (SPCB) has refused to grant consent to operate the unit of the respondent no. 1 for the year 2013 and 2014 under both the above said Acts, on the ground that the unit has not complied with the siting para meters stipulated in the Haryana State Notification dated 18.12.1997. This was pointed out by the Joint Inspection Report of the Regional Officer, Gurgaon (South), Executive Engineer (Public Health) and Tehsildar, Pataudi dated 18.03.2013. The said order of the SPCB was reversed by the Appellate Authority on appeal filed by the project proponent, thereby granting consent to operate for both unit I and unit II of the stone crushing units of the respondent no. 1 in the area of V. Mau Tehsil, Pataudi situated in Killa No. 9/15 and 10/2-11 respectively.

The historic events which are narrated in the case show in no uncertain terms, and makes one to necessarily conclude that the appellant has taken every opportunity to question the conduct of respondent no.1 project proponent at every stage taking advantage of certain observations made by the Judicial forum. Even though the Tribunal are conscious that the appellant is not disentitled to take such action, the Bench has no hesitation to conclude that the steps taken by the appellant have not been with

bonafide intention. That apart there is no question of any environmental issue affecting the larger public interest that has been raised in this appeal. The appellant having taken shelter under spot inspection report dated 18.03.2013 which is not only truncated but also bald in our view has in fact taken many other steps which are seen in the records filed by the appellant himself, that he has raised different sort of issues at different times and sought compliance regarding the units of respondent no. 1 on different grounds subsequent to the spot inspection report dated 18.03.2013 ,other than those two grounds mentioned in serial no. 7 and 11. He has started raising issue about the wind breaking walls, plantation of trees, metalled road etc. which were not the subject matter of the spot inspection report dated 18.03.2013 and made the officers of the Board to conduct inspection frequently and invited various reports at various times to make his grievance against respondent no. 1 alive for the reasons best known to him. When once it is admitted that Theodolite method of measurement is the most accurate method and both the units of respondent no. 1 were functioning with necessary compliance, the conduct of the appellant shows that he has carefully made the entire issue alive against respondent no. 1 from time immemorial under one pretext or the other which in our view cannot be termed better than the abuse of process of law. It is also informed to this Tribunal that the appellant has even filed a contempt application against respondent no. 1 and otherofficial respondents for not considering his representation of the year 2012 based on an order passed in a Writ Petition dated 20.08.2012 in respect of the NOC granted 10 years before ,namely 20.05.2002 and that contempt application came to be dismissed by the High Court on 10.07.2013. These are all the reasons that in the Tribunal's view are sufficient to hold that the appellant has not come to the Court with clean hands.

Looking into any angle the Tribunal sees no reason to interfere with the impugned order of the Appellate Authority and accordingly, the Tribunal dismisses the appeal.

Applying the ruling of the Apex Court which are having binding precedential value, to the facts of the present case tribunal held the view that the present appeal is not only an abuse of process of law, but the entire conduct of the appellant deserves to be condemned.

The Appeal was dismissed with the cost of Rs.50, 000/- (Fifty Thousand Only) to be paid to the legal aid fund of the NGT Bar Association within two weeks from the date of receipt of a copy of this order.

Tribunal made certain observation to be used as a guideline in future in respect of stone crushing units. The State Pollution Control Boards are directed to ensure that while Consent to Operate is given to any stone crusher, a condition should be stipulated that the unit will implement the pollution control measures as suggested in the

Comprehensive Industry Document (Series COINDS/78/2007-08) brought out by the Central Pollution Control Board in February 2009.

Further, in view of the fact that by and large stone crushing units are bound to cause significant air pollution problems to the nearby residents and its adverse impact on environment are to be taken note of, therefore the tribunal directed all the State Pollution Control Boards and Pollution Control Committees of the Union Territories to strictly ensure while granting Consents to stone crushers that the pollution control measures and environmental safeguards as mentioned in the above referred Comprehensive Industry Document are scrupulously followed and same must be periodically monitored.

The appeal was dismissed.

Nawab Khan Ors.
Vs
State of Madhya Pradesh and Ors

Original Application No. Appeal No. 52/2014(CZ)

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Mr. Justice M.S. Nambia, Dr. G.K. Pandey, Prof. Dr. P.C. Mishra, Prof. A.R. Yousuf

Keywords: Air Act 1981, Water Act 1974, Compliance, sand blasting, short blasting, Pollution Control Board

Application Disposed Of
Dated: 29 April 2014

This application had been filed by the Applicant complaining about the pollution being caused by various units including that of Respondent No. 5 (M/s M.M. Bajaj Packaging & Engineering Works) in the industrial area at Govindpura in Bhopal. As regards the Respondent No. 5, it was submitted that the said unit is operating sand blasting and short blasting at Plot No. 3, Sector-D of the Industrial Area of Govindpura and as a result of the aforesaid activity, since necessary precautionary measures had not been put into place, they were violating the provisions of the Air (Prevention & Control of Pollution) Act, 1981 and causing air pollution in the vicinity.

Tribunal held that whatever be the problem with regard to compliance of the directions issued by this Tribunal in the Judgment dated 9th May, 2013 in the case of *Cox India Ltd. Vs. M.P. Pollution Control Board* it is directed that the Principal Secretary, Environment and Housing shall take up the issue with the Chairman, Pollution Control Board and all measures that are necessary shall be put into place and necessary government sanctions be issued for the revision of the sanctioned strength of the staff within two weeks and direction in the judgment dated 9th May, 2013 be complied with. The matter shall be listed on 15th May, 2014 before the Tribunal and by that date if the compliance is not made, the Principal Secretary, Environment and Housing shall appear personally along with the Chairman, Pollution Control Board to explain the issue and file necessary affidavits regarding the steps taken so far and show cause why the judgment dated 9th May, 2013 has not been complied with. In case, the tribunal did not find satisfactory explanation for the delay, the Tribunal shall hold the officers concerned personally liable and if necessary issue penal orders against them for non-compliance.

Tribunal made it clear that in case sanction orders are issued and compliance in the case of Cox India Ltd. is made before 15th May 2014, the personal appearance of the aforesaid officers shall stand dispensed with and it would be sufficient to file the affidavits of the Principal Secretary, Environment & Housing and Chairman, MPPCB.

The Application stands disposed of. The counsel for the State and MPPCB shall convey the order to the concerned officer.

It was listed on 15th May, 2014 for compliance.

Dilip Bhoyar
Vs
State of Maharashtra Ors

Original Application No. Appeal No. 35/2013(THC)(WZ)

Judicial and Expert Members: Shri Justice V.R. Kingaonka, Dr. Ajay A. Deshpande

Keywords: PIL, Coal storage, Loading and unloading, excavation, health, road infrastructure, agriculture, ambient air quality, Water pollution, Air pollution, guidelines

Application is allowed partially
Dated: 29 April 2014

The present Application was originally filed as Public Interest Litigation (PIL) in the High Court of Bombay, Bench at Nagpur, which was transferred to this Tribunal vide order dated September 19th, 2013. The present Application has raised three important issues namely; (i) improper loading/unloading of coal in the Railway siding at Wani Railway Station, (ii) unscientific activity of storage of coal in Lalpuriya area of Wani by the Respondent Nos.10 to 12, and (iii) air pollution in the area of Wani Tahsil, including Wani town, due to improper activities of excavation, transportation and loading/ unloading of coal. The Applicant alleges that there is serious increase in the air pollution as well as water pollution due to above activities and there is serious impact on health of the residents of Wani area and there are serious impacts on the road infrastructure and agriculture.

On hearing the parties the tribunal concluded that there is deterioration of ambient air quality in Wani area, and the Coal transportation and handling have been identified as major contributors of air pollution. However, the response of various authorities like MPCB and SDM is far from satisfactory as only paper work has been done and no efforts have been made to enforce the directions/ decisions taken by these authorities.

Tribunal went on to allow Application partly in following terms:

- Secretary, Environment Department, Govt. of Maharashtra shall ensure that the study initiated by MPCB through IIT/NEERI, is completed within six weeks and the action plan which will be proposed in the final report shall be finalized by MPCB within next four weeks and suitable directions be issued to all concerned agencies for a time-bound and effective implementation.

- MPCB shall set up suitable air quality station/s in Wani area in next twelve weeks to monitor the ambient air quality as per NAAQS initially for a period of 3 years which may be extended by MPCB as per its own assessment.

- Collector, Yavatmal shall ensure the implementation of orders issued by SDM dated 20/10/2012 to shift coal depots and decision regarding funds to be allocated for road repairs, as per minutes of the meeting held on 23/03/2013, within next twelve weeks, subject to order, if any, given by competent court of law.

- MPCB shall take decision on application of consent of the coal depots/stackyards in view of CPCB'S directions and frame suitable environmental guidelines for siting and operations of coal depots/ stockyards, within next twelve weeks.

- MPCB and Collector, Yavatmal shall undertake study to assess the impact of air quality of public health and agriculture, through reputed institute. The cost of such study can be borne 50% by MPCB and 50% by WCL authorities, who are the major coal handlers in the area. Such studies shall be completed in one year and the findings and recommendations shall be implemented by Collector, Yavatmal on priority basis State Environment Department shall ensure the compliance of this, within one year hereafter.

- The authorities including MPCB and SDM and RTO shall take regular stringent actions against activities causing air pollution such as, industries, coal stackyards and heavy overburdened good's transport trucks, through joint and coordinated efforts, and should submit report to Collector, Yavatmal on monthly basis. Collector Yavatmal shall review these reports every quarter along with reports from Health and agricultural departments to ensure that the adverse impact on health and agriculture are mitigated effectively.

The Application is accordingly partly allowed and disposed of. No Costs.

The Application is listed on July 1st, 2014 for seeking compliance.

Niraj Mishra
Vs

Union of India Ors.

Original Application No. 27/2014(CZ)

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

Keywords: Writ Petition, High Court, Quashing of Order, PIL, Pollution, Environmental Clearance, Power Plant, Limitations

Application Disposed Of
Dated: 30 April 2014

This Original Application was a writ petition (PIL) that was transferred to the Tribunal by the Madhya Pradesh High Court at Jabalpur. The applicant has made two fold prayer one for quashing of order for establishment of power plant by the Respondent No. 3(Chief Manager, Jhabua Power Company) and second for direction to the Respondents "to get the necessary rules complied with to avoid Air, Water & Land Pollution".

Tribunal held that the relief sought against the grant of the Environmental Clearence dated 17.02.2010, 22.12.2010 and 25.01.2012, the latter two being corrigendum only, cannot be entertained having been barred by limitation.

Tribunal further held that the applicant had failed to appear before the Tribunal despite having been issued notice and that there is no specific allegation has been averred with respect to violation/deviation from EC conditions. Therefore directions were issued to the Respondent No. 1 and Respondent No. 6 to consider the report submitted to them by the Project Proponent and they were given the liberty to inspect the site as well and if they found any instance of violation of EC conditions then they shall take necessary action in accordance with law.

The Original Application was accordingly disposed of by the Tribunal with the liberty to the applicant to file a fresh application before the Tribunal concerning any new instances of breach of EC conditions by the Project Proponent. No specific allegation has been averred with respect to violation/deviation from EC conditions. Therefore directions were issued to the Respondent No. 1 (Union of India through Director MoEF)and Respondent No. 6 (Madhya Pradesh Pollution Control Board) to consider the report submitted to them by the Project Proponent and they were given the liberty to

inspect the site as well and if they found any instance of violation of EC conditions then they shall take necessary action in accordance with law.

The OA accordingly stands disposed of with the liberty to the applicant to file a fresh application before this Tribunal concerning any new instances of breach of EC conditions by the Project Proponent.

Gulab Meena
Vs
State of Rajasthan

Original Application No. 130/2013(CZ)

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

Keywords: Writ Petition, High Court of Rajasthan, PIL, Forest land, Encroachment, Chemicals, Pollution, Hazardous, Threat

Application Disposed Of
Dated: 30 April 2014

The Application was transferred after D.B. Civil Writ Petition (PIL) No. 13683/2012 was transferred by the High Court of Rajasthan Bench at Jaipur to the Tribunal.

In the petition it has been stated that Khasra No. 235 measuring 346 Bigha situated in Village Kishorepura, Tehsil Sapotra, District Karauli in Rajasthan is a forest land for which in Annexure-I the Land Revenue Record (Jamabandi) has been filed in support thereof which shows that Khasra No. 235 measuring 346 Bigha stands in the name of the Forest Department.

It is alleged that the aforesaid Khasra No. 235 has been encroached upon by certain persons by name Shri Ramesh, Mukesh, Mahesh & Dinesh to the extent of 150 Bigha. The villagers objected to the same and filed a complaint before the Dy. Collector for removal of the encroachments under their complaint letter dated 30.08.2011, which has been filed as Annexure-2 of the petition. A complaint was also filed on 08.09.2011 to the Tehsildar, Sapotra on the same ground with the additional allegations that some chemicals were sprayed in the area which is resulting in placing the life of the cattle in danger because they graze in the area and drink water from the ponds. It has been mentioned in the petition that the authorities thereafter carried out the demarcation of the area at the request of the villagers and the Gram Panchayat also deposited an amount of Rs. 11456/- (Rupees eleven thousand four hundred fifty six) with the Settlement Department for demarcation of the area on 15.02.2012. A committee was constituted by the Tehsildar on 03.04.2012 for solving the boundary dispute and apprise the factual position. The villagers also submitted a representation dated 18.07.2012 to the Addl. Chief Secretary (Environment and Forest) and Principal Chief Conservator of Forest, Govt. of Rajasthan for removal of the encroachments on Khasra No. 235 measuring 346 Bigha. Ultimately, they sent a final notice for removal of the encroachments on 16.08.2012 but nothing was done in the matter and therefore they approached the High Court of Rajasthan in this regard. The prayer made in the petition

was for calling for the record and issuing directions to remove encroachments over the forest land in the Khasra No. 235 measuring 346 Bigha,Village Kishorepura.

The tribunal noticed that the High Court vide its order dated 14.09.2012 issued notices to the Respondents and the Respondents submitted a short reply on 19.09.2013. In the reply it is not disputed that Khasra No. 235 is recorded in the name of the Forest Department, Rajasthan. However it has been stated that the Assistant Conservator of Forests (Wildlife), Karauli has initiated proceedings under Section 91 of the Rajasthan Land Revenue Act, 1956 on 14.12.2012, in the aforesaid land for removal of the encroachments and the said matter is pending in the Court of Assistant Conservator of Forests (Wildlife), Karauli.

Tribunal held that since the matter is pending before the Assistant Conservator of Forests (Wildlife), Karauli, the petition is ordered to be disposed of. Tribunal also directed the concerned local forest are responsible if any unlawful activities including the encroachment of Forest land, are allowed in violation of the provisions of the concerned Acts and action shall be initiated against them if they are found neglecting their duties.

The matter was directed to be put on 30.07.2014

Jayshree Dansena

Vs

M/s Athena Chattisgarh

Original Application No. 61/2013(CZ)

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

Keywords: Section 14, 15, Pollution, blasting, Environmental Clearance, Construction, CSR, Green Belt

Application Disposed Of
Dated: 30 April 2014

This application has been filed under section 18 read with Section 14 and Section 15 of the National Green Tribunal Act, 2010 with the following prayer.

"This application is moved for the purpose of protecting lives and health of the people of the villages Singhitarai, Katharrapali, Singhitarai, Nimuhi, Odekera, District –Janjgir – Champa and to make villages free from pollution and unless suitable orders have passed by this Tribunal it would endanger the lives of the people of the villages."

After registration of the application, notices were ordered to be issued on 13.11.2013 to the Respondents with direction to identify the property which was allegedly damaged due to alleged blasting being carried out by the respondents at the project site. Also with respect to the alleged pollution in the neighbouring areas as a result of construction and also to submit response with respect to observance of Environmental Clearance (in short EC) conditions particularly restoration of environment as contained in the EC condition No. 8 onwards.

A perusal of this inspection report shows that no blasting is being carried out and the same ceased to happen after June 2013. It is also reported that a school is situated near the water reservoir and no cracks have been observed in the school building as a result of the alleged blasting. The Head Master of the school has also denied occurrence of any cracks. The report also shows that no cracks have occurred to hutments or thatched houses near the reservoir. Some superficial minor cracks were observed in the house of Shri Dilip Dansena but they could not be attributed to the blasting as this house was situated at a distance of about 250 mts. from the reservoir. It was further reported that regular sprinkling of water is being done on village and inner roads of the project to contain fugitive emissions and 66,000 (Sixty Six Thousand) trees have been planted in an area of about 70 (seventy) acres for development of green belt. A regular project

report is also being submitted by the Project Proponent to the MoEF with a copy to the CECB.

Having heard the Counsels and having perused the records and more particularly the reply well as the inspection report of Respondent No. 5 and the Reply of the Respondent No. 1 and the affidavit of the COO of Respondent No. 1 filed on 25.03.2014 with respect to the query raised by the Tribunal on CSR commitment, the Tribunal is of the view that the issues raised by the Applicant have been satisfactorily taken care of.

As regards controlling the pollution found from the report of Respondent No. 5 a green belt of 70 acres has been developed by the Project Proponent. It shall be the responsibility of the Respondent No. 5 to ensure that the Respondent No. 1 ensures a good survival rate of the trees already planted in the green belt and the establishment of entire green belt as required by the EC to the extent mentioned therein in para XIX that "A green belt of adequate width and density shall be developed around the plant periphery in 200 acres area preferably with local species" shall be completed before the project is commissioned. Since presently only 70 acres green belt has been developed, the remaining 130 acres shall be developed by the Respondent No. 1. Preparatory works for the same shall be started before the onset of monsoon this year and required number and variety of tall plants shall be arranged in advance. The sprinkling of water shall continue till the construction of pucca roads in the area to contain fugitive emissions.

The Tribunal is of the opinion that no direction needs to be issued with respect to the allegations of blasting and damage to the school building in view of the inspection report of the Respondent no. 5 stating that no blasting is taking place and the School Head Master has denied any damage to the school buildings.

As far as the issue of sanitation and drinking water is concerned the Tribunal finds from the annexed documents and the affidavit of the COO of Respondent No 1 that under the head of infrastructure under item no. 8 "improvement of sanitation facility" and item No. 9 "provision of drinking water supply as well as development of community bore well to augment water supply", has been made and sufficient funds have been prescribed. The respondent No 1 shall carry out the aforesaid task of improvement of sanitation and supply of drinking water and intimate the CECB and the Applicant year wise as the said task is to be carried out every year for four years as per the Annexure-1.

In view of the above, the Tribunal is of the opinion that no further directions need to be issued by this Tribunal. However, the CECB shall monitor the above aspects on regular basis and ensure compliance as the previously mentioned issues form part of EC conditions and non-compliance of these conditions will entail consequences in accordance with law.

This petition is accordingly disposed of.

M/s Champ Energy Ventures Pvt. Ltd.
Vs

MoEF and Ors

Misc. Application No. 58/2014 (WZ)

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar, Mr. Ajay A. Deshpande
Keywords: Automotive Research Association of India (ARAI), Petrol run models, Bio-fuel, Bajaj Electricals, Environment (Protection) Act 1986

Application Disposed Of

Dated: 1 May 2014

By this common order, it was proposed that both the Applications are disposed of together, in as much as they are interlinked. The Application was filed by the original Applicant with a request to add Automotive Research Association of India (ARAI), as a party to the main Application. The Applicant has further sought directions against ARAI, to grant type approval/COP for six model of bifuel gas Gensets, petrol start/ petrol run models. The Applicant sought further directions including direction to CPCB to the effect that no instructions shall be issued to ARAI to discontinue internal process of Type Approval/COP of six petrol start/petrol run Gensets, manufactured by the Applicant.

The main Application of the Applicant reveals that the Applicant allegedly manufactures 22 models of petrol and LPG driven Gen sets. Out of them, 6 are petrol driven Gen sets, 14 are petrol start LPG run Gen sets and 2 are LPG start/LPG Run Gensets. According to the Applicant, standards have already been fixed for petrol start/ petrol run and Petrol start/LPG run Gensets. However, the CPCB has not yet fixed the standards, nor notification has been issued by the MoEF in respect of LPG start/LPG run Gen sets. Obviously, ARAI has not tested the same for issuance of Type Approval. The Application for such approval is not entertained by ARAI, because the Authorities, MPCB and CPCB have fixed no such standards.

The Applicant seeks directions that the CPCB shall give them personal hearing in respect of directions which have been issued under Section 5 of the Environment (Protection) Act, 1986, as regards to the unapproved Gensets for which standards are not notified. The Applicant further urges that MoEF be directed to set out standards for emissions and noise for petrol start/LPG run Gen sets and LPG/CNG/Natural Gas run Gensets. So also, certain other directions are sought against the ARAI.

The reply affidavit of Respondent No.2, (CPCB) shows that only six (6) models of petrol start/petrol run type have been approved. It is stated that out of these six (6) models, only three (3) type Gensets, which are manufactured by the Applicant, have been granted approval for production, because they are manufactured at the site of industrial unit of the Applicant. Other three approved models are being manufactured for the customer namely M/s Bajaj Electrical Ltd, for which type approval has been issued. It is stated that any Genset compatible with petrol fuel must have valid Type Approval and unless such approval is granted production thereof cannot be undertaken. It is further stated that the Applicant is illegally manufacturing a large number of Gensets without obtaining Type Approval and unless such bulk of Gen sets are recalled, the request for personal hearing cannot be considered by the CPCB. It is further stated by CPCB that the Applicant has got valid type of approval for three (3) models and therefore, cannot manufacture any other models, as there is no approval. It is contended that the Type Approval for model of other three (3) Gensets sold to the customer i.e. M/s Bajaj Electrical Ltd, is not permissible, to manufacture at the Applicant's industrial premises.

The tribunal on hearing both the parties held that under these circumstances to finally dispose of the main Application and Miscellaneous Application in the following manner;

- The approved three Gen sets bearing Champ 3000 CPS petrol start/ petrol run, Champ 5000 CPS petrol start/ petrol run and Champ 2800 CPS petrol start/ petrol run, shall be allowed and continued to be manufactured by the Applicant for period of four (4) months hereafter. The remaining three models which are being sold to the customer M/s Bajaj Electricals Ltd, may be allowed to be manufactured if they are manufactured at the site of M/s Bajaj Electricals Ltd and if they are not manufactured on that site, then after conducting inspection same may be disallowed by the CPCB.
- There is no need to join ARAI in the Application and ARAI, stands discharged.
- The CPCB shall reconsider the closure order or any prohibitory order passed against the Applicant and recall the same.
- The CPCB shall hear the Applicant on 26 May 2014, at the office of the Chairman/Member Secretary, New Delhi, between 11 a.m. to 1.00p.m.
- The Applicant will be at liberty to submit written representation before the date of such hearing.
- The Chairman, CPCB, should consider such representation before taking final decision in regard to the directions which are proposed to be given under Section 5 of the Environment (Protection) Act, 1986. Then only after hearing the

Applicant, such decision shall be arrived at and be communicated to the Applicant.

- The MoEF, in consultation with CPCB shall fix the standards for LPG start/LPG run as well as petrol start LPG run Gen Sets within period of four months hereafter at the most.
- The directions shall be communicated by the Counsel to the Secretary of MoEF and concerned department and Mr. Kedarnath, Scientist-C, shall communicate this order to the Chairman/Member Secretary of CPCB as well as shall give a copy of the order to the concerned department of MoEF.
- In case standards are so fixed, the Applicant is at liberty to apply to ARAI, as per the Notification and norms settled.

Application was disposed off without any order for costs.

M/s Laxmi Suiting

Vs

State of Rajasthan and Ors.

Original Application No. 358/2014(THC)

Judicial and Expert Members: Mr. Justice Swatanter Kumar , Mr. Justice M.S. Nambiar, Mr. P.C. Mishra, Mr. R.C. Trivedi
Keywords: Hazardous Wastes (handling and Management) Rules 1989, RIICO, Industrial units, pollution, CETP, water pollution

Application Disposed Of
Dated: 1 May 2014

This judgment sought to dispose of 62 appeals/applications, as they raise common questions of law, based upon somewhat similar facts before the Tribunal.
Thus, tribunal decided that it is not necessary to notice facts, in any greater detail, of all the appeals/applications. It would suffice to refer to the facts of the Original Application No. 358(THC)/2013 (S.B. Civil Writ Petition No. 8074/2010) and limited reference of facts in other connected appeals/applications.

The State of Rajasthan had handed over a piece of land to the Rajasthan State Industrial Development and Investment Corporation Limited (for short the "RIICO") for the purpose of setting up an industrial area. RIICO planned the land into plots for leasing out to industrialists for erection/setting up/establishing industrial units. These industrial premises allotted by RIICO were to be used for manufacture of industrial products by the respective units. Disputes were in relation to such units in which case the tribunal gave the following directions;

Directions to RIICO, State Government and State Pollution Control Board:

- In line with the order dated 9th December, 2010 passed by the High Court of Judicature for Rajasthan at Jodhpur, Tribunal directed the State Government to identify and establish a separate industrial area and also to consider expansion of the existing industrial area at Sangaria Industrial Estate thereby shifting the industries existing around the industrial area as of today to the newly established or expanded, demarcated industrial area.

- The above authorities should ensure that the industries operating in non-conforming areas are gradually shifted to the conforming areas upon

establishment of the new industrial estate and/or to the existing industrial estate upon its expansion.

- These authorities shall ensure that the Trust operates its CETP to the optimum capacity of 20 MLD and there is no malfunctioning of the said CETP. They shall also ensure establishment of an additional CETP near the already existing CETP or at any other place as the authorities concerned may define; positively ensuring that no untreated trade effluent or waste is discharged into the stream/river directly. The RIICO, Trust and RSPCB together should formulate a time targeted action plan for complete wastewater collection, treatment and reuse within one month from the date of this order to achieve zero discharge. This action plan should be implemented as per the schedule. The implementation should be monitored by the Committee constituted under this order to ensure its timely implementation. The Board may give consent to the Trust to operate the CETP to its optimum capacity, if collection and disposal of trade-effluent is in conformity with the prescribed standards.

- The State Board shall monitor the quantum of wastewater generated periodically for which consent has been granted or will be granted to the industries that are connected to the CETP.

- The State Board shall conduct inspection of the CETP of the Trust as well as the industrial units in and around the industrial estate at regular intervals and ensure that they are discharging trade effluents in accordance with the specified limits and prescribed standards.

- The State Board shall also monitor the functioning of captive ETP of those industries which are operating outside the conforming areas after grant of consent

- If any industry/unit – whether a member of the Trust or otherwise – fails to make an application for consent within three weeks from the date of this order or if such application is submitted to the Board and the consent applied for is declined/refused, such industry/unit shall be closed until it complies with the conditions/requirements stated by the Board

- All the industrial units operating in and around the industrial estate 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/ Board for causing pollution during all these years for their having failed to take appropriate measures and establish anti-pollution devices, as required under the law. This shall be one-time payment based on the 'polluter pays' principle. The amount so

called from all the units shall be utilized exclusively for upgradation/ expansion of existing CETP and for establishment and development of a new industrial estate and CETP to be established in future. The remaining amount, if required, shall be borne by the RIICO and State Government.

- Directed all the respondents, particularly mentioned under the above head to formulate a well-considered scheme for removal of sludge contributed by the industries into Jojri River within six months from the pronouncement of this judgment positively.

- Tribunal constituted a committee of Secretary Environment, State Government of Rajasthan as its Chairman; Member Secretary, Rajasthan Pollution Control Board as its Member Convenor; Senior Environmental Engineer, Central Pollution Control Board; Director of Industries; Senior Representative of Trust and RIICO, who shall supervise and submit a quarterly report to this Tribunal on the progress and implementation of these directions.

Directions to the Trust:

- The Trust shall enhance its present capacity to accommodate the entire effluent generated in the industrial area. The treatment should be based on achieving zero discharge that includes the tertiary treatment. The Trust may propose a detailed plan for such augmentation and reuse of wastewater after treatment to achieve zero discharge including the system for charging the units based on volume of wastewater and pollution load. Operating the CETP at 80% capacity is not sustainable. There should be proper collection system for the effluent through underground sewerage in order to prevent ground water pollution during transportation of wastewater.

- The Trust shall ensure installation of good quality, temper-proof electronic flow meter at the outlet point of each of the industries for regulating the flow allowing the volume of discharge for which consent has been granted. Any additional generation by the Industry shall not be allowed by Board unless they have their own captive treatment plant.

- Other industries located in the industrial area may be allowed by Trust to discharge their wastewater after ensuring that the CETP has adequate capacity to treat the additional wastewater and the industries have primary treatment facility including RO facilities and consent of the Board and they have paid their share in the cost of the CETP.

- Power back-up arrangement in the form of duly certified D.G. sets should be installed for continuous operation of CETPs even during power failure.

- The raw effluents from all the member units should be conveyed to the CETP through closed conduit pipelines only. No raw effluent should be transported through open unlined drains.
- The discharge allowed by the Trust to each member- unit should be on scientific/ rational basis, preferably based on likely effluent quantity generated from the member-units depending on their manufacturing processes/machinery installed and quantity of cloth processed.
- A surveillance mechanism should be created to investigate every instance of non-compliance reported to the RSPCB using fast and modern communication. The RSPCB should have adequate arrangements to immediately respond to the complaint.
- Management of CETP: A manual of standardised procedures for operation and maintenance should be prepared for all the activities of the staff for monitoring the performance of the CETP on regular basis with a surveillance mechanism. These procedures should be mandatory and penalties must be imposed for each default.
- Sludge Disposal: The sludge generated at the CEPT should be stored in covered sheds as per the prescribed guidelines and should be preferably co-incinerated in cement kilns or disposed of as per the Hazardous Wastes (handling and Management) Rules 1989.

Directions to Industries operating outside conforming area without consent:

- All other textile industries operating outside the conforming area shall be allowed by the Board to operate after they have their captive ETP and the treated waste water should be completely reused. No wastewater should be discharged into any drain or on land. However, as and when an industrial area is established by RIICO, they should be shifted to the new industrial area.
- The reject stream of reverse osmosis process is to be treated along with spent dye bath effluent.
- No discharge of highly polluting effluent, stream or R.O-rejects shall be allowed in any river, drain or on land.
- An electronic, tamper-proof good quality water meter should be installed at the outlet of each of the industries.
- All such units should strive for adopting process/CETP modifications which result in waste minimization and conservation of chemicals, energy and water.

- The sludge generated from these units should be utilized for co-incineration in cement CETPs. The units should make such arrangement within three months from today.

Directions for Members of the Trust:

- The industry should have proper consent from RSPCB.
- Industry should obtain membership of the CETP Trust with allowed quantity of effluent discharge. They need to monitor through electronic tamper-proof meter the quantity of the effluent as permitted. They should not let more effluent into CETP than permitted.
- All the individual industries should have adequate primary treatment facility so as to achieve standards prescribed for inlet of CETP. Such facilities should be effectively operated continuously.
- All the member-industries should install electronic, tamper-proof and good quality water meter at the outlet of their primary treatment CETP. Industry should have only one single outlet for discharge of effluent to drain leading to CETP.

Directions for the industries along the drain:

- All those industries located along the drain and not in the organized industrial area should immediately apply for the membership of CETP.
- The Trust should consider the applications expeditiously and plan for augmenting the treatment capacity based on the total additional volume required to be treated in view of the additional applications.
- These industries should also apply for consent from RSPCB after getting membership from the CETP Trust.
- The industry should install adequate primary treatment facility so as to achieve standards prescribed for inlet of CETP.
- The industry should install electronic, tamper-proof and good quality water meter at the outlet of their primary treatment CETP. Industry should have only one single outlet for discharge of effluent into the drain leading to CETP.

The directions issued in this judgment shall be complied with within six months from the date of pronouncement of this judgment wherever no specific time limit has been prescribed.

If any party needs any clarification or extension of time for complying with the above directions, it shall be at liberty to approach the Tribunal.

The above directions shall be complied with by all the stakeholders – the State Government, the RIICO, the Trust, any other public authority or industry – in true spirit and substance and without demur or protest. Tribunal made it clear that in the event of any person, authority or Government does not carry out the directions afore-stated, shall render them liable for appropriate action in accordance with law, including under Section 28 of the NGT Act.

All the applications/writ petitions were disposed of in the above terms while leaving the parties to bear their respective costs.

Shri Sudip Narayan Tamankar

V/S

Union Of India and others

APPLICATION No.228/2013 (WZ)

CORAM: Hon'bleShri Justice V.R. Kingaonkar (Judicial Member) Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Keywords – Casinos, waste disposal, river pollution

Application party allowed

Dated - May 6th, 2014

Judgment –

The case is about discharging of waste into rivers. The facts of the case are that certain casinos that have obtained the license to operate on ships in the river Madakini in the state of Goa who are respondents 6-12 in this application. It is alleged that since February 2009 they had been discharging untreated waste into the river Madakini. There were actions taken against these casinos by Goa state pollution control board and they were directed to make arrangements for taking care of sewage by building storage tanks on ships and disposing it offshore through tankers for treatment by the captain of ports. The allegations are based on the newspaper reports about the pollution caused to the river. The allegations further stated that the sewage isn't treated scientifically by the casinos and directly released into the river. Goa state police control board had issued directions to the casino owners to suspend operations on March 18th, 2009 which were subsequently allowed if the casinos made arrangements for proper waste disposal. There had been show cause notices issued by GSPCB to these casinos. The claims by the appellant state that there is a very bad effect on the environment because of these activities, which is also adversely affecting the marine life in the river Mandakini. It was alleged that fishermen were also getting affected by the waste disposal by the casinos. A report by the National Institute of Oceanography pointed out that the percentage of bacteria and pathogens in the river Mandovi were higher. The claim by the appellant is that the casinos were polluting the river and the regulatory authorities weren't able to monitor these casinos. The issues formulated by the tribunal were – Whether the casino's operating in the river Mandovi are working according to the environmental norms? Whether the waste material from these vessels is being

taken care of properly? Whether the regulatory authorities were ensuring that the operations of these organizations are environment friendly? The tribunal in its judgment stated that the operations of the casino vessels as well as other vessels in the river Mandovi need to be environment friendly. The tribunal future called the behavior of GSPCB unsatisfactory because the tribunal felt that it didn't take adequate measures to check the implementations of the directions issued to the casinos for proper waste disposal. The tribunal had asked for water testing of the water of the river which showed that the water quality wasn't up to the mark and there were pollutants present in the river. It can be established that there is no evidence which proves that the casinos had been disposing the waste in accordance to the standards given to them. The Tribunal in its judgment, party allowing the application said –

1. The casinos operating the ships shall improve the waste management system within a period of 6 weeks and in case the GSPCB feels the need, the casinos will install equipment for dis infecting the solid waste on the ships.

2. The GSPCB would monitor the STP at Tonca to ensure its proper functioning.

3. The Casinos i.e the respondents 6-12 shall be paying a fine of 2 lakh each as the cost of environmental damage, the sum will be paid within a period of 2 months to the Collector, North Goa who will utilize the sum to upgrade the STP.

4. A committee shall be constituted to oversee the functioning of the casino's waste management whose report will be submitted in every 4 months. The casinos will have to pay a sum of 1 lakh to meet the expenditure of the committee, the amount shall be paid within a period of 2 months.

5. Rs. 15000 shall be paid by the respondent casinos to the applicant and they will bear their individual costs.

Sandeep Sanghavi

Vs

Tree office

Original Application No. 88/2014(WZ)

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar, Mr. Ajay A.Deshpande
Keywords: The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, Principal Bench precedents, trees, birds, nests

Application Disposed Of

Dated: 6 May 2014

The application was filed with the requests that it;

- Petition be allowed with all reliefs.
- The said Act is enacted by the legislature for special purpose of curbing illegal axing of trees within urban areas, therefore the acts of the respondents itself wash out the very purpose of The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and therefore direction be given to respondent No. 2 shall be followed scrupulously and that the existing tree authority shall be abolished, turned down and all its operations shall be restricted till formation of new tree authority as per the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975.
- The resolution passed by Respondent no. 3, dated 03.10.2012 be quashed and set aside and be held as invalid.
- The Tribunal may kindly be pleased to call all records and proceedings of Tree Authority and details with quantitative date form year 1996 till today.
- The respondents be perpetually restrained from taking /decision to cut old / new trees on Talegaon Dabhade Jijamata Chouk to Talegaon Station Road and further be perpetually restrained from causing harm to birds nest and trees on the said road.

Considering rival submissions of the learned Counsel and the pleadings enumerated in the original Application, it is explicit that the Applicants have not restricted the prayers to challenge the Municipal Resolution dated 3rd October, 2012, but have also sought prohibitory injunction against the Municipal Council for indiscriminate cutting of the trees, which according to them would cause harm to the bird's nesting as well as environment and ecology. The photographs placed on record prima facie show that some of the trees have nesting of birds, including bats and may be of protected species of bats. There is prima facie material to show that nesting of the birds will be destroyed if such trees are cut. It is true that the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, is not shown in the list of specifically enactments, which are mentioned in the Schedule-I, of the NGT Act, 2010. However, that is not at all required. The reason is not far to seek. The enactment is aimed at preservation of the trees and therefore is duly encompasses under the Environment (Protection) Act, 1986. The word 'environment' is of wide amplitude. Section 2(m) of the NGT Act, cannot be given restricted meaning. In our opinion, the present Application is duly covered by dictum in case of Goa Foundation & Anr V. Union of India &Ors (MA No.49/2013 in Application No.26/2012, which is an elaborate order/Judgment, rendered by the Principal Bench of the NGT. By the said Order/Judgment dated July, 18th 2013, the Chairperson, heading the Principal Bench, dealt with various facets of the interpretations of legal provisions and particularly in relation to expression 'civil cases' , as used in Section 14(1) of the NGT Act, 2010 and scheme of the NGT Act. The relevant observations in paragraph 22 of the said Order/Judgment would indicate that "a substantial question of environment" does imply anticipated actions as substantially relating to environment."

Tribunal held that, when the Principal Bench has elaborately dealt with the same issue, it is not desirable to reiterate again same facets of the issues and particularly when tree-cutting activity cannot be disassociated from the environmental issues. The challenge to the above referred resolution of the Municipal Council, is of incidental nature. What the Applicants are asking by way of present Application, is that the provisions of legal enactment shall be followed by the Municipal Council in stricto sensu. The Applicants allege that by way of resolution dated 3rd October, 2012, settlement of offences outside the Court only by accepting certain amount, is not permissible under the Law and that should be stopped. Tribunal decided not to express any opinion on such an issue at this juncture. Tribunal also stated that there exists a substantial dispute relating to environment and therefore the NGT can entertain the original Application. There is no need to frame preliminary issue in the context of jurisdiction. The Application was dismissed. No Costs.

Neel Choudhary S/o Pramod Choudhary
Vs
District Collector, Indore

Original Application No. 18/2013(CZ)

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

Keywords: Party gardens, Pollution, Bhopal, Municipal Solid Waste (Management and Handling) Rules, 2000, Environment (Protection) Act, 1986 and the Rules made Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981

Application Disposed Off

Dated: 6 May 2014

This Original Application was filed under Section 18 of the National Green Tribunal Act, 2010 highlighting the problems arising out of running of marriage gardens, function halls and similar activities of holding parties etc. in such premises in and around the city of Bhopal resulting in pollution of the environment with particular reference to non-observance of the Municipal Solid Waste (Management and Handling) Rules, 2000 (in short referred to as MSW Rules) as well as violation of the provisions of the Environment (Protection) Act, 1986 (in short referred to as EP Act) and the Rules made there under as also the Water (Prevention & Control of Pollution) Act, 1974 (in short referred to as Water Act) and the Air (Prevention & Control of Pollution) Act, 1981(in short referred to as Air Act). The prayer made is for seeking a direction against the Respondents for strict implementation of the aforesaid statutory provisions and also regulating the aforesaid activity and bringing it within the jurisdiction and regulatory control of the Respondents as it is alleged that at present there are no clear-cut provisions for regulating the aforesaid activity or for issuance of licenses for the aforesaid activity. It is submitted that such activities are going on throughout the city and in particular around the lakes of Bhopal city which often results in disposal of solid waste as well as sewerage from such gardens post event into the lakes in total violation of the provisions of the Water Act as well as the MSW Rules and also the Wetlands (Conservation and Management) Rules, 2010 apart from other provisions.

Tribunal held that, while the issues which have been raised in the O.A. filed by the Applicant have been taken care of both by the high Court in its judgment dated 14th November, 2013 in the case of *Dheerendra Jain & Ors. Vs. State of Madhya Pradesh & Ors.* as well as the draft rules prepared by the Committee constituted during the pendency of this O.A. under directions of the Tribunal, Tribunal stated that it had no hesitation to

hold that the problems related to environmental pollution caused by the marriage gardens/function halls which have been highlighted by the Applicant, shall be taken care of.

The Tribunal in the issue with regard to the persons and owners of marriage gardens to whom notices have been issued as also the other such owners of premises shall be required to comply with the directions issued by the High Court in *Dheerendra Jain & Ors. Vs. State of M.P. & Ors.* and all those owners of premises or managers or persons having control over the same shall seek necessary permission from the authority/officer under Clause (h) of Rule 2 of the Ujjain Municipal Corporation bye-laws as applicable throughout the State under the orders of the State Govt. dated 29th March, 2014. All marriage/party gardens and lawns/ function halls shall also necessarily obtain such permission from the authorised officer with prior clearance from Pollution Control Board and such applications shall be filed in the prescribed form appended to the bye-laws and the Municipal Corporation, Bhopal shall deal with each individual application in accordance with these bye-laws.

So far as 24 persons to whom notices have been issued, it is made clear that in case they are found guilty of polluting the lake and the surroundings or orders are passed against them by the Bhopal Municipal Corporation in pursuance to the notices issued to them, the said matter shall be brought to the notice of this Tribunal and their continuance shall be decided by the Tribunal after the matter is taken up for consideration and compliance by the Tribunal when this case is listed for reporting compliance on 25th July, 2014.

As far as the M.A. No. 216/2014 filed by the State is concerned, Tribunal had made it clear that tribunal was not extending the time, as prayed by the learned counsel for the State for compliance of the directions issued by the High Court in Dheerendra Jain & Ors. Vs. State of M.P. & Ors. The Municipal Corporation, Bhopal and the State of Madhya Pradesh shall file compliance report by 25th July, 2014. The M.A. No. 216/2014 is dismissed.

The O.A. No. 18/2013 accordingly stands disposed of.

Chandrika Prasad Sonkar
Vs
Union of India

Original Application No. 146/2014(CZ)

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

Keywords: High Court, Environmental Clearance, Conditions, State Pollution Control Board, SEIAA

Application Disposed Of
Dated: 7 May 2014

During the course of arguments, learned counsel for the Applicant sought to raise the issue with regard to violation of the conditions of the EC dated 4thJune, 2013 granted to the intervener by SEIAA. Since, the original letter petition filed before the High Court did not contain any such averment with regard to the issue now sought to be raised during the course of hearing and even the project proponent not having been made a party/respondent, what was only permitted to intervene once and the application filed by the project proponent before the High Court the project proponent has also indicated in the application that no illegal activity is being carried out by the project proponent but has only carried out the work in accordance with the EC granted to him.

In that view of the matter, the issues which are now sought to be raised during the hearing, the project proponent cannot be taken by the element of surprise. Even otherwise, in case the Applicant wishes to challenge either the grant of the EC or the violation of the specific conditions mentioned in the EC, the Applicant must file appropriate application.

Tribunal noted the fact that initially the Applicant had filed a letter petition before the High Court and did not have the assistance of a counsel. After the transfer of the matter before this Tribunal, the Applicant who is present in person, has taken the able assistance of a counsel and therefore on the tribunals suggestion the Applicant has submitted that he may be permitted to withdraw this petition with liberty to file a fresh application before this Tribunal indicating the ground either challenging the EC or against the alleged violation of the conditions of the EC with supporting documents. The Tribunal decided to grant the above relief to Applicant permitting the Applicant to

withdraw this application with liberty to file a fresh application with complete pleadings and supporting documents and implead necessary and affected parties as in the letter petition neither the project proponent nor the State Pollution Control Board or SEIAA or the State or the District Authorities were impleaded as parties.

The Applicant was permitted to withdraw the present petition arising out of Writ Petition No. 12897/2013 and permit the Applicant to file a fresh petition, if so advised.

In view of the above, the interim order passed by the High Court dated 11th October, 2013 also stands vacated. The Original Application as well as the pending M.A. No. 146/2014 stand dismissed as withdrawn.

Jagat Ram Chicham
Vs
State of M.P. Ors

Original Application No. 44/2014(THC) (CZ)

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

Keywords: High Court, Public Interest Litigation, MP Forest Development Corporation,

Application Disposed Of

Dated: 8 May 2014

Initially this petition was filed as Public Interest Litigation (PIL) before the High Court of Madhya Pradesh Principal Seat at Jabalpur in Writ Petition No. 3219/2013 with a prayer to issue Writ of Mandamus to the Respondent Nos. 1 & 2 and restrain the functioning of Respondent No. 4 Madhya Pradesh Forest Development Corporation (in short MPFDC/Corporation) and from cutting the trees in the forest. The relief prayed by the petitioner is reproduced below.

i. A writ of Mandamus to Respondent No. 1 and 2 to stop the functioning of Respondent No.4 and conducting the inquiry against the Respondent No.4 for causing damage to the forest area.

ii. A command to Respondent No. 1 and 2 to abolish Respondent No. 4 and permit the Forest Department to look after the forest area in accordance with Indian Forest Act.

iii. A command to Respondents 1 and 2 to cease (seize) all the machinery (used) for felling the trees.

iv. Any other relief deemed fit in the circumstances

The case was listed on 8th April, 2013 and the High Court passed an interim order restraining the Respondent No. 4 from felling of trees until further orders. The interim orders of the Court are reproduced herein under -

"By way of ad-interim relief the Sub-Divisional Officer (Forest), West Circle Forest Division, Mandla, the Respondent No. 5 herein, is directed to prevent transportation of any fallen timber from outside the Division and to ensure that there is no further felling of trees until further orders."

Subsequently, in consonance with the orders of Supreme Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 326,* the Writ Petition was transferred to the Central Zone Bench of the National Green Tribunal (NGT) at Bhopal to deal with it under the National Green Tribunal Act, 2010 and the case is registered as Original Application No. 44/2014. Notices were issued on 12th March, 2014 and the case was heard on 28th March, 2014, 21st April, 2014 and finally on 24th April, 2014. Neither the Applicant appeared in person nor through his counsel on all the aforesaid dates of hearing.

Tribunal on considering the above facts, and answering issue No. III directed that the State Government and the Forest Department shall examine the following directions and take decisions and implement them to avoid such conflicts with the local communities in future and make them to participate in the activities of the MPFDC since it is very critical to have an effective Human Resource Development environment in the Corporation for ensuring successful implementation of their Action Plan/ programmes;

- The Government of M.P. provided a mechanism for "lease rent" determination and working relationship between the State Forest Department and the MPFDC in Circular No. 25/11/79/10/2 dated 14 November 1979. After that it appears that no review has been taken up in this regard and no updated/revised guidelines have been issued by the State Government though many developments such as revision of the National Forest Policy in 1988, issuing guidelines on encouraging Community Participation in afforestation and management of degraded forests under the JFM concept by constituting JFM committees, amendments to the Wildlife (Protection) Act, 1972, enacting Biological Diversity Act, 2002, making it mandatory to implement Corporate Social Responsibility (CSR) under the Companies Act, 2012 etc. have taken place after 1979. Therefore, urgent revision of the previously mentioned guidelines is required. The Respondent No. 1 shall immediately convene a meeting in this regard with all the concerned stakeholders and review the existing provisions and take action to revise the guidelines in tune with the changing circumstances.

- The State Forest Department issued guidelines in 2003 for identification and transfer of forest areas to the MPFDC for raising the plantations. After that, further set of guidelines have been issued for transfer of forestland in 2009. These require further amendment to take care of the interest of local communities. Though JFM Committees are reported to be involved in preparation of Working Plans especially with regard to the issues pertaining to Nistar privileges which are discussed under the participatory approach, it is high time to make a provision that the issue of transfer of forest land to the MPFDC is discussed with

JFM Committees so that their aspirations and wishes may find place in the forest management plans. Determination of various Treatment Types to be undertaken in the handed over forest areas may also be discussed with the local communities to ascertain Nistar and Non Timber Forest Produce (in short NTFP) needs of the community.

- The Government Resolutions on the concept of JFM have been notified in the Gazette of Madhya Pradesh in 1991, 1995, 2000 and 2001 but no role has been envisaged for the MPFDC in the above Resolutions. Thus, almost 13 years have elapsed, after the latest Resolution was notified by the Government in the year 2001. Therefore the Government may review the Resolution, 2001 and insert appropriate provisions specifying the role and duties and responsibilities of the MPFDC vis-a-vis JFM committees in the areas handed over to the MPFDC.

- From the perusal of the record placed before us and the averments made during the course of hearing it is observed that though adequate provision has been made for Participatory Rural Appraisal (in short PRA) in the preparation of the Micro-plans of JFM committees, these provisions are found not implemented in letter & spirit. Specific provision may be made on conducting PRA, preparation of Micro-plans of JFM committees and they shall find place in the CSR Plan of JFM committees. Tribunal found that at present, Zonation Plan for conservation of biodiversity, demarcation and management of ecologically fragile zones, NTFP propagation etc. is not being prepared. It should be prepared before commencing the treatment of the forest area handed over to the Corporation. The ecologically fragile zones should be protected against all decimating factors.

- Certain percentage of the gross forest area, of about 3 to 5%, may be earmarked for treating under biodiversity conservation plan and for NTFP propagation giving emphasis on planting of NTFP species of villagers' choice and another 3 to 5% of the forest area may be reserved for wildlife management activity including the management of riparian zones around the water bodies, rivers, streams, canals etc. so that the needs of forest dependent communities are taken care of in the long run and local biodiversity and wildlife is preserved well.

- It is also directed that the MPFDC should spend some amount of their profits for maintenance of wildlife corridors in case the forest areas handed over to them are falling in the corridors or located adjacent to the corridors for effective wildlife conservation. It may be examined to keep the amount at the disposal of the MPFDC by creating an 'Autonomous Fund'.

With the above directions Tribunal disposed of this OA. The interim orders passed by the High Court of Madhya Pradesh on 8 April 2013, stand vacated. However, no felling

and regeneration activities shall take place in the Mohgaon Project area without consulting and involving the local JFM committees. No order as to costs.

A copy of this judgment was directed to be sent to the Secretary, MoEF, Government of India for issuing similar guidelines to the States where such working plans are submitted seeking approval and such conditions as mentioned in para 20 may be made part of such approval. As the MoEF and the Supreme Court have laid considerable stress on participatory approach.

Sukhjeet Singh Ahuwalia
Vs
Gurudwara Gurnanak Mandir Trust Ors

Original Application No. 113/2014 (CZ)

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

Keywords: Cleaning of Naala, Pollution, Planting and Protection of trees, Public interest, amicable settlement

Application Disposed Of

Dated: 15 May 2014

The order dated 02.05.2014 an amount of Rs. 21,000/- has been deposited by the Respondent No. 1 with the CMO of the Nagar Palika, Betul, Respondent No. 2 for carrying out plantation and protection of the trees by Respondent No. 1 and Respondent no. 2 jointly.

Misc. Application No. 225/2014 was filed for taking on record the documents including photostat copy of the cheque bearing no.004370 drawn on Bank of Mahrashtra, Main Road Betul Gunj, Betul, Gokul Trade Centre. Shri Sachin K. Verma, Learned Counsel also indicated in the Misc. Application that the Municipal Council, Betul has resolved to sanction a sum of Rs. 20,000/- in public interest for beautification of the area near the Gurudwara and cleaning up of Hathi Nalah for which estimates have also been filed along with the said Misc. Application as Annexure R-2/3 along with site plan for executing the aforesaid planting and developmental works.

Since the Respondent No.1 has made contribution of Rs 21,000/- towards the planting and protection of trees and the Applicant also suo motu submitted that he would deposit an amount of Rs. 10,000/- with the CMO, Municipal Council, Betul within 30 days from today which amount shall also be utilised for the aforesaid work going to be carried out jointly by the Respondent No. 1 & 2 in an around the Gurudwara area, revised proposals shall be drawn up taking into account the additional amount of Rs. 10,000/- which the applicant had suo motu agreed to deposit for the aforesaid purpose. Only the broad leaved shade bearing and fruit yielding tall plants of indigenous species shall be planted and the amount has to be utilized effectively.

In view of the above, since the matter has been resolved amicably the petition along with the pending Misc. Application No. 225/2014 stands disposed of.

Kailash Chand Meena
Vs
State of Rajasthan

Original Application No. 122/2013 (CZ)

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

Keywords: PIL, High Court, Rajasthan, Forestland, trespass, encroachment

Application Disposed Of

Dated: 15 May 2014

This Original Application was originally filed in Public Interest Litigation (PIL) as a writ petition before the High Court of Rajasthan by the three Applicants jointly which was registered as S.B. Civil Writ Petition No. 631/2005. The High Court vide its order dated 23rd September, 2013 transferred the Writ Petition to the NGT, Central Zone Bench at Bhopal and consequently it came to be registered as O.A. No. 122/2013.

After receipt of the aforesaid matter before this Tribunal, notices were ordered to be issued on 5th December, 2013 to the parties. Pursuant to the notices, the Applicant as well as the Respondents have put in their appearance. Vide order dated 29 January 2014 it was ordered that the interim order passed by the High Court on the order of the Respondent No. 3 SDO, Sikrai, District Dausa passed on 29th July, 2003 Annexure-4 to the petition in Case No. 105/2002 was ordered to be stayed which was continued by this Tribunal as well. It was further directed that the Respondent No.2 District Collector, Dausa shall ensure that no encroachment is allowed to take place and no trees are allowed to be cut on the land in dispute.

Tribunal allowed this O.A. and confirmed the order dated 22 February 2005 passed by the High Court so far as it relates to the correction of the entries with regard to the Khasra No. 140, 141-1, 142 and 143 in the land measuring 93 bighas 12 biswas in village Banepura in terms of the judgment of the SDO dated 29th July, 2003 in case No. 105/2002 and hold that the aforesaid order of the SDO in relation to the above Khasra Nos. shall remain inoperative being without jurisdiction, while maintaining the same so far as Khasra No. 145 is concerned. Having said so tribunal clarified that in case the Forest Department or the State Government is in any manner aggrieved by the above order, their remedy lies under the provision of Forest (Conservation) Act, 1980 and they

would be free to approach the Central Government for the aforesaid purpose, if so advised.

It was also brought to our notice that in some portion of the disputed land of the Khasra No. 140, 141-1, 142 and 143 there is some amount of trespass and the Revenue officials of the State have proceeded against the trespassers under the Land Revenue Act, 1956.

So far as above is concerned, Tribunal only observed that under the Rajasthan (Forest) Act, 1953 there are ample powers with the forest officers for proceeding against the trespassers in forest land, as this land continues to be recorded as forest since the order of SDO has been set aside and they need not wait for any action to be initiated by the Revenue Department in this behalf. Accordingly the tribunal direct and give liberty to the forest officials to proceed against the trespassers under the Rajasthan (Forest) Act, 1953.

Tribunal further directed that the Forest Department of the State of Rajasthan through Respondent No. 1 to initiate the demarcation of the lands in Khasra No. 140, 141-1, 142 and 143 along with Khasra No. 145 measuring 93 bighas and 12 biswas and 69 bighas and 3 biswas respectively and boundary pillars be fixed on the same and carry out plantation work if not done, so as to maintain the aforesaid land as forest land free from encroachment and to ensure its proper upkeep in future. The details of the aforesaid Khasra Nos. including their measurements and boundaries shall be indicated in the maps of the Forest Department at the level of Forest Guard, Forest Section Officer, Forest Range Officer etc.

With the above orders, Tribunal disposed of this O.A.

Ramakant Mishra Ors

Vs

Bharat Sanchar Nigam Chhindwara Ors.

Original Application No. 31/2013(CZ)

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

Keywords: High Court, Supreme Court, Pollution, Diesel Generator, Mobile Towers, Environment (Protection) Act, 1986

Application Disposed Of

Dated: 15 May 2014

On a previous date, it had been brought to the Tribunal's notice that the judgment of the High Court of Rajasthan dated 27.11.2012 which was taken into consideration by this Tribunal while passing the earlier order and on which certain clarifications were sought from the Respondents, is a subject matter of appeal before the Supreme Court.

Both the parties submitted that the aforesaid appeal which was fixed in the month of April, 2014 has since been adjourned for taking up after the ensuing summer vacation by the Supreme Court. The parties submit that since the issues raised in this application are similar to the one which is being dealt with by the Supreme Court on the matter arising out of the judgment of High Court of Rajasthan, the present application may be disposed of with the directions that the parties shall abide by the decision given by the Supreme Court on the issues which had been raised in the present application.

The tribunal clarified that in notification issued with regard to radiation from the Mobile Towers and necessity for all the service providers to comply with the directions of the Dept. of Telecommunications, Govt. of India in this behalf particularly with reference to the guidelines issued on 01.08.2013, there is yet another aspect with regard to pollution as a result of use of Diesel Generator (DG) Sets at the location of the Mobile Towers by the Service Providers for uninterrupted supply of power.

Tribunal held the view that the use of DG sets is covered under Item No. 94 & 95 of Environment (Protection) Rules, 1986 and all service providers or those who have installed DG sets, are required to comply with the aforesaid requirement under the Environment (Protection) Act, 1986 and in this regard all the service providers must necessarily obtain necessary consent from the State Pollution Control Board as provided under the Rules of 1986. For the aforesaid purpose in case any of the service provider has not taken necessary permission they would be required to apply and take necessary permission within 30 days from today. The applicant would be at liberty to serve a copy of this order on the service provider and the Pollution Control Board for enforcing of the previously mentioned directions.

With the aforesaid observations and directions this Application stands disposed of with liberty as aforesaid.

Dr. (Sau) Nandini Sushrut Babhulkar
Vs
MIDC Kolharpur Ors

Original Application No. 9/2014(WZ)

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

Keywords: Environment Clearance, Limitation, SEIAA, Environment Ministry

Application Disposed Of

Dated: 16 May 2014

The Original Appellants in Appeal No.7 of 2013, Dr.(Sau) Nandini Sushrut Babhulkar and Ors, have preferred Appeal against the Environment Clearance (EC) certificate dated March 28th, 2012, granted by the Respondent No.3 –SEIAA, i.e. competent authority of the Environment Ministry of the State of Maharashtra, in favour of Respondent No.4 M/s AVH Chemicals P Ltd.

The same the Environment Clearance (EC) certificate dated 28 March 2012 is the subject matter of challenge in Appeal No.2 of 2014, filed by the Appellant – Narsing Patil. Both the matters are clubbed together, in order to avoid over lapping consideration of the same issues.

The tribunal decided to allow the Misc Application No.46/2013, and hold that the Appeals are barred by limitation. Consequently, MA No.46/2013 is allowed. The Appeals are dismissed, as being barred by limitation. However, it is made clear that Tribunal had not considered any issue raised in the Appeal on merits. Tribunal was of the opinion that the Appellants have raised certain important issues, which need consideration and have already been allowed to intervene in the Writ Petition No.7098 of 2013, and they are at liberty to agitate the said issues. The Misc. Application No. 46 of 2013, and both the Appeals are accordingly disposed of. No costs.

Janardan Pharande
Vs
MoEF and Ors

Original Application No. 7/2014 (ThC) (WZ)

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

Keywords: Water Pollution, Human consumption, Animal needs, Agricultural needs, Article 21, Nira River,

Application Disposed Of

Dated: 16 May 2014

Originally, Writ Petition (PIL) No.240 of 2009 was filed by Applicants in the High Court of Judicature at Bombay. By order dated October 25th 2013, High Court directed transfer of the Writ Petition to this Tribunal in view of the Judgment of the Supreme Court in "Bhopal Gas Peedith Mahila Udyog Sangathan Vrs. Union of India". The Writ Petition was thereafter registered as an Application under Section 14, 15, 16 read with Section 18 of the National Green Tribunal Act 2010.

The Applicants' Counsel sought certain amendments in the pleadings on basis of analysis of samples conducted later on through an independent agency. By Order dated 13 January 2014, the request for amendment was allowed.

The Applicants, in continuation of their pleadings in the petition, filed amended pleadings in this Tribunal. However, it may be noted that they have not filed a composite copy of the original pleadings along with amendment of the pleadings and the comprehensive application in the format as per Rule 10 of the National Green Tribunal (Practice and Procedure) Act 2011.

Shorn of technicalities and un-essentials, case of the Applicants is that they are residents of villages Nimbut, Murum and Mirewadi situated in Pune and Satara Districts. These three villages are located on bank of river 'Nira'. For many generations in past, the residents of these villages are using water of river 'Nira" for human consumption, animal consumption and agricultural use. They have right to get good quality water for the above purposes. Such is the fundamental right available to them in view of guarantee of life enshrined in Article 21 of the Constitution.

According to the Applicants, the hazardous waste was being discharged for many years, unscientifically, by M/s. VAM Organics Company and thereafter by M/s. Jubilant Industry in river 'Nira'. As a result of such effluent discharge, including

drifting of spent wash, the ground water of the area nearby river 'Nira' is contaminated. As a result of such obnoxious Industrial Waste Management of Jubilant Industries, human life of the villagers is endangered, the agricultural food products, water, soil and bio-diversity in the area is impaired. Although, a large number of complaints were made repeatedly, yet only cosmetic type of actions were taken against Jubilant Industry which did not deter such obnoxious activities.

Tribunal allowed the Application and passed the following order/directions :

- The Application is allowed.
- The Respondent Nos.2, 2A and 2B or any other industry which may take over the unit/units shall not discharge effluents of the Distillery/spent wash of the Industry in Buvasaheb Nala and Saloba Nala or any part of the River 'Nira'.
- The recommendations of 'NEERI' and CGWB shall be complied with by the Respondent Nos.2, 2A and 2B which shall be regularly monitored by the MPCB
- The MPCB shall give appropriate directions to the Respondent Nos.2, 2A and 2B in case zero discharge status is not achieved within period of three months hereafter, including directions under Section 33 of the Water (Prevention of Pollution) Act, 1980.
- The Collector, Pune shall constitute a Committee consisting of: (a) An Additional Collector (Chairperson), (b) Regional Officer of MPCB (Co-ordinator) (c) A nominee of the Krishi Vidyapeeth, Pune (expert in soil testing and fertility, loss of fertility due to water pollution) and having adequate knowledge about methodology to quantify such loss in terms of money. (As nominated by the Vice-Chancellor).
- A nominee of Central Ground Water Board, Pune (As nominated by its Director) The above Committee shall inspect the land area within radius of two (2) km of Buvasaheb Nala and Saloba Nala within period of three months hereafter. The Committee may take help of any expert and/or Cadastral Surveyor. The Committee shall cause evaluation of loss caused to the agriculturists, if any, due to discharging of industrial effluents in the water of River 'Nira' which assessment may be done after soil testing, examination of the past revenue assessment and other relevant factors. The loss, if any, is noticed then it also be stated with reference to identify of the land owner/occupier. The cost of inspection and work of committee is to be borne by Jubilant Industry, which the Collector shall recover, if not paid, as if it is land revenue arrears.

- The Respondent No.2, 2-A and 2-B shall tentatively deposit amount of Rs. 25,00,000/- (Rs. Twenty five lakhs) in the office of the Collector, Pune in eight (8) weeks and shall be liable to deposit/pay any further amount, if so required, for the purpose of disbursement to be made by the Collector, Pune on basis of report of the aforesaid Committee.

- The report of previously mentioned Committee shall be submitted to the Tribunal within period of six months hereafter. A copy of said Report to be given to the Respondent No.2, 2A and 2B. Any objection on the Report has to be filed, may be filed within two weeks thereafter. The Collector, Pune shall undertake the work for disbursement of compensation to affected land owners/occupiers as may be further directed on basis of such Report if it is so accepted fully or in part, as per further orders of this Tribunal.

- In case the Respondent Nos.2, 2-A and 2-B will fail to deposit above amount of Rs.25,00,000/- (Rs. Twenty five lakhs) in the office of Collector, Pune, it shall be recovered as if it is land revenue arrears under the Maharashtra Land Revenue Code, 1966, by the Collectorate, Pune by attachment and sale of the Industrial Units, stock and barrel.

- The M.P.C.B. shall issue necessary directions to Respondent 2, 2A and 2B in next four weeks for securing the time-bound remedial measures, as recommended by 'NEERI' and also the MPCB along with the further recommendations of the Central Ground Water Board, Pune as per the report of CGWB dated March 19th, 2014, which comprehensively shall be treated as part of the directions of this Tribunal for the purpose of remedial measures that should be adopted. The costs of remediation/restitution shall be estimated by the MPCB. If the Industrial units in prescribed time limit do not comply with the measures, the same shall be recovered by MPCB from the Industry and the compliances shall be ensured through the independent machinery at the costs of the Industry. (The direction is being issued U/s. 15(b) and (c) of the National Green Tribunal Act 2010).

- The Respondent Nos.2, 2A and 2B shall pay Rs.20,000/- (Rs. Twenty thousand only) to the Applicants as costs of the Application and shall bear their own.

Munnilal Girijanand Shukla Ors.
Vs
Union of India Ors

Original Application No. 39/2013 (WZ)

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

Keywords: Limitation, Fraud, Cause of action, bona-fide, Condonation of delay

Application Disposed Of

Dated: 16 May 2014

This is an Application filed for condonation of delay under Section 5 of the Limitation Act, read with Section 14 (3) and 18 of the National Green Tribunal Act, 2010. The Applicants seek condonation of delay, if any, in filing of the Original Application No.45 of 2013. They would submit that in fact, there is no delay in filing of the Original Application, because of continuity of 'cause of action' in view of the alleged 'fraud' committed by the Respondent No.11, Rashmi Infrastructure Ltd., which will be referred to hereinafter as "M/s Rashmi Infrastructure" for the sake of brevity. Still, however, in case, if there is any delay found in filing of the main Application, they seek condonation on the ground that the delay is bonafide, justified and explained satisfactorily.

Tribunal held that the Application for condonation of delay is without any merits. Furthermore it was held that the main Application is filed beyond the limitation, and otherwise also it is not maintainable, in view of tenor of the prayer-clauses, stated in the Application.

Hence, both the Applications are dismissed. No costs.

Vinesh Madanyya Kalwal

Vs

State of Maharashtra Ors.

Original Application No. 30(THC)/2013(WZ)

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

Keywords: PIL, suo motu cognizance, Amicus Curie, Industry, Pollution control systems

Application Disposed Of

Dated: 16 May 2014

The present Application was originally listed before the High Court Judicature at Bombay, Bench Nagpur, as Public Interest Litigation (PIL) bearing WP No.3501 of 2006, which was transferred to this Tribunal, vide the High Court order dated October 17th, 2013. The High Court has taken Suo Motu cognizance of the public cause in respect of increase in air pollution levels allegedly caused by M/s Lloyds Metal and Engineering Ltd., which is causing adverse health impacts on the villagers in the locality. High Court had issued various orders in this Petition from time to time and particularly on October 15th, 2008 ordered MPCB–Respondent No.2 to give monthly reports w.e.f. March 2009. Advocate Shri. C.S. Kaptan was appointed as Amicus Curie by the High Court, who has also submitted detailed reports, supporting to the cause of PIL.

Considering rival pleadings and also submissions of learned Counsel for the parties, following issues arise for adjudication of the present Application.

1. Whether industrial operations of Respondent No.3 and Respondent No.4, are in keeping with due compliance of environmental norms?

2. Whether industrial operations of Respondent No.3 and Respondent No.4, are causing deterioration of air quality in village Ghuggus?

3. Whether the response of Authorities is adequate and comprehensive to deal with the problem of air pollution at Ghuggus?

4. What directions are necessary to be issued against the contesting Respondents to abate the air pollution at Ghuggus?

The sponge iron industry has grown significantly in last decade. Direct Reduced Iron (DRI) route, is preferred over blast furnace route for manufacturing of steel due to smaller scale of production, access to iron ore, paucity of coking coal, lesser investments etc. It is reported in the report of Centre for Science and Environment, 2012 that about 27% of steel is produced through coal based (DRI) route in India, though sponge iron industry is known to be an air polluting activity which has multiple sources of air pollution.

The sponge iron industries also generate large quantity of solid waste, which is an important source of secondary air emissions. The average solid waste generated by DRI based sponge iron plant, is about 707 kg/tone of DRI production. This includes char, dust, ESP dust, dust form sitting, chambering, kiln accretions etc.

The MPCB has also filed reports of ambient air quality at Ghuggus which shows consistent high concentrations of particulates, on a long term duration basis. It has been clearly established that the ambient air quality at Ghuggus, is deteriorated and therefore the CPCB has identified this area as "Critically polluted area". It is true that the ambient air quality at Ghuggus is cumulative effect of various sources of air pollution, including industries, traffic, coal burning etc. However, it cannot be disputed that the industries are generally largest contributing point sources of emissions and have necessary control systems to regulate emissions and therefore in any air quality management, the industrial emission control is the first preferred action. Moreover, many of the other sources like traffic etc. is generally related to industrial activities of the Respondent Nos. 3 and 4. Hence, their role in entire air quality management is crucial. And therefore, the non-compliance by these industries, which are incidentally large scale industries, cannot be just given liberal treatment in view of other air pollution sources. However, it is also necessary that MPCB, shall identify these sources and take necessary action.

Tribunal decided to allow the Application partly as stated below:

- A joint inspection and monitoring of the industry be done by a team of CPCB and MPCB in four (4) weeks hereafter and based on the observations and findings, MPCB shall issue comprehensive directions to the Respondent Nos. 3 and 4 industries, within one month thereafter for improvement of pollution control systems in maximum 6 months thereafter. MPCB shall also take into account the proposal sent by MPCB, Chandrapur office vide letter dated 26/9/2013. The MPCB may also issue simultaneous directions to curtail the production levels at the industry in tune with the adequacy of pollution control systems, if found necessary and if deemed proper.

- The Chairman, MPCB shall review the progress of NEERI study in four (4) weeks to ensure the timely completion of such study and necessary actions shall be initiated on priority basis.

- MPCB shall frame the enforcement policy in next twelve (12) weeks as discussed in above paragraphs and publish it on its website for public information.

- The Respondent No.3 shall deposit Rs. Ten (10) lakhs towards the cost of environmental damages due to excessive air emissions since beginning of plant, with Collector, Chandrapur in eight (8) weeks who shall use this amount for environmental improvement activities in Village Ghuggus in consultation with the expert committee referred in below mentioned paras. MPCB shall also deposit the amount of BG forfeited from Respondent Nos. 3 and 4, so far, if the same has not been used for remedial measures in the area, with Collector, Chandrapur in eight (8) weeks for the above purpose.

- An Expert Committee is hereby constituted to ensure the compliance of these directions in time bound manner and also, the complianceof consent conditions by the industries in Ghuggus area and the ambient air quality at Ghuggus, for a period of next 2 years. The Committee will comprise of: (1) Shri. Mhaisalkar, Professor, Environmental Engineering, VNIT, Nagpur – Chairman. (2) Representative of Principal, College of Engineering, Chandrapur (3) Zonal Officer, CPCB, Vadodara (4) Regional Officer, MPCB – Member convener.

  The committee shall meet minimum once in 3 months and submit a report to Registrar of the Tribunal with copy to Chairperson, MPCB for further actions. Chairman of Committee is at liberty to bring any particular non-compliance or difficulty to the notice of Tribunal. All the expenses including travel, subsistence, honorarium, secretarial assistance etc. shall be borne by MPCB.

- Respondent No.3 shall pay cost of Rs.10,000/- to the Applicant towards cost of litigation.

The Application was accordingly disposed of.

Ram Singh and Ors.
Vs
Union of India Ors

Original Application No. 16/2014(CZ)

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

Keywords: High Court, Writ, Rajasthan, Pasture land, Aravali, Mining Lease

Application Disposed Of

Dated: 20 May 2014

The case in hand being O.A. No. 16/2014, was originally filed as a Public Interest Litigation/Writ Petition bearing No. 7988/2005 before the High Court of Rajasthan at Jaipur Bench by the four Applicants with the prayer that the record pertaining to allotment and grant of mining leases to Respondent Nos. 7 & 8 in Khasra Nos. 155, 157 and 207/1 situated at village Hasampur, Tehsil Neem-Ka-Thana, District Sikar, Rajasthan be re-examined on the ground that the land in the aforesaid Khasra Nos. comprises pasture land and is a part of the Aravali Range and therefore the mining leases granted to them be revoked.

Tribunal held that since the Government has also taken note of the Jagpal Singh & Ors Vs. State of Punjab & Ors in Civil Writ Petition No. 1131/2011 judgment and issued the Circular on 25th April, 2011, specific instances of any violation of the direction issued by the Supreme Court may be brought to the notice of this Tribunal or the concerned authority and it is expected that the concerned authorities shall take note of the same and initiate action after following the procedure prescribed.

As far as the three mining leases are concerned i.e. ML Nos. 200/2004, 201/2004 and 250/2004 since all of them are at present remained closed as and when application or information is submitted by the mining lease holders to the SPCB during the pendency of the Application and if the deficiencies as pointed out in the show-cause notice are removed, it is expected that the SPCB shall proceed to inspect the mining leases and in case the deficiencies as pointed out have been removed to the satisfaction of the SPCB, the SPCB shall issue necessary orders in accordance with law. Having said so, it is directed that as and when such applications are submitted by the lessees and the orders passed by the SPCB on such application, the same shall be filed before the Tribunal for examination of the same.

This Application stands disposed of in the above terms

Shyam Narayan Choksey
Vs
Municipal Corporation Bhopal

Original Application No. 20/2013(CZ)

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

Keywords: High Court, Madhya Pradesh, encroachments, lake, pollution, Bhopal

Application Disposed Of

Dated: 21 May 2014

M.A. No. 238/2014 has been filed by the Municipal Corporation, Bhopal with the prayer to bring onto record the documents annexed as Annexure 1/Affidavit of the Municipal Commissioner, Annexure 1A/2 the order of the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 6145/2002 passed on 11th April, 2014 and accompanying petition as well as the order dated 8th May, 2014 in the aforesaid writ petition.

The Applicant as well as the Respondents are unanimous in their submission that the entire matter pertains to the removal of encroachments from the Siddique Hasan Talab in the city of Bhopal resulting in pollution of the lake as well as areas around it and the same is also under active consideration and adjudication by the High Court of Madhya Pradesh and directions in the above noted writ petition are being issued regularly and the case is also being monitored by the High Court with regard to the removal of the encroachments as well as for restoration of the lake to its original shape, size and area.

Tribunal took the view that in view of the fact that the High Court is seized of the matter there cannot be parallel proceedings in the Tribunal on identical issues.

Tribunal disposed of this petition with liberty to the Applicant that in case the Applicant still feels it necessary to raise any environmental issue or wants any additional issue to be adjudicated he may approach the High Court.

With the above directions, the O.A. along with the pending miscellaneous applications was disposed of.

Roop Vihar Nagrik

Vs

State of Rajasthan

Original Application No. 115/2013 (CZ)

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

Keywords: High Court, Rajasthan, Children's park, Jaipur Development Authority, construction, residential units, plantation of saplings

Application Disposed Of
Dated: 22 May 2014

The petition was originally filed as a writ petition before the High Court of Rajasthan. The applicant had raised the dispute with regard to keeping the open space in plot no.3-B as Children's Park/ green belt in Sewage farm, New Sananger Road, Jaipur stating that the same had been earmarked for the said purpose only. Having been issued with niotices by the High Court, Jaipur Development Authority has filed their reply. The Respondent No.5 Pink City Heritage Resort has moved Misc. Application for being impleaded as party and submitted its reply. Neither, the Applicant nor the Respondent No.5 has chosen to appear before the Tribunal. Tribunal found from perusal of the reply filed by the Respondent 5 that the plat 3-B has been auctioned by JDA in favour of the Respondent 5 and the respondent no 5 has developed the same by raising construction. It has further been stated by filing a site plan at Annex R-5/4 that out of the total area of 38500 sq.mtr, re-planning was done for 25240 sq. mtrs of area and 3 residential plots were carved out as plot no. 3, 3A & 3B. It has been alleged that on both in plot no 3 & plot no.3A that residential apartments (grouping House0 known as Mahavir Resi I & II have already been developed and about more than 250 residential units which were constructed, are now fully occupied. It has further been stated that plot No.3-B which was purchased by the Respondent No.5 on being auctioned by the JDA has been developed by the Respondent No.5 raising construction on the same. It has further been stated that towards the south at the intersection of 2 roads of 60 ft. wide, a park has been developed in the area of 7839 mtrs of land

Tribunal decided to dispose of this application taking note of the reply submitted by the Respondents as well as compliance report submitted on behalf of the Jaipur Development Authority that for the Swej Farm complex, the park measuring 7839 Sq. Mtr. has been developed by the Jaipur Development Authority and the Municipal

Corporation, Jaipur with a boundary wall, benches, footpath etc. However, it is made clear that the said park shall at all the time be maintained as an open space and the area of the same shall not be reduced in any manner nor the park shall be utilized for any commercial activity or for the purposes of raising any construction for the same even for the community purposes.

However, looking at the photographs filed on the date of judgment along with the affidavit by the Respondent No.2, it was observed that there is a scope for planting more number of trees in the aforesaid park surrounded by multi storey residential apartments. Therefore, the Respondents No 2 & 3 shall plant more number of broad leaved indigenous ornamental and shade bearing trees in the park which not only increases the greenery but the aesthetics in the area. This work shall be taken up during the ensuing monsoon with the assistance of the Urban Forestry officials of Jaipur City duly involving the members of the applicants society who shall also take care of the protection and maintenance of the trees.

The application was disposed of.

Ramdas Janardan Koli

Vs

The State of Maharashtra

Misc. Application No. 19/2014 (WZ)

Judicial and Expert Members: Justice V.R. Kingaonkar Mr. AjayA.Deshpande

Keywords: Fishermen, Jawaharlal Nehru Port Trust, The Mahul Creek (Extinguishment of Rights) Act 1922, Tidal land, High Court, Mangrove restoration

Application Disposed Of

Dated: 27 May 2014

Applicant– Randas Koli and others are members of an organization called "Paramparik Macchimar Bachao Kruti Samiti". They have filed class action vide the instant Application, seeking various reliefs, particularly, in respect of rehabilitation of the families of fishermen, who are allegedly affected on account of construction, expansion, reclamation of the lands and other activities of Jawaharlal Nehru Port Trust (JNPT) as well as to protect the environment.

They further challenge MCZMP drawn by State Coastal Authority and approved by CIDCO and activities of Oil and Natural Gas Company (ONGC). The Application appears to have been filed by members of the fishermen community purportedly under Section 15 of the National Green Tribunal Act, 2010.

The prayers in the main Application may be reproduced as follows:

- Equal compensation amount of Rs.32,542/- hectare common tidal land should be given to 1630 project affected local traditional fishermen families according to the current market value (total compensation amount divided by 32542 per family) as per the "The Mahul Creek (Extinguishment of Rights) Act 1922".

  Or

  20 % amount of total tidal land lease amount taken by CIDCO & JNPT yearly from various companies should be given as share of project every year to 1630 project affected local traditional fishermen families till the project lasts.

- 15 % of the developed land in return of the common tidal land should be given and distributed equally between 1630 project affected local traditional fishermen families.
- For getting employment project affected certificate should be given to person (individual) from 1630 project affected traditional fishermen families.
- For getting employment training should be given to person (individual) from 1630 affected traditional fishermen families. In addition, give employments without taking any competitive exams.
- For the loss of local fishing business, 1630 traditional individual fishermen family should be given loss compensation of 10 lakhs by the four projects.
- For livelihood permanently rupees 10 thousand per month, increased livelihood as per dearth instead of local fishing business should be given to 1630 project affected traditional fishermen families by four projects till the project lasts.
- Permanent arrangement for free educational, technical and professional studies of children from 1630 project affected local traditional fishermen families should be made by project till the project lasts.
- Free medical services to 1630 project affected local traditional fishermen families in 4 Koliwada's should be provided permanently by the projects till the project lasts.

Or

If above mentioned demands are not affordable then out of 23,542 hectares of fishing zone (costal land) each family should be given 1 hectare aquaculture (fishing) pond and like this 1630 ponds should be prepared and given.

According to the Government Policy, first Rehabilitation then all the projects on tidal environment must be kept as it is until 1630 project affected traditional fishermen families are not rehabilitated.

The tribunal held that, by way of interim-measure JNPT shall deposit an amount of Rs. 20 Crores and ONGC shall deposit amount of Rs.10 Crores, with the Collector, Raigad, within period of four weeks hereafter. The amount shall be placed by the Collector, Raigad in Escrow Account for disbursement to the families of fishermen, in terms of final order, which may be passed in this Application, or any order that may be passed by the High Court. This order itself is subject to any order, which may be passed by the High Court in the Writ Petition filed by JNPT.

It was further directed that JNPT, shall remove soil and artificial blocks/obstructions created in the natural flow of tidal water in the creek between Nhava and Sheva islands, which may obstruct egress and ingress of the boats of fishermen or cause obstruction for turning of the boats on eastern side after taking turn beyond proposed 330 m, 4th berth, unless permitted by the MoEF after due compliances of stipulated conditions of the E.C. or by any order of the High Court.

Tribunal directed that JNPT, shall immediately undertake the work for restoration of mangroves, which have been destroyed, in order to comply with the conditions of EC, granted for the project of Port/Expansion thereof.

No further destruction of mangroves or reclamation of land, shall be undertaken by JNPT, CIDCO or ONGC without approval of competent Authority or unless allowed by the High Court/N.G.T. The Miscellaneous Application is disposed of accordingly.

Date was given on 11th July, 2014, for further directions/compliances/hearing.

M/s Ardent Steel Limited
Vs
MoEF and anr

Original Application No: Appeal No. 5/2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Mr. D.K. Agrawal, Mr. Bikram Singh Sajwan, Mr. R.C. Trivedi
Keywords: Metallurgical industries, Environmental Clearance Regulations 2006, pelletization, Environmental Clearance, EIA

Application Disposed Of
Dated: 27 May 2014

In the present Appeal, the following short but interesting questions of law and public importance have arisen for consideration of the Tribunal:

Whether on its true construction and scope, a pelletization plant would fall under Entry 3(a) (Metallurgical industries) (ferrous and non-ferrous) of the Schedule to the Environmental Clearance Regulations, 2006 (for short 'Regulations of 2006').

The Tribunal held that pelletization is a process that squarely falls under the head "primary metallurgical industry". As such the industries, carrying on the process of pelletization, even as a stand alone project, would be required to seek Environmental Clearance in terms of the Regulations of 2006. Tribunal did not set aside or quash the Order dated 12 December 2013 and the proceedings of the EIA Committee taking that view. Tribunal directed and granted liberty to the Appellant to seek Environmental Clearance even for the 'stand alone' pelletization plant under the Regulations of 2006 as a 'stand alone' or part of the comprehensive expansion plan of the Appellant. Such application should be filed within one month from today and shall be disposed of by the MoEF as far as the 'stand alone' pelletization plant is concerned, within three months thereafter. Upon grant of such clearance, the unit would operate in accordance with law.

Tribunal issued a direction to MoEF and all the State Pollution Control Boards to take steps immediately, requiring the stand alone pelletization plants to obtain environmental clearance from the concerned authorities. Copy of the judgment was circulated by the registry to the Secretary, MoEF and Member Secretaries of all the State Pollution Control Boards and Pollution Control Committees. For the fact that MoEF has now taken the view that stand alone pelletization plants would also require environmental clearances, which has been accepted by this Tribunal, it will be open to

the MoEF/ State Pollution Control Boards to examine the possibility, whether such units should be permitted to operate during the interregnum of applying for environmental clearance and grant/refusal of the same by the competent authorities in accordance with law. Such requests to operate during interregnum should only be considered if the units are found otherwise complying with the terms and conditions imposed by the concerned Board / Committees for establishment / operation of such unit.

Tribunal found no merit in this appeal. The same was dismissed, however, with the above directions and while leaving the parties to bear their own costs.

R. S. Bapna

Vs

Commissioner, Indore Municipal Corporation and Ors

Original Application No: Appeal No. 5/2014

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

Keywords: Trees, Tree officer, Madhya Pradesh Vrikshon ka Parirakshan (Nagariya – Kshetra) Adhiniyam, 2001

Application Disposed Of
Dated: 28 May 2014

This application has been filed before the National Green Tribunal, Central Zonal Bench, Bhopal under Section 18(1) read with Sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010.

The issue which has been raised in this application is that trees which are outside the house of the applicant on the road leading from Janjeera Chouraha to Malwa Mill Road are allegedly being cut by the Indore Municipal Corporation Authorities in contravention of the law and without permission of the Tree Officer.

Notices were issued to the respondents.

Tribunal heard the parties. It was been submitted by the respondents that no tree outside the house of the applicant is sought to be cut and only the railing/fence which has been erected by the applicant on the public place along the road for protection of the trees, is sought to be removed. The Learned Counsel for the applicant submits that in that event, the applicant himself will remove the railing that he has fixed for the protection of these trees.

Tribunal directed that the respondent shall depute an officer for carrying out the census of the trees in the presence of the applicant or his representative and the report of such census shall be filed before this Tribunal. It was made clear that the census shall include such trees which fall within the purview of definition of 'Tree' under the Madhya Pradesh Vrikshon ka Parirakshan (Nagariya – Kshetra) Adhiniyam, 2001.

The application no. 139/2014 accordingly stands disposed of. There shall be no order as to costs**.**

Mr. Hrishikesh Arun Nazre Ors
Vs
Municipal Corporation Nasik Ors

Original Application No. 50/2014(THC)(WZ)

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

Keywords: Tree Committee, Tree Officer, illegal cutting, Nashik

Application Disposed Of

Dated: 28 May 2014

This is an Application filed by two Applicants, seeking certain reliefs stated as below:

- That the Tribunal be pleased to call the paper in procedure relating to constitution, formulation and particulars about the tree committee and its decision and after perusing the same be pleased to declare that the tree committee itself is illegal and its decision of cutting approximately 3500 trees in the city of Nashik is itself ultra-virus and void ab-initio.
- The mandatory direction to form the proper and legal tree authority,
- The Respondent No.1 and 2 be restrained from implementing the alleged illegal decision of the tree committee for cutting approximately 3500 trees within Nashik.
- That mandatory direction to perform immediate tree-census and audit before cutting any tree be given.

Tribunal did not find any substance in the Application. Since the issues are addressed by the High Court, therefore, the Application did not survive any more. Consequently, the Application is dismissed, keeping option regarding prayer 'A' open. No costs.

Shri P. Prasad Pathanamthitta Kerala
Vs
Union of India and MoEF

Appeal Nos. 172, 173, 174 of 2013 (SZ)

and

Appeal Nos. 1 and 19 of 2014 (SZ)

Appeal No. 172 of 2013 (SZ)

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

Keywords: Airport, Environmental Clearance, Aranmalu Airport, Kerala, High Court, writ, EIA Notifications, 2006

Application Disposed Of

Dated: 28 May 2014

Common Judgement

These appeal has been preferred by the appellants herein against the order of the 1st respondent, Ministry of Environment and Forests dated 18.11.2013, granting Environmental Clearance to the 4th respondent, M/s. KGS Aranmula Air Port Ltd., to set up an airport at Mallappuzhasserry, Aranmula and Kidangannur villages in Kozencherry taluk of Pathanamthitta District, Kerala. A writ petition has also been filed in W.P. (C). No. 6004 of 2012 challenging the notification issued by the 2ndrespondent, the State of Kerala declaring the area as an industrial area and the said writ petition is still pending before the High Court of Kerala.

The proposed airport is being set up by the 4th respondent on the banks of the holy river Pampa, in an ecologically sensitive and environmentally diverse and rich area. Aranmula is a declared heritage site and gets its name from the centuries old Aranmula Parthasarathy temple and it attracts a large number of devotees. The Aranmula village is situated at the beautiful wetland eco- system on the banks of the holy river Pampa represents the epitome of Kerala culture and also the apex heritage of Kerala.

Mallappuzhasserry, Aranmula and Kidangannur villages where the airport is to be set up are agricultural villages with paddy being the principal crop and the wetlands in the area are major bio-diversity hotspots. The 1st respondent, without considering the deleterious effects of the airport on the pristine environment of the area, has granted the impugned EC to the 4th respondent. The Environment Impact Assessment (for short

'EIA') submitted by the 4th respondent is inadequate, incorrect, misleading and it is a fraud perpetrated by the 4th respondent. The EIA has not been prepared by an accredited agency. The public hearing conducted for the purpose of the setting up the airport was conducted in a clandestine and undemocratic manner in violation of EIA Notification, 2006 and the impugned EC dated 18.11.2013 was granted without any application of mind.

The 4Th respondent has provided false information about the number of persons likely to be displaced as a result of the present project. The EIA report is based on woefully inadequate study on the impact of the project in this regard. The EIA report has not provided any details regarding the sociological impact on account of the project activities assessed and the impugned EC has been granted without even assessing this aspect. The 4th respondent has willfully concealed the fact that a huge number of people will have to be evacuated from the area to facilitate the project and has not addressed the rehabilitation and relocation issues involved with such huge displacement. The evacuation of people historically, culturally and economically connected with the region is violation of the right to life as guaranteed by the Article 21 of the Constitution of India.

The Tribunal did a step by step analysis of the EIA process and it was discovered that none of the procedures were followed properly. The Tribunal stated that it not unmindful of its duty that a balance has to be struck between ecology and development in order to uphold the principles of sustainable development and precautionary principle as envisaged under section 20 of the NGT Act, 2010. Striking a balance between the ecology and development is a difficult task. However, at the same time, it cannot be forgotten that for one's sake other should not be sacrificed. A balance has to be struck whereby a compromise is made in order to achieve the development without causing environmental degradation and damaging ecology. Ordinarily, the contention put forth by the learned counsel for the appellants that if not the environmental issues and concerns were not considered, the conditions specified in respect of the particular project would not have been attached to the EC. But, in the instant case, all mandatory principles and guidelines as envisaged by the EIA Notification, 2006 have been violated by (1) Form I along with the application for EC. (2) Incompetency of the consultant who prepared the EIA which is the basis for the grant of EC, (3) public hearing and public consultation and (4) non-pplication of mind and lack of due diligence.

The Tribunal decided that there is no option but to scrap the impugned EC granted by the MoEF to the 3rd respondent/project proponent for setting up the Aranmula airport. In the result, the appeal Nos. 172-174 of 2013 (SZ) and 1 and 19 of 2014 (SZ) were allowed granting only the following reliefs.

- That the 5th respondent, Consultant namely, M/s. Enviro Care India Pvt. Ltd., was not competent to prepare the EIA or appear before the EAC in respect of the proposed Aranmula Airport Project.

- That the public hearing conducted for the proposed Aranmula Airport Project is in violation of the mandatory provisions of the EIA Notification, 2006 and it is vitiated.

- That the recommendation of the EIA made by EAC for the grant of EC in respect of the proposed Aranmula Airport Project as invalid.

- The EC granted by the 1st respondent/MoEF in F.No. 10-51/2010-IA.III dated 28.11.2013 is set aside and consequently, the 3rd respondent/Project Proponent namely, KGS Aranmula International Airport Ltd., is restrained from carrying out any activities either constructional or otherwise in respect of the Aranmula Airport Project on the strength of the above environmental clearance.

In all other respects, the appeals are dismissed and all connected the parties to bear their respective cost.

Awaaz Foundation and Anr

Vs

State of Maharashtra and Ors.

Appeal No. 34(THC)/2013(WZ)

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar, Mr. Ajay A. Deshpande
Keywords: PIL, CRZ Notification 1991, Maharastra, Sand Mining

Application Disposed Of

Dated: 28 May 2014

Originally, the Applicants filed Writ Petition (PIL) No. 138 of 2006 in the Court of Judicature at Bombay. By that petition, they raised issues pertaining to illegal extraction of sand from Sea belt in blatant violation of CRZ Notification of 1991, illegal dredging activities in the coastal and River areas, of the State of Maharashtra, inaction on part of the authorities to control the illegal activities of illegal sand mining/dredging of sand, transportation thereof.

By order dated October 11th, 2013, High Court of Judicature, at Bombay was pleased to transfer the Writ Petition (PIL) No.138 of 2006 to the National Green Tribunal along with the Civil Application filed therein. The Application falls within ambit of Section 14, 15 and 18 of the National Green Tribunal Act, 2010 and is accordingly entertained by this Tribunal.

Briefly stated, case of the Applicants is that, in exercise of powers U/s. 3 of the Environment (Protection) Act 1986 and Rule 5(d) of the Environment (Protection) Rules 1986, the Ministry of Environment and Finance (MoEF)-Respondent No.8 issued CRZ Notification dated February 19th, 1991 declaring some Coastal Stretches of seas, bays, estuaries creeks, rivers and backwater as Coastal Regulation Zones (CRZ) for the purpose of controlling certain categories of activities within the said area. State of Maharashtra prepared a Coastal Zone Management Plan (CZMP) as required under the said CRZ Notification. The CZMP was approved by the competent authority on September 27th, 1996. One of the activity is absolutely prohibited under the CRZ Notification is mining of sand, rocks and other substrata materials excluding only two (2) limited exceptions. Sand Mining and dredging of the Sea bed has become a huge commercial activity along the coastal areas in the State of Maharashtra. The unbridled, uncontrolled and rampant dredging of sea, dredging of Rivers for extraction of sand is

being carried out in violation of CRZ Notification and other statutory provisions. A large number of sand mafias are indulging in such business that is causing damage to the environment, ecology and the flora and fauna. The gangs of sand mafias have encroached on various spots of the creeks, tidal water, Estuaries and stretches of sea beds for the purpose of sand mining/dredging as well as transportation thereof. Unabated sand, dredging/mining activities would lead to damage to mangroves, marine life, interference with natural tidal flow of seawater on and along creeks and back water/estuaries. Therefore, it is essential to stop the illegal sand mining/dredging business. The Applicants brought the illegal dredging activities, transportation activities of the sand to the notice of the concerned authorities.

The authorities of the State have failed to adopt proper control measures to prohibit the dredging and illegal sand mining activities of the sand mafias. By report dated March 17th, 2003 Superintendent of Police, Raigarh informed Divisional Commissioner, Kokan region that between 20 01 and 2002 one Mr. Mahesh Oswal had extracted sand which was auctioned by him. It was reported that said Mr. Mahesh Oswal had collected royalties of about Rs.1,20,00,000/-(Rs. 1Crore 20 lacks). Similar instances about illegal sand extraction by some other persons were reported by Superintendent of Police.

In the result, the Application is allowed. Tribunal deemed it proper to issue following directions:

- The extraction of the sand from coastal area by manual method may be permitted but the quantification of such sand shall be set out and if so required, the same traditional fishermen, if can be found eligible may be assigned the work of "maintenance dredging" without use of mechanical equipments in the channels which are required to be cleared.

- The sand extracted from the channels which are to be cleared/already cleared by dredging shall not be allowed to transported by any transport vehicle within HTL area. Thus, all the transport vehicles shall be parked only at approved designated locations marked by the Maharashtra Maritime Board or concerned MB and regulated by the MMB.

- The contractors to whom the work for clearance of the channel is given on contract basis shall be allowed to use dredgers only during daytime between 11.00 a.m. to 4.00 p.m. The transportation vehicles also shall not be permitted to be used beyond the day time and in any case the same shall not be allowed to be parked in the CRZ areas, I, II or III between 6 p.m. to 6.00 a.m.

- The Collector may act as coordinator over auctioning process and controller for the activities, so also for the purpose of collecting the revenue after 'e' auction

sale of the sand so extracted. The sand shall become property of the Contractors only after it is transported beyond the CRZ areas and until then it will be under the domain of the Maharashtra Maritime Board.

- The competent authorities, including the controlling authority like Police/ Coastal Police shall give full support/assistance to the Maharashtra Maritime Board (MMB) and CRZ authorities to ensure compliances of the CRZ as well as the conditions enumerated while awarding the contracts for maintenance dredging, transportation of the sand and use of the vehicles. The vehicles like JCB mounted machines/equipments like earth movers, suction pumps etc. shall be immediately confiscated if found anywhere within CRZ, I, II and III areas of the coastal zones and shall not be released without specific orders of the competent authority/concerned Magistrate. The Police shall register F.I.R. and in case, no one would claim such seized vehicle within a reasonable period. It may be sold by way of auction and thereafter the auction money shall be credited to the Government authority.

- These directions are however, restricted only to the cases of dredging/clearing of channels in sea/creeks and not in respect of sand mining in River beds which activity is covered by case of "Deepak Kumar". The Application is accordingly disposed of.

No costs.

Mr. S.K. Shetye Anr.
Vs
MoEF Ors

Original Application No. 17/2013(THC)(WZ)

Judicial and Expert Members: Mr. Justice V.R. Kingaonkar, Mr. Ajay A. Deshpande
Keywords: Solid Waste Disposal, Municipal Solid Waste (Management and Handling) Rules, 2000, Coastal Zone Regulations of 1991, MSW Composting Plant

Application Disposed Of
Dated: 29 May 2014

The Applications relate to a dispute regarding location of Municipal Solid Waste Disposal site of Mormugao Municipal Council and associated activities, and non-compliance of provisions of the Municipal Solid Waste (Management and Handling) Rules, 2000, and Coastal Zone Regulations of 1991.

Tribunal decided to partly allow these Applications and partly allow the same as stated below:

- Both the Applications challenging NOC dated 7-12-1999 granted by GCZMA and Authorization dated 11-4-2000 granted by GPCB for composting plant of the Municipal Council were dismissed.
- The Application is partly allowed to the extent of direction for location of landfill site and monitoring of the MSW composting plant. A Joint Team of CPCB and GSPCB headed by Zonal Officer, CPCB Bangalore shall visit the MSW processing site of Respondent No.3 in next four weeks and carry out detailed inspections in terms of its capacity, segregation of waste, process technology, environmental parameters, plant performance, record keeping, waste accumulation etc. and submit a detailed report to Chairperson GSPCB within four weeks. In the meantime, Respondent No.3 is directed to ensure that the composting activities shall be conducted adopting precautionary measures like spraying of suitable herbal spray etc. so as to avoid smell nuisance and fires.
- Chairperson GSPCB shall issue comprehensive directions to the Respondent No. 3 Municipal Council in next three weeks for improvement in the MSW processing/treatment unit of Respondent No.3 within a time bound period, which shall not exceed three months. In case of non-compliance, GSPCB shall take further stringent action against Respondent No.3 including prosecution of the responsible officers/office bearers of the said Council.

- The District Magistrate, South-Goa who has overall responsibility for enforcement of MSW Rules shall personally review the compliance of the directions issued by GSPCB and in case of non compliance shall take further suitable action in terms of Municipal Council Act.

- The private operator i.e. Respondent No.5 has failed to operate the plant in terms of compliance with the MSW Rules and the plant was also not operated for substantially long period since its commissioning. The District Magistrate, South Goa shall cause to conduct an enquiry into the entire operations of the MSW plant and fix up the responsibility of the operator for not operating the plant for substantially long time and verify whether it has caused any loss to the public exchequer and also damage to the environment in the surrounding area.

- Chairperson GSPCB shall ensure that the monitoring as envisaged in MSW Rules shall conducted at the site of composting plant of the Respondent No.3 till compliances is achieved. This monitoring shall be conducted at the cost of Municipal Council/private operator of the plant.

- Respondent No.4-GSPCB and Respondent No.3 Municipal Council shall pay costs of Rs.10,000 (Rs. Ten Thousand) each towards these Applications in next four weeks which shall be paid to the Collector, South Goa for undertaking Environment Improvement Initiatives in the area surrounding MSW plant.

- The operator M/s. Chemtrol Engineering i.e. operator of the composting plant shall pay costs of Rs.1, 00,000/- (Rs. One lack) to the Collector, South Goa, towards cost of these Applications which be used for above purpose. This amount shall be deposited within period of four weeks or else the Collector shall take suitable action to recover this amount as a part of land amount.

The Application Nos. 17(THC)/2013 and Application No.20 (THC)/2013 are accordingly disposed of.

Amit Kumar

Vs

Union of India Ors.

Misc. Application No. 240/2014

Judicial and Expert Members: Mr. Justice Dr. P. Jyothimani, Mr. Justice M.S. Nambiar, Dr. G.K. Pandey, Prof. Dr. P.C. Mishra, Mr. Ranjan Chatterjee

Keywords: Jaypee Infratech, Okhla Bird Sanctuary, Eco-sensitive Zone, EIA, National Board for Wildlife

Application Disposed Of
Dated: 30 May 2014

This application was filed for review/modification of the final order dated 03.04.2014 passed in original application no. 58/2013 filed by respondent No. 11/ Noticee no. 34 (M/s Jaypee Infratech Ltd.). By order dated 03.04.2014, the original application was disposed of giving certain directions making it clear that the decision taken by the Ministry of Environment and Forest (MoEF) based on those directions will be subject to the final decision of the Supreme Court. The O.A. was filed praying for a direction against the respondents to prevent illegal and unauthorized construction works undertaken by the developers within a radius of 10 Kms. from the boundary of the Okhla Bird Sanctuary. While the original application was pending, by interim order dated 28.10.2013 based on the order of the Supreme Court dated 04.12.2006 in "Goa Foundation Vs. Union of India". It was held that any new project which is being considered for the purpose of issuance of EC by the State Level Environment Impact Assessment Authority (SEIAA) or by the MoEF, if it falls within a radius of 10 km from the boundary of Okhla Bird Sanctuary, E.C shall not be granted unless the authority is satisfied that the National Board for Wild Life (NBWL) has given no objection for the project. It was also directed that wherever Environmental Clearances has been granted, it should be kept under suspension as inoperative unless and until the National Board for Wild Life gives no objection certificate. In the final order, the interim orders passed earlier were directed to continue in operation until notification is issued by the MoEF regarding Eco-Sensitive Zone in respect of Okhla Bird Sanctuary.

Tribunal found no apparent error or other sufficient reason to review either the final order dated 03.04.2014 or the interim order passed on 28.10.2013. Therefore, the application for review can only be dismissed.

The Applicant submitted that, if the interim order is to be continued it would adversely affect the interest of a large section of people as the 10 km radius would extend to a very large area including the South Extention part1, Greater Kailash, India Gate etc in Delhi, and Noida Sector 62 A, Sector 66, Sector 35, 36, 37 etc of India and in such circumstances, the MoEF shall be directed to take the decision and notify the eco-sensitive zone expeditiously within a time frame.

MoEF submitted that a decision on the question, as directed by the Tribunal and by the Supreme Court will not be delayed and expeditiously a decision will be taken expeditiously. Tribunal expressed hope that the MoEF will not further protract the decision and would notify the eco-sensitive zone taking into consideration all the relevant aspects without further delay. In such a circumstance, Tribunal found it not necessary to issue any further direction.

The application is dismissed. No cost.

Latif Beg Ors.

Vs

MoEF Ors.

Original Application No. 6/2014

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

Keywords: Municipal Solid Waste Management, Municipal Solid Waste (Management and Handling)Rules 2000, Environmental Clearance, EIA Notification 2006, leachtes disposal, unscientific, Supreme Court

Application Disposed Of

Dated: 30 May 2014

Application No. 5 of 2014 is filed by the residents of the affected villages seeking an order directing the Respondents not to operate the MSW plant before obtaining EC clearance as per EIA Notification 2006 and fresh authorization as per Municipal Solid Waste (Management and Handling) Rules 2000.

Application No. 6 of 2014 was filed by farmers of the village Razau Paraspur and Nariyawal claiming to be directly and substantially affected by the operation of the said plant seeking an order restraining Respondent No. 4 and M/S AKC Developers Ltd. (Respondent No. 5 in that Application) from operating the plant without obtaining Environmental Clearance and from raising fresh or further construction on the site of the plant.

The Invertis University filed the Application No. 110 of 2014 seeking almost identical reliefs against the Respondent No. 4 who is impleaded therein as Respondent No. 3.

Tribunal noted that the respondent No.4 has not obtained the requisite consent and authorization from the State PCB and does not have the approval of CPCB on the art of the technology adopted. It is very clear that pollution is being caused by disposal of leachtes in an unscientific manner. The rules and regulations are binding on all including the Respondent No.4. In the name of Public Welfare, respondent No.4 cannot be permitted to operate the MSWM plant violating the rules and regulations. Violation of rules and regulations and operating its plant without authorization cannot be countenanced by the Tribunal, in the light of the law clearly enunciated by the Supreme

Court of India in the case of *Bangalore Medical Trust V.s B.S Buddappa and Ors.* ((1991) 4 SCC 54) and *Research Foundation for Science and Technology Vs. Union of India* ((2005) 10 SCC 510). Larger public interest and public health must take precedence over the claim by Respondent No. 4. Tribunal held that Respondent No. 4 had ample time to make up for the deficiencies and take all anti pollution measures. The conduct of the Respondent No. 4 itself disentitles it from any discretionary relief from the Tribunal.

The Tribunal ordered the closure of the MSW Plant of Respondent No. 4. The Respondent No. 4 is at liberty to cure all the deficiencies pointed out by the joint inspection team and approach the Pollution Control Board for the requisite consent and authorization. In that event, it is for the Board to take appropriate decision in accordance with law. If the Board grants the consent and authorization to Respondent No 4, it is entitled to resume operation of the plant in accordance with law subject to the order that may be passed by the Supreme Court.

Krishan Kant Singh Anr.

Vs

National Ganga River Basin Authority Ors.

Original. Application No. 299/2013

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

Keywords: Sugar Mills, Distilleries, River Ganga, Ground water contamination, incinerator, Hand pumps, Bore wells.

Application Disposed Of

Dated: 31 May 2014

The Application was filed under Section 14 of the National Green Tribunal Act seeking directions to the respondents to stop releasing harmful effluent from Simbhaoli Sugar mill and Distillery and Gopal Ji Dairy (Respondents no. 7 and 8 respectively) into Simbhaoli Drain and finally into the River Ganga and also for a direction to the Central Pollution Control Board (Respondent no. 3) to assess the pollution done by Respondents 7 and 8 and for restoration of the area and other reliefs by the Applicants, a person and an organization working in the field of environment, jointly.

The case of the Applicants is that respondent No. 7 is an industry of Sugar Mills and Distillery, established in 1933 and 1943 respectively. They are now operating three sugar mills and three distilleries in the State of Uttar Pradesh and the total crushing capacity is 20,100 TCD and the unit at Simbhaoli alone is having a crushing capacity of 9,500 TCD and they are discharging untreated effluent into a drain originating just outside the premises of the Distillery and Sugar Mill complex which is known as Simbhaoli Drain. This drain is finally opening into Siana Escape Canal, which is joining the Ganga River. Thus, the drain is polluting the nearby areas and contaminating the ground water of the villages Bauxar, Jamanpur, Syana, Bahadurgarh, Alampur and others, through which the drain is passing and finally meets River Ganga. The case of the Applicants is that the discharge from the Simbhaoli Drain is directly polluting the Ganga, the National River and it adversely affects River Dolphins and Turtles, for which River Ganga is a prime habitat.

Tribunal noted that at present Respondent no. 7 cannot legally be entitled to operate the distillery for want of requisite consent from the PCB. It is the admitted case that there is no subsisting consent to operate the distillery which is a condition precedent to operate the distillery unit. Therefore on that sole ground the request of the Respondent no 7 to

operate the unit is liable to be rejected. The contention of the Respondent No. 7 is that there is violation of article 14, if a direction for installation of incinerator is enforced as against their unit, as all other industries can operate without incinerators. This argument is misconceived in fact and in law. There cannot be a negative discrimination in law. Violation of law does not invite the concept of equality. All are expected to know and comply with the law in force. Furthermore, it has been brought to our notice that CPCB has already issued direction for conversion to better and modern technology i.e. from bio-composting to installation of incinerators. It is also brought on record that there are large number of industries i.e. 24 industries, operating successfully the incinerators installed and there is no pollution. It is not the financial burden on Respondent No. 7 that can be taken as a yardstick for determining the damage or degradation of the environment.

Respondent No. 7 is obliged to run its business without causing damage or degradation of the environment and violating the prescribed parameters of trade effluent and air emission. Respondent No. 7 has been causing pollution for the last 40 years after the preventive pollution laws came into force. For all these years it has violated the prescribed standards. Not only the Boards but even the Expert Members of this Tribunal found the colour of the Phuldera drain has turned red due to the discharge of molasses and spent wash directly into the drain through the bypass illegally constructed by the industry. The change in the colour apparently appears to be due to lignin which is an aromatic, phenolic complex compound, which does not get degrade easily. The Respondent No. 7 cannot claim any right to run its industry while causing serious pollution hazards.

Tribunal decided that the submission made by the Learned Senior Counsel against adopting the method of incinerator. The defence raised against adopting incinerators was not accepted in the light of the latest technology available. The bio-compost method earlier adopted by the distilleries were proven not to be sufficient to achieve zero discharge and in addition is causing environmental hazards which cannot be allowed to be continued. Not only that the bio-compost method has failed to yield requisite results but also Respondent No. 7 in the garb of zero discharge, has persisted with polluting the underground water and Phuldera drain. This drain finally joints river Ganga which ultimately gets seriously polluted because of large number of distilleries on its banks. Leachate, overflow of the press mud in the bio-compost yard of the units and the spent wash are sources of serious pollutants more particularly in the rainy season.

Tribunal also found that respondent no 7 is bound to comply with the directions formulated earlier and accepted by the PCBs to preserve and protect the environment. Before complying with the said directions, the Respondent no. 7 was not entitled to seek permission for operation of the Distillery Unit. It is up to the Respondent no. 7 to

submit a time bound action plan as to how the directions are to be complied and satisfy. Tribunal decided not to agree to the request to operate the Distillery for utilization of the stored press mud and molasses.

Tribunal also find no reasonable basis for the apprehension of wastage of the stored press mud and molasses as they could be utilized otherwise by the industry. The Respondent no. 7 can economically use the press mud by selling it to any Thermal Power Plant or Cement Industry, as it is reported that such industries are prepared to purchase the same for fuel. Similarly, the molasses available with the industry could be sent to any other distillery having adequate treatment facility. Both are viable.

Furthermore, as Respondent no. 7 would contend that the Phuldera drain is the property of the irrigation department, and it cannot be cleaned by the industry, it was made clear that the industry shall be permitted by the Irrigation department of the State of UP , to clean the same and remove the sludge at the expense of the industry, under the supervision of the officers of the irrigation department. So also as the industry has an apprehension that they cannot remove the concrete channel and construct new storm water drain through the property of the Government , and as the concrete channel does not belong to them, Tribunal found it necessary to give direction to the concerned Authorities of the State of Uttar Pradesh, to grant the necessary permission to the Respondent no, 7 to demolishing and remove the concrete pipeline and to construct a storm water drain to allow the draining of water from the premises of the industry into the Phuldera drain without mixing it with any industrial waste.

Before carrying out sludging operations, the UPPCB and CPCB are directed to collect sludge samples from the Phuldera drain at regular intervals of 500 meter starting from the vicinity of the distillery unit up to the confluence of Phuldera drain with Siana Escape Canal. The samples should be collected in the presence of the authorised representatives of the industries. The sludge samples should be collected at various depths i.e. from the surface 15 cm depth, 30 cm depth and 45 cm depth all along the central line of the Phuldera drain. The sludge samples should be sent for physical and chemical analyses to the CPCB Laboratory for the parameters related to sugar and distillery wastes. The soil samples from at least 5 more locations from the upstream of the industry in the Phuldera drain should also be collected and analysed for same parameters to establish base line condition.

From all the corresponding locations referred above, water quality samples should also be collected and analysed including base line locations. This exercise should be completed within next fortnight. Five Hundred (500) meters from the centre line of the Phuldera drain on either Banks wherever bore-wells or tube-wells or hand-pumps are available, water samples should be collected and analyzed for relevant water quality

parameters. On either Banks of the Phuldera drain soil samples should also be collected from the Agricultural fields and analyzed for relevant parameters to establish if the soil quality is affected by the industrial effluent. All these reports shall be submitted to the Tribunal in the sealed cover.

Tribunal directed the Respondent No. 7 to comply with all the directions stated in paragraph 8 of this order. Unless these directions are complied with at least substantially and for remnant if any, Respondent No. 7 applies for extension of time, Tribunal did not find any error in the Order/stand taken by UPPCB in declining grant of consent to operate to Respondent No. 7. Respondent No. 7 is at liberty to approach the Tribunal even prior to the next date of hearing if the circumstances so required.

This is an interim order. Tribunal directed the petition to be listed for final hearing before the Tribunal on 4th July, 2014, for further direction and submission of report by the respective authorities in terms of this order and for arguments.

Smruti Park Tulsivan
Vs
Municipal Corporation Bhopal

Original Application No. 131/2014

Judicial and Expert Members: Mr. Justice U.D. Salvi, Mr. P.S. Rao

Keywords: Felling of trees, trimming of the trees, Threat- electric wires/limb and property, unmindful stone throwing

Appeal disposed of

Dated: 3rd July, 2014

This case deals with a letter petition in front of the National Green Tribunal (NGT), Bhopal bench dated 26 April, 2014 addressed by Mr. S. K. Banerjee, President of Kshetriya Vikas & Jan Kalyan Samiti

It is alleged in the letter petition that the respondents i.e. Bhopal Municipal Corporation, on 24 April, 2014 cut three old/big trees namely Mango and Amla and also three big Ashoka trees opposite to House No. E-6/34, Arera Colony, Bhopal.

In the return dated 3 July 2014 filed by the Respondents, it is stated that, pursuant to the permission granted by the Tree Officer, dated 23rd April, 2014, only trimming of the trees had been carried out. It was also revealed that the permission for the said trimming of the trees was granted as a consequence of a complaint made by one, Mr. Ramkrishna Gupta, a retired IAS officer, resident of E-60/40, Arera Colony, Bhopal bringing to the notice of the Municipal Authorities the problems arising out of excessive growth of the trees leading to threat to electrical lines and limb and property of the neighboring residents as well due to unmindful stone throwing by the passersby in hope of getting fruits of the trees.

The tree officer, Ms. Sudha Bhargava, while appearing before the tribunal, submitted that the trees had not been fatally damaged and the trimming that had been done would facilitate the vigorous horizontal growth of the trees. It is also stated by the Tree officer that the three Ashoka trees still stand at the very place they had been planted.

It was submitted by the counsel of the State and accepted by the tribunal that that 'felling of the trees' which includes the trimming work had been done in accordance with the Madhya Pradesh Vrikshon ka Parirakshan (Nagariya Kshetra) Adhiniyam, 2011.

Hence, the tribunal, with aforesaid observations, found no valid reasons to continue with the said letter petition and disposed off the Original Application No. 131/2014.

Surendra Ors.
Vs
State of Rajasthan

Original Application No. 136/2013 (CZ)

M.A. Nos. 193, 292 & 294 of 2014
Judicial and Expert Members: Mr. Justice U.D. Salvi, Mr. P.S.Rao

Keywords: Illegal mining, Blasting, Eco-Sensitive Zone, Protected Forest Area/Prohibited area, Core Area, Buffer Zone

Application Disposed of with directions.

Dated: 3 July, 2014

The present application is for seeking the revocation of mining leases at Khasra Nos. 1195 (M.L. No. 334/2009 applied by Respondent No. 6. Kamal Kumar) and 1196/1260 (M.L.472/2003 granted to the Respondent No. 5 Rampyari) respectively on the ground that they fall in Protected Forest Area/prohibited area of the Aravalli range.

The question of law and fact that arose before the tribunal was whether the areas referred to in the said application fell in the category of prohibited areas or not.

From the reply to the writ petition filed by the Respondent Nos. 1 to 4, it has been ascertained that the Mining Lease Nos. 472/2003 and 334/2009 does not fall under the purview of Aravalli hills or Protected Forest area and suffers with no prohibition for restricting the rights of the Respondents to undertake lawful mining.

The State was directed on 29th April, 2014 to carry out a joint survey (both by the Mining Department and the Forest Department) to verify the facts concerning the prohibited areas. In furtherance to the said direction, an affidavit by the Superintending Mining Engineer dated 18th June, 2014 confirms that the mining leases in question do not fall within the prohibited zones like core area or buffer zone of the Sariska Tiger Reserve or any Eco-Sensitive Zone as proposed by the State of Rajasthan to be notified as prohibited area.

The Tribunal, based on the affidavit as well as written submissions by the state passed an order on 18th June, 2014 permitting the interveners to carry out their mining operations.

It was also laid down that based on the proposal of the Govt. of Rajasthan, the Eco-Sensitive Zone of the Sariska Tiger Reserve shall be duly notified by the MoEF under the Environment (Protection) Act, 1986. The Applicant shall be informed about the date, time and place of a public hearing and shall be given the liberty to participate in the same conducted before declaration of such notification. The said applicant could raise such objections as felt appropriate by him and due cognizance would be taken of such objections.

Hence, the present application along with all other miscellaneous application were disposed off with directions that the state shall abide by its statement assuring the Applicants the communication of the information about the particulars of public hearing to be conducted before issuance of the notification. The state was also directed to not allow illegal mining in any protected area or Eco sensitive Zone.

M/s. Coorg Wild Life Society Madikere
Vs
The State of Karnataka (Chief Secretary Bangalore and others)

Application No. 414 of 2013

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

Keywords: Transmission high tension power line (HTPL), Environmental Damage, Felling of trees, Biodiversity, Ecology

Application Dismissed.

Dated: 7 July, 2014

This application has been filed by the applicant herein, who is a non-government, non-profit organization to disseminate information about wildlife and environment. The applicant is representing all the persons who are affected by the alignment of the Mysore-Kozhikode 400 kV double transmission high tension power line (HTPL) in Kodagu District and who state to be 'person aggrieved' under the National Green Tribunal Act, 2010 (NGT Act).

The applicant has alleged environmental damage caused to the ecology of Kodagu district in the State of Karnataka due to the setting up of 400 KV HTPL in Mysore - Kozhikode by the 3rd Respondents (Power Grid Corporation of India Limited) under Section 2(m)(i)(A) & (B) of the NGT Act.

The 3rd respondent herein, the Power Grid Corporation of India Limited, is constructing 400 kV HTPL for transmitting power from Kaiga Nuclear Power Plant in Uttar Karnataka to Kozhikode in Kerala State For this the shortest route would be through Nagarhole National Park. However, in order to avoid the National Park, the transmission line passes close to Hunsur and Piriyapatna and then goes to Doddaharve Forest in Hunsur Division, Dubare Reserve Forest in Madikeri Division and Devmachi Reserve Forest in Virajpet Division, After passing through Devmachi Reserve Forest, the transmission line would have to pass through private lands in South Kodagu upto Begur near Kutta (near Nagarhole National Park and Brahmagiri Wildlife Sanctuary), through more than 43 km of private lands in Kodagu. The area from Kodagu forms part of the Western Ghats and forms the catchment area of River Cauvery.

Hence, the applicant being concerned about the massive felling of tress and the resulting disturbance to the ecology of the geographical region through which such transmission line passes had also filed a writ petition before the High Court of Karnataka, which was subsequently withdrawn seeking liberty to file before this Tribunal.

The impugned order here dated 1.03.2012, which granted the 3rd respondent namely the Power Grid Corporation of India Ltd., approval for constructing a 400 kV power transmission line from a Nuclear Power Plant in Uttar Karnataka to Kozhikode in Kerala State was challenged by the applicant in the High court of Karnataka by filing a writ dated 7.06.2013 but withdrew it later.

The present appeal by the said petitioner challenging the impugned order of 1.03.2012 was held to be barred by limitation. The reasons considered by the tribunal regarding the writ filed were –

1) After passing of the impugned order dated 01.03.2012, he filed the writ petition on 07.06.2013 nearly after one year and three months, that too long after the establishment of NGT.
2) The applicant had made a communication dated 21.08.2012 to the Principal Chief Conservator of Forests of the Karnataka State Government about the state of fact and yet he filed the present appeal on 06.12.2013

Hence the various provisions of the NGT Act, 2010 were perused in detail and it was laid that it is a special enactment and specifically provides the period of limitation under section 14 for application and section 16 for appeal. Tribunal dismissed facts put forth by the learned counsel for the applicant that the applicant has sought for a direction to the authorities to consider the alternative routes and hence the application is well within the period of limitation.

M/s Shree Consultants Mysore

Vs

The Karnataka State Appellate Authority Bangalore and others

Appeal No. 47/2013(SZ)

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

Keywords: Water Act, Air Act, Common Biomedical Waste Treatment and Disposal Facility, Mysore, permission to set up, Bio - medical waste, Pollution, Biomedical Waste (Management and Handling) Rules

Appeal is dismissed

Dated: 14 July 2014

The appellant was aggrieved by the common judgment dated 20.04.2013 in Appeal Nos. 48 & 49/2012 passed by the Karnataka State Appellate Authority, Bangalore, under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, (for short 'Water and Air Acts'). He has filed the present appeal on the following brief facts and grounds.

The appellant, a proprietary concern is involved in the Environmental Consultancy and other allied activities. The Appellant was interested in establishing a Common Biomedical Waste Treatment and Disposal Facility ('CBWTF') which was then a new concept in India. Accordingly, the appellant approached the respondents with an application for setting up a CBWTF. On examining and scrutinizing the same and inspecting the place at which the proposed plant to be erected the first respondent herein by its order dated 02.05.2011 has issued Consent order to establish of CBWTF under Water and Air Acts at Sy.No.25 of Varuna village Mysore. With an enormous investment, the appellant established CBWTF providing employment to 30 to 40 persons with 7 dedicated vehicles to transport the Biomedical waste generated by the hospital, nursing homes, clinics from four districts viz., Mysore, Coorg, Hassan and Chamarajanagar, which are all situated within a range of 120 km from the plant established by the appellant. The construction of the plant was completed in the year 2002 and the 2nd respondent started issuing consents for every year with effect from first July to 30Th June of subsequent years under both the Water and Air Acts. The appellant was given Consent orders for the last 10 years without any hindrance or any allegations from any quarter including the hospitals, clinics, nursing homes etc. from all the four districts.

At the beginning, in the year 2002 - 03 the district of Hassan was also included and the appellant was collecting Bio - medical waste from 4 districts regularly without any default and the same has been disposed of in a scientific manner and as per the guidelines of the Karnataka State Pollution Control Board (for short 'KSPCB').

In the year 2010, the respondent Board informed the appellant that they are permitting for establishment of one more plant at Hassan though the appellant was not provided with an opportunity of being heard before excluding the district of Hassan from the appellants CBWTF. Subsequently, without even consulting the appellant, the Consent Order was redistricted only to three districts viz., Mysore, Chamarajnagar and Coorg, excluding the Hassan District. However, the appellant did not challenge the same.

The said action of the second respondent/KSPCB is contrary to the Biomedical Waste (Management and Handling) Rules, 1998 and regulations thereunder according to which the prescribed authority may cancel or suspend an authorization, if for reasons, to be recorded in writing, the occupier/ operator has failed to comply with any provision of the act of these rules: provided no authorization shall be canceled or suspended without giving a reasonable opportunity to the occupier /operator of being heard.

As per the guidelines of Central Pollution Control Board, (for short 'CPCB') regarding the coverage of the area for CBWTF in any area, only one CBWTF may be allowed to cater up to 10,000 beds at the approved rate by the prescribed authority. A CBWTF shall not be allowed to cater to the healthcare units situated beyond a radius of 150 km.

However, in any area where 10,000 beds are not available within a radius of 150 km, another unit may be allowed to cater to the needs of healthcare units situated outside the said 150 km.

The Tribunal stated that on scrutiny of the entire materials made available, the following would emerge as admitted facts:

The appellant, a proprietary concern made an application for the establishment of a CBWTF. Consent for the establishment of the same was granted by the KSPCB by an order dated 02.05.2001 covering four districts in the State of Karnataka, namely, Mysore, Coorg, Hassan and Chamarajanagar. On completion of the construction of the CBWTF in the year 2002, Consent to Establish was granted by the KSPCB. The said consent has been renewed periodically. The said consent given to the appellant was restricted only to three districts viz. Mysore, Coorg and Chamarajanagar excluding Hassan District by an order of the 2nd respondent/KSPCB in the year 2010 which has never been challenged by the appellant. The 5th respondent made an application to the office of the KSPCB at Mysore on 12.03.2012 and the said application was forwarded to the Head

Office of the KSPCB on 13.03.2012. Pursuant to the direction given, the 5threspondent submitted a feasibility report on 25.04.2012. In a Lok Adhalat proceedings dated 02.05.2012 that took place before the High Court of Karnataka, a representation was made by an NGO that the CBWTF should be established within 50 to 60 km of healthcare units at all places and directions were issued to the authorities of the KSPCB by Lok Adhalat to look into the matter immediately. An inspection of the appellant unit was made on 18.07.2012. The appellant sent communications to the KSPCB and CPCB on 08.10.2012 and 11.10.2012, respectively raising objection to permit one more CBWTF alleging that it was contra to the guidelines. The KSPCB issued authorization to the appellant in respect of the above three districts, namely, Mysore, Coorg and Chamarajanagar under Bio-medical Waste (Handling and Management) Rules, 1998 from 01.12.2012 to 30.06.2015. The consent which was given to the appellant was renewed under Water and Air Acts till 30.06.2018. The appellant placed a status report dated 11.10.2012 regarding the quantum of waste generated. The application filed by the 5threspondent for consent was recommended for approval by the concerned officer citing defects in the functioning of the appellant's unit along with the figures and data regarding the quantum of waste generated. The CPCB issued direction on 22.10.2012 to KSPCB to consider the representation of the appellant objecting to the establishment of CBWTF by the 5th respondent. The 2nd respondent/KSPCB granted the impugned consent order dated 24.11.2012 to the 5th respondent to establish one more CBWTF. Aggrieved over this, the appellant preferred two appeals before the Appellate Authority and also an application for impleading the CPCB in the proceedings. The Appellate Authority dismissed the impleading application. The CPCB issued a clarification on 25.03.2013 to the State Pollution Control Boards to take into account the fixed coverage area to each of the authorized CBWTF in case additional facilities were to be allowed. The appellant submitted a copy of the clarification issued by the CPCB before the Appellate Authority. The Appellate Authority dismissed both the appeals as devoid of merits. Hence the present appeals are filed before the Tribunal.

The management of bio-medical waste has been a problem that has been recognized for many decades by the environmental engineers and the healthcare establishments. The bio-medical waste is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining thereto or in the production or testing of biologicals. This may include wastes like sharps, soiled wastes, disposables, anatomical waste, cultures, discarded medicines, chemical wastes etc., It is pertinent to point out that this waste is potentially hazardous, the main hazard being infection and may pose a serious threat to human health if its management is indiscriminate and unscientific.

Needless to say, in a thickly populated city like Mysore, where there are a number of hospitals, multi-speciality hospitals, clinics and healthcare centers generating enormous

quantities of bio-medical waste, there exists a need for proper treatment and if not done, the same would cause unimaginable health hazards. In such a situation, the appellant against whom complaints of not collecting the bio- medical waste regularly and properly were made cannot be allowed to say that there was no need for the setting up of anymore CBWTF. Under the above circumstances and in view of the increasing demand for disposal of huge quantities of bio-medical waste with suitable incineration plants and also taking into account of the public interest to protect and improve the environment and to prevent hazards by employing qualitative service in the collection, segregation, packing, reception, storage, transportation, treatment, handling and disposal of bio-medical waste, the 2nd respondent/KSPCB is fully justified in granting the establishment of one more CBWTF to the 5th respondent.

Needless to say, in a thickly populated city like Mysore, where there are a number of hospitals, multi-specialty hospitals, clinics and healthcare centers generating enormous quantities of bio-medical waste, there exists a need for proper treatment and if not done, the same would cause unimaginable health hazards. In such a situation, the appellant against whom complaints of not collecting the bio- medical waste regularly and properly were made cannot be allowed to say that there was no need for the setting up of anymore CBWTF. Under the above circumstances and in view of the increasing demand for disposal of huge quantities of bio-medical waste with suitable incineration plants and also taking into account of the public interest to protect and improve the environment and to prevent hazards by employing qualitative service in the collection, segregation, packing, reception, storage, transportation, treatment, handling and disposal of bio-medical waste, the 2nd respondent/KSPCB is fully justified in granting the establishment of one more CBWTF to the 5th respondent. Non-availability of proper or insufficient and inadequate bio-medical waste disposal facility would certainly cause health problem and hazards. If only one CBWTF should be allowed to operate within a radius of 150 km as put forth by the appellant, the human and animal anatomical wastes cannot be transported quickly in order to avoid decomposition. No doubt, there exists very imminent and acute need for establishing more bio-medical waste treatment disposal units having incinerator and other facilities therein. While huge quantities of bio-medical wastes are generated, more units have to be necessarily set up in suitable locations in the same area in order to cater to the existing needs of disposal of bio-medical waste. It is not disputed that the 2ndrespondent/KSPCB has followed the guidelines with regard to the technical specification for equipment and disposal of waste. So long there is no provision for restricting the power of the Pollution Control Board to grant establishment of additional CBWTF, the act of the 2nd respondent/ KSPCB in granting consent in favour of the 5threspondent cannot be termed as illegal.

Apart from all the above, allowing one CBWTF of the appellant alone to operate within a radius of 150 km by placing restraint on the KSPCB not to give consent for additional

CBWTF would be nothing but imposing restriction on the power of the KSPCB which would not be consistent with the provisions of EP Act, 1986 and also the rules made thereunder. If the relief of quashing the consent given in favour of the 5th respondent for establishment of a new CBWTF as asked for by the appellant is granted, it would be imposing unreasonable restriction on the freedom of trade of the 5th respondent apart from creating an impermissible monopoly in favour of the appellant.

Under such circumstances, the problem can be solved only by having common bio-medical waste treatment facilities situate within short distance from the health care units generating bio medical wastes enabling the transportation of bio-medical waste within a short span of time before they become decomposed. From the point of view of environmental protection, the establishment or having only one CBWTF would no doubt, defeat the purpose, since it would not only be insufficient, but also inadequate.

Hence, in the instant case, there existed an imminent and acute need for establishing more CBWDT units and in that line the 2nd respondent/KSPCB has rightly given the consent to the 5th respondent for establishing its CBWTF and the same is justified.

For the reasons stated above, the appeals are dismissed as devoid of merits. The miscellaneous applications, if any pending are closed.

Wilfred J. Anr.

Vs

MoEF Ors.

M.A. No. 182 of 2014 & M.A. No. 239 Of 2014

In Appeal No. 14 Of 2014

And

M.A. No. 277 of 2014 in Original Application No. 74 of 2014

Original Application No. 74 Of 2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr.D.K. Agrawal, Mr. B.S. Sajwan, Dr. R.C.Trivedi

Keywords: Vizhinjam International Seaport Limited, fishermen, coastal area, ecology, Coastal Regulation Zone Rules, maintainability, NGT powers, Kovalam

Matter to be listed for arguments

Dated: 17 July 2014

Common Judgment:

The appellants (applicants in Application No. 74 of 2014 hereafter commonly referred as 'appellants) are persons interested in the protection of environment and ecology. They are persons aggrieved and affected due to the Vizhinjam Port Project (for short 'the project'). The Appellants are fishermen belonging to families that traditionally do fishing in the project area and are representatives of the larger community of fisher folk who inhabit that area. By the project, not only the ecology and environment of that area would be affected but there would also be adverse impact on their livelihood. The Appellants are also the registered members of the Fish Workers Welfare Board formed by the Government of Kerala to give assistance to the people in the fishing occupation. This is the benchmark to determine that Appellants are sea-going fishermen.

Vizhinjam International Seaport Limited (Respondent No. 3, Hereafter 'the Project Proponent ') formulated a project for development of Vizhinjam International Deep water Multipurpose Sea Port at Vizhinjam in Thiruvananthapuram (Trivandrum) district, in the State of Kerala. This Project involves the construction of quays, terminal area and port building and is expected to be completed in three phases. The first phase is proposed to be built on 66 hectares of land to be reclaimed from the sea. The material

required for phase I reclamation is proposed to be obtained from dredging activity in the sea. This phase requires 7 million metric tonnes of stone, aggregates, sand and soil for construction of a breakwater stretching almost 3.180 Kms into the sea. This material is sought to be sourced from blasting quarries in Trivandrum and in neighbouring district of Kanyakumari in Tamil Nadu State, possibly falling in Western Ghats region.

The factual matrix as projected by the Applicant leading to the above prayers is that the applicants being persons interested in protection of environment, ecology of the coastal area of Mulloor and being personally affected, are persons aggrieved and entitled to invoke the provisions of Section 14 of the NGT Act. According to the Applicants, they intend to protect and safeguard 'coastal areas of outstanding natural beauty' and 'areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time', which categories were deleted from the classification of CRZ-I areas in Para 7(i) CRZ-I of the Notification of 2011. These areas have been categorized/classified as CRZ-I areas from time to time. The Notification of 2011 deletes these areas, which were categorised as 'areas of outstanding natural beauty' and the 'areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union territory level from time to time' under the Notification of 1991. According to the applicants, the project in question, which has been granted Environmental and CRZ Clearance, vide Order dated 3 January 2014 by MoEF is sought to be established on 'coastal areas of outstanding natural beauty '. In the Notification of 1991, the Vizhinjam-Kovalam sector was declared to be an 'area of outstanding natural beauty' in part of CRZ-I, but the area has not been demarcated. The facts concerning grant of Environmental and CRZ Clearance and the grounds stated in Appeal 14 of 2014 have been reiterated in this Application. The applicants submit that they have instituted the Application under Section 14 of the NGT Act to protect and preserve 'coastal areas of outstanding natural beauty' and areas which are 'likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government and other Authorities' which have been deleted from the classification of CRZ -I vide Notification of 2011. Applicants also submit that such non-inclusion of the areas of outstanding natural beauty is arbitrary and violative of Article 14 of the Constitution. The Coastal Zone Management Plan (for short 'CZMP') has been prepared contrary to the guidelines of preparation of such CZMPs, as neither objections were invited nor public hearing was held in accordance with the guidelines. The applicants also rely upon the observations of the Supreme Court of India in the case of Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281, to contend that the economic development should not be allowed to take place at the cost of ecology or by causing

wide-spread environmental destruction and violation. At the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand.

The preliminary and other objections raised by the Respondents can precisely be stated as under:

The NGT being a creation of a statute is not vested with the powers of judicial review so as to examine the constitutional validity/vires or legality of a legislation - whether subordinate or delegated (in the present case, the CRZ Notification, 2011). Exercise of such jurisdiction would tantamount to enlarging its own jurisdiction by the Tribunal.

B. The Principal Bench of National Green Tribunal does not have any territorial jurisdiction to entertain and decide these cases as the cause of action has arisen at Kerala and the coastal zone that is the subject matter of the Petition is in Kerala.

C. The Chairperson of the National Green Tribunal, unlike some of the other statutes, is not vested with the power to transfer cases to its Principal or Regional Benches from other Benches.

D. The Original Application No. 74 of 2014 is a device to indirectly and effectively seek insertion of certain words into the CRZ Notification, 2011, which is impermissible.

The Tribunal after having heard the Learned Counsel appearing for the parties on these preliminary submissions at some length stated that, "even at the cost of repetition clarify that at this stage, we are not concerned with the merit or demerits of the case but are only dealing with the preliminary submissions made by the Learned Counsel appearing for the Project Proponent as to the maintainability of the present application. We have already held that even if there was a challenge to the validity of the Notification of 2011, the Tribunal has the jurisdiction to examine the same, of course, within the limitations laid on the grounds of challenge which are available for a delegated or a subordinate legislation. It is contended that for the purpose of arguments on the merits of the case, the applicant does not question the validity of the Notification of 2011. Thus to that extent, objection taken by the Project Proponent cannot be sustained and is inconsequential. What remains is the relief claimed by the applicant that the aforesaid areas must be preserved and protected de hors the fact that they do not form part of the Notification of 2011. This is the contention which has to be examined by the Tribunal when the case is heard on merits. At this stage, we are only concerned with the facts that whether a prayer of this kind is contemplated under section 14 read with Section 15 of the NGT Act or not. The moment the area is covered under the Notification of 2011, the restriction contemplated in law in relation to activity, construction and other matters would apply instantaneously. The areas which are not

covered under the Notification of 2011 can still be required to be preserved and protected in different ways known under the accepted norms, in so far as it relates to a substantial question relating to environment. The competent authority including the Central Government may be called upon to formulate such guidelines or directions as contemplated under Sections 3 and 5 of the Act of 1986 and the Rules framed thereunder, particularly Rule 5. Thus, it is also possible that after hearing the matter on merits, the Tribunal comes to the conclusion that these areas need no environmental protection and being not covered by any specific notification, any use of or activity in such areas would be permissible in accordance with law. But this is a question that can be determined only after the matter has been heard fully on merits. The expression 'environment' has been defined under Section 2(a) of the 1986 Act. It is a very wide definition and covers not only water, air and land but even the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Section 2 (b) of the said Act describes 'Environmental pollutant' as any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. In addition thereto, Section 2(c) of the NGT Act similarly defines the expression 'environment', while in Section 2(m) 'substantial question relating to environment' has been explained so as to include a direct violation of specific statutory environmental obligation and the gravity of damage to the environment, which includes the environmental consequences relating to a specific activity or by a point source of pollution." The various provisions of the NGT Act do not, by use of specific language or by necessary implication mention any restriction on the exercise of jurisdiction by the Tribunal so far it relates to a substantial question of environment and any or all of the Acts specified in Schedule I. Sections 15 and 16 of the Act do not enumerate any restriction as to the scope of jurisdiction that the Tribunal may exercise. There is no indication in the entire NGT Act that the legislature intended to divest the Tribunal of the power of judicial review. It is the settled cannon of statutory interpretation that such exclusion has to be specific or implied from the language of the provisions governing the jurisdiction of the Tribunal. From these stated principles, it is clear that the Tribunal has to exercise powers, which are necessary to administer the justice in accordance with law. Certainly, the Tribunal cannot have contrary to the powers prescribed or the law in force but it certainly would have to expand its powers and determine the various controversies in relation to fact and law arising before it. This Tribunal has the inherent powers not only by implied application of the above enunciated principles of law but the provisions of the NGT Act particularly Section 19 of the NGT Act which empowers the Tribunal to regulate its own procedure and to be guided by the Principles of natural justice.

The Tribunal through a long and detailed answer the four issues framed by us with reference to the preliminary and other objections raised by the Respondents as follows:

A. NGT has complete and comprehensive trappings of a court and within the framework of the provisions of the NGT Act and the principles afore-stated, the NGT can exercise the limited power of judicial review to examine the constitutional validity/ vires of the subordinate/delegated legislation. In the present case the CRZ Notification of 2011, that has been issued under provisions of the Environment Protection Act, 1986. However, such examination cannot extend to the provisions of the statute of the NGT Act and the Rules framed there under, being the statute that created this Tribunal. The NGT Act does not expressly or by necessary implication exclude the powers of the higher judiciary under Articles 226 and/or 32 of the Constitution of India. Further, while exercising the 'limited power of judicial review', the Tribunal would perform the functions, which are supplemental to the higher judiciary and not supplant them.

B. In the facts and circumstances of the case in hand, part of cause of action has risen at New Delhi and within the area that falls under territorial jurisdiction of the Principal Bench of NGT. Thus, this bench has the territorial jurisdiction to entertain and decide the present cases.

C. On the cumulative reading and true construction of Section 4 (4) of the NGT Act and Rules 3 to 6 and Rule 11 of Rules of 2011, the Chairperson of NGT has the power and authority to transfer cases from one ordinary place of sitting to other place of sitting or even to place other than that. The Chairperson of NGT has the power to decide the distribution of business of the Tribunal among the members of the Tribunal, including adoption of circuit procedure in accordance with the Rules. An applicant shall ordinarily file an application or appeal at ordinary place of sitting of a Bench within whose jurisdiction the cause of action, wholly or in part, has arisen; in terms of Rule 11 which has an inbuilt element of exception.

D. Original Application No. 74 of 2014 cannot be dismissed as not maintainable on the ground that it attempts to do indirectly which cannot be done directly and which is impermissible.

Having answered the formulated questions as above, the Tribunal directs that the matter be listed for arguments on merits.

M.C. Mehta

Vs

University Grants Commission Ors.

Original Application No. 12/2014

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

Keywords: M.C. Mehta, Supreme Court, University Grants Commission, UGC, environment, education, school, All India Council of Technical Education

Application dismissed

Dated: 17 July 2014

The applicant had instituted a writ petition being Civil Writ Petition No. 860/1991 titled M.C. Mehta v. Union of India before the Supreme Court of India which came to be disposed off by the judgment of the Supreme Court of India dated 22nd November, 1991 whereby the Supreme Court gave various directions to the Central and the State Governments for providing compulsory environmental education to the students of schools and colleges throughout the country. The University Grants Commission (for short 'UGC') on 13th July, 2004 submitted before the Supreme Court that they have prepared a common syllabus and the same is being implemented by various educational institutions. The All India Council of Technical Education on 6th August, 2004 informed the Supreme Court that it had already prepared a syllabus which includes 'environmental science' and which is being updated and would be introduced from the next academic year. The syllabus pertaining to environmental education has been prescribed and the guidelines have been framed but according to the applicant, teachers who are not qualified in terms of the UGC Guidelines are teaching the subject. The teachers who have specialized in Sanskrit, Hindi, English, Electronics, Political Science, Sociology, Mathematics, Physical Education, Home Science, Computer Science etc. have been assigned the task of teaching the subject of environmental science; in the most cosmetic way, which is against the letter and spirit of the judgment/orders passed by the Supreme Court of India. It is also averred by the applicant that a number of States like the State of Haryana, Punjab, Goa, Mizoram, Delhi and the Union Territory of Chandigarh amongst others have not complied with the directions of the Supreme Court of India, as afore-noticed. None of these States has taken any steps to appoint qualified teachers who are competent to teach environmental science. The eligible

teachers are the ones who have qualified the National Eligibility Test (NET) in Environment Science or Ph.D. in terms of UGC guidelines. The whole purpose of making 'Environment' as a compulsory subject, hence, stands defeated. While referring to some of the States, the applicant makes a particular reference to the States of Haryana and Jammu and Kashmir. The applicant stated that except for holding the meetings, the State Governments have not taken any concrete steps for compliance or for implementation of the above directions. In fact, they have been exchanging letters on what should or should not be the qualifications of the teachers who would teach the subject of Environment Science.

A number of States have been impleaded as respondents in the present application along with the Ministry of Environment and Forests. The applicant submits that the action of the respondent, in not providing environment education properly in the Colleges, Institutes and Universities is against the spirit of the order passed by the Supreme Court of India as well as the affidavit given by the State Governments before the Apex Court. Article 48A of the Constitution provides that the States should endure to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution imposes as one of the fundamental duties on every citizen to protect and improve the natural environment, including forests, rivers, lakes and wildlife and to have compassion for the living creatures. While referring to these provisions the applicant submits that lack of education in environment science would prejudicially affect the spirit of these Articles and thus, the applicant has been compelled to approach this Tribunal for redressal of his grievances.

The petitioner has made the following prayer to the Court:

I. issue direction/directions to the Respondents to ensure that compulsory subject of Environment studies is taught by the qualified/eligible teachers/Astt professors having specialization in post graduate degree i.e. M.Sc Environmental Science with NET qualified or Ph.D. in terms of UGC guidelines in the State of Haryana and other States and union Territories for providing proper environmental education to the students at Under Graduate and Post Graduate level from Academic Session 2014 in both Government and Private Universities/ colleges in India.

II. take appropriate Action against the Respondents for not implementing the judgments/ orders of the Supreme Court given vide Direction Number IV passed on 22.11.1991 in W.P.(C) No. 860 of 1991 and subsequent orders; and

III. pass such other order/ orders as may be deemed necessary on the facts and circumstances of the case.

The Tribunal does not find merit in the application because environment education cannot be included in the definition of implementation under Schedule I of the NGT Act.

The expression 'substantial question relating to environment' or 'enforcement of any legal right relating to environment' cannot be interpreted so generically that it would even include the education relating to environment. Furthermore, the expression 'implementation' understood in its correct perspective cannot be extended, to empower the Tribunal to issue directions in relation to service matters involving environmental sciences.

A phrase of significant importance appearing in Section 14 of the NGT Act is 'arises out of the implementation of enactment specified in Schedule I'. Even in this phrase, the word 'implementation' is of essence. 'Implementation' in common parlance means to take forward a decision or to take steps in furtherance to a decision or a provision of law. Nexus between the dispute raised before the Tribunal for determination and the environment has to be direct. When the framers of law use the expression 'substantial question relating to environment', it clearly conveys the legislative intent of ensuring that the disputes determinable by the Tribunal have to relate to environment and not allied fields thereto.

The applicant has submitted that firstly in all colleges and institutions, environmental science is not a subject and wherever it has been introduced as a subject, it is not being taught by qualified teachers. This is the substance of the application. It clearly falls within the framework of the constitution and/or service jurisprudence. It does not raise any substantial question of environmental jurisprudence understood in its correct perspective within the provisions of the NGT Act and the Scheduled Acts thereto. The contention that 'mass education' in Section 16(e) of the Water Act and 16 (f) of the Air Act would come to the aid of the applicant for issuance of such a direction, is again misconceived. Organizing through mass media a comprehensive programme regarding the prevention and control of water and air pollution, would not take in its cover the education or service jurisprudence in relation to environmental science as a subject of education. The programmes contemplated under these provisions must relate to prevention and control of pollution and not what should be the terms and conditions of appointment of teachers and how the environmental science should be taught in an educational institution. An activity for prevention and control of pollution must be discernibly distinguished and understood as such from education and conditions of service of teachers as enumerated under the constitutional provisions or the notifications issued by the UGC or the Universities. The applicant claims that a legal right as envisaged under Section 14 of the NGT Act has accrued in his favour as a result of the Order of the Supreme Court dated 22nd November, 1991 referred supra. There

cannot be a dispute to the preposition that the orders and judgments declared by the Hon'ble Supreme Court would be the law of the land and are enforceable throughout the territory of India in accordance with law. However, the direction of the Supreme Court in the above case, clearly falls within the domain of constitutional or service law. It is for the applicant to approach the appropriate forum/court for enforcement of that direction. In the Tribunal's considered view it would not fall within the ambit of Section 14 of the NGT Act as neither does it raise any substantial question relating to environment nor does the implementation of the Scheduled Acts arise.

This application is, therefore, dismissed as not maintainable.

Rajendra Sinh Manish Kshatriya

Vs

Gujrat Pollution Control Board Ors

APPLICATION No. 41/2013(WZ)

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

Keywords: Gujarat Maritime Board, Coal mining, Coal management, Air Pollution, Water Pollution, Navlakhi Port, Baroda

Application disposed of

Dated: 17 July 2014

By this Application, Applicant Rajendrasinh has sought following directions:

(I) Direct the Respondent Gujarat Maritime Board to stop coal-handling unit located at Navlakhi Port on southwest end of the Gulf of Kutch in Hansthal Creek.

(II) Direct the State Pollution Control Board to do the assessment of the damage done to the environment to the marine life of the coastal area by the Gujarat Maritime Board by illegally operating the coal-handling units.

(III) Direct the Gujarat Maritime Board to restore the area based on polluter pays principle.

(IV) Direct the State Pollution Board to initiate proper action against the Gujarat Maritime Board for violating the environmental laws and polluting the environment.

Briefly stated, the Applicant's case is that without obtaining required lawful consent under provisions of the Air (Prevention and Control of Pollution) Act, 1981, Navlakhi Port is handling coal units, dumping coal near open areas and transportation thereof in the nearby places which results into Air and Water Pollution.

The coal handling without proper management system is causing Air Pollution. It also leads to health hazard viz. breathlessness, eye soar etc. amongst the workers, residents of nearby area and passersby. The Maritime Board has not provided water fogging and sprinkling system in the coal handling area. There is no compound wall around the coal yards. The nearby agriculture fields are adversely affected due to emission of the coal dust, which is spreading due to the wind and hurricane. The Gujarat Pollution Control Board (GPCB) noted several deficiencies in the coal handling of Navlathi Port and gave directions from time to time. The consent to operate was also denied on two occasions, yet, the coal handling system of Navlakhi Port did not show any improvement. Consequently, the Applicant filed present Application seeking the directions as mentioned above.

The Judges have gone through the Action Plan put forth by the Respondent Nos. 2 and 3. The Respondent No.2 stated that some of the compliances have been duly done. It is, however, stated that some of the compliances will be done within a time period as stated in the last paragraph. For example; recommendation that there should be a proper drainage system around all coal storage area and along roads so that water drained from sprinkling and run off is collected at a common tank and can be reused after screening through the coal slit or any other effective treatment system is given time till end of June 2015 for compliance. We fail to see why such a long time is needed for compliance of the said recommendation. The Maritime Board appears to be rather sitting over the correctional steps/measures required to be taken to improve the coal handling system. In fact, in the year 2000 itself, the Maritime Board was expected to update the system and ensure due compliances to meet the environmental norms. This could have avoided the second round of litigation. The proposed Action Plan of the Maritime Board shows that in respect of some of the recommendations, there are only assurances for compliances within a time frame. We are afraid, Maritime Board will again commit breach of the word and fail to comply the recommendations of the M.S. University. Be that may as it is, the parties have agreed to the recommendations of the M.S. University, Baroda and shall have to comply with the same and therefore, it would be appropriate to direct the Respondent No.2 (Maritime Board) to comply with the recommendations in stricto sensu. Needless to say, the Application will have to be partly granted.

We deem it proper to allow the Application in following terms:

(I) The Application is partly allowed.

(II) The Respondent No.2 is directed to strictly comply all the recommendations of the Civil Engineering Department, M.S. University, Baroda, as per the Report dated 22nd March 2014. The recommendations indicated at Sr.Nos. 1 to 9 in the Report shall be complied with within period of four (4) weeks. Rest of the recommendations shown at Sr.No.10 to 12 in the Report of the M.S. University, Baroda shall be complied with within period of six (6) months hereafter.

(III) The Respondent No.1 (GPCB) shall monitor compliances done by the Respondent No.2 (Maritime Board) atleast periodically at each quarter and in case of any violation of the Air Act, Water Act or Hazardous Waste Management Rules, appropriate legal action shall be taken as may be permissible under the Law, including closure of the Port Activity.

(IV) The Respondent No.1 shall not issue consent to operate the Port if the conditions as per the recommendations of the M.S. University, Baroda are not found duly complied with within given time as mentioned above. The Applicant is at liberty to pinpoint any breach committed by Maritime Board, in the context of compliances of the recommendations of M.S. University, Baroda, within the above time period for action needed to be taken by the Respondent No.2.

(V) In case the consent to operate is so declined by the Respondent No.1 due to non-compliances, as mentioned above, it shall not be approved without prior permission of this Tribunal.

(VI) The Respondent No.2 shall pay costs of Rs.25,000/- (Rs. Twenty five thousand) to the Applicant as the litigation cost and Rs.50,000/- (Rs. Fifty thousand) as cost of the Counsel's fees and also shall pay costs of Rs.50,000/- (Rs. Fifty thousand) to the Respondent No.1 as cost of the litigation and Counsel's fees and bear its own costs.

(VII) The Respondent No.1 may assess damages caused due to improper/illegal handling of the coal by the Respondent No.2 and may recover such amount of damages from Respondent No.2 for payment to the concerned victims by forfeiture of the security furnished to it as per the principle of Polluters pay. (VIII) GPCB shall frame its enforcement policy in the next 12 (weeks) as discussed in above paragraphs and publish it on its website for public information.

The Application is accordingly disposed of.

Kalpavriksh Ors

Vs

Union of India Ors

Original Application No. 116(THC) of 2013

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Mr. B.S. Sajwan, Dr. R.C.Trivedi

Keywords:EIA Notification 2006, Environmental Clearance, EAC, SEAC

Application disposed of with directions

Dated: July 17, 2014

The petitioners consist of individuals and organizations that are involved in furthering causes related to the conservation of the environment. Paragraph 6 of EIA Notification, 2006 issued by the Central Government stipulates four stages in the process of obtaining Environmental Clearance- screening, scoping, public consultation and appraisal of the project. The EAC or the SEAC appointed by the MoEF in accordance with the instant notification has to make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior Environmental Clearance, together with reasons for the same. The Regulatory Authority will be the MoEF or State Environment Impact Assessment Authority (SEIAA) depending upon the category in which such project falls. Appendix VI to the Notification of 2006 details the composition of the sector/ project specific EAC for Category 'A' projects and the SEACs for Category B Projects. The composition of the Committee of experts, as per the Notification of 2006, includes persons from various disciplines including eco-system management, air/water pollution control, water resource management, ecologists, social sciences particularly rehabilitation of project ousters and representatives from other relevant fields.

In the instant case, the applicant put forth that in the EIA Notification of 1992, the MoEF stated a different criteria, relevant for the purpose of considering Environmental Clearance application. This criteria was varied in the EIA Notification of 1994 to some extent, but in the EIA Notification of 2006, the criteria was considerably varied. According to the applicant, this defeats the very purpose; object and attainment of environmental protection under the provisions of the Act and Rules framed there under and is in contradiction to the qualifications provided in Appendix VI to the Notification of 2006. The composition of the Committee as laid down in both the Notifications of 1992 and 1994, reflected the inter-disciplinary approach required to analyse the impact of a project. Under the Notification of 1992, the Chairperson/ members had to be outstanding and experienced ecologists or environmentalists or technical professionals in the relevant development sector having demonstrated interest in environment conservation and sustainable development. The Notification of 1994 removed the requirement

for demonstrating interest in environment conservation and sustainable development. The Notification of 2006 modified the requirements even further with regard to the Chairperson who now has to be an outstanding expert with experience in environmental policy, management or public administration with wide experience in the relevant development sector. The words 'environmentalist' and 'ecologist' were entirely left out in this Notification and the emphasis has shifted from environment to management and public administration. According to the applicant, the result of this deletion and change in qualification of the Chairperson of EAC has led to conflict of interest and has attained serious dimensions in the working of the EAC, as persons from either public administration or managerial posts are being appointed as Chairperson of EAC. The applicant prayed that in order to protect the environmental interests, in order to avoid conflict of interest in examination of such applications and to apply the settled principles of fairness, precautionary principle and substantial and effective compliance to the provisions of the Notification of 2006, it is necessary that Appendix VI to the Notification of 2006, should be struck down as being contrary to the Notification of 2006 and the provisions of the Act. Furthermore, the eligibility criteria stated under the Notification of 1994 should be read and applied by MoEF for appointing Chairperson and Members of the EAC or SEAC.

The respondent, the MoEF, questioned the jurisdiction of the Tribunal and contended that Appendix VI to the Notification of 2006, which prescribes qualifications for members and the Chairperson of the EAC/SEAC is a subordinate legislation and no jurisdiction has been vested in the Tribunal to entertain and adjudicate upon vires of statutory provisions and subordinate legislations within the ambit of Section 14 of the NGT Act. It was also contended that the validity of a regulation made under the delegated legislation can be decided only in judicial review proceedings before the Tribunal and not by way of appeal before the Tribunal. The respondent also contended that the Notification of 2006 has been issued on 14th September, 2006 that prior to the coming into force of the National Green Tribunal Act in 2010, the provisions of Section 16 of the NGT Act do not get attracted.

The tribunal took the view that it is a judicial Tribunal having the trappings of a Court, with complete judicial independence, being manned by the judicial and expert minds in accordance with the procedure prescribed and keeping in view the legislative scheme of the NGT Act and Rules. For proper administration of environmental justice, the Tribunal has to examine the correctness or otherwise of Rules and Notification made in exercise of delegated legislation. The Tribunal is vested with the power of judicial review to a limited extent, which it would exercise only as supplementing and not supplanting to the jurisdiction of the higher courts in accordance with law. In exercise of the power of judicial review, the Tribunal can examine the validity, *vires*, legality and reasonableness of the rules, provisions or notifications, made or issued in exercise of the powers vested in the concerned Government or authority by way of subordinate or delegated legislation, but only in relation to the Acts enumerated in Schedule I to the NGT Act. This power of judicial review would not extend to examination of provisions of the NGT Act or the rules framed there under; NGT being the creation of that statute.

The Tribunal opined that the whole challenge in the Application was to the prescription of

eligibility criteria and parameters for appointment of Chairperson and members of the EAC/ SEAC. This challenge was relatable to the amendment of the Notification of 2006, which substituted or superseded the Notification of 1994.
The expression 'public administration or management' in paragraph 2 is, according to the applicant, still an offending requirement. According to them, persons with experience in public administration or management, without any reference to environment in particular, cannot be appointed as members of EAC. The Tribunal held that MoEF cannot by virtue of its administrative powers violate the statutory provisions or act contrary to the spirit of the legislation and defeat the object of the law. If persons having experience only in the administrative and management fields are appointed as members of the expert bodies who are to examine or appraise and recommend grant and/or refusal of Environmental Clearance in accordance with law, they would hardly be able to contribute in arriving at a proper decision in accordance with law. It is a specialised job and it will be appropriate that people with experience in the specialised field are appointed rather than persons with experience of general administration or management. The Appendix VI of the Notification of 2006 in turn refers to paragraph 5 of the said Notification provides for composition of EAC's and SEAC's. The expression 'shall consist of only professional experts fulfilling the following eligibility criteria' in Paragraph 1 of Appendix VI clearly suggests that it is only the persons fulfilling the criteria according to Appendix VI, who would be eligible for being considered as members of the EAC. Amendment of Paragraph 2 certainly dilutes this essence of appointment as Members of the EAC. The professionalism referred to in Appendix VI has to be in the field of environment and not in connection with non environmental sciences. Even the amended Paragraph 2 has to be read in conjunction with Paragraph 1 of Appendix VI. By virtue of omission of Paragraph 4, the appointment of chairperson remains in vacuum as no specific criteria has been provided in Appendix VI. It may be possible for the MoEF to act by administrative order and stop gap arrangement, but certainly cannot make it as a permanent feature. It must amend Appendix VI and provide the eligibility criteria for the Chairperson of EAC/SEAC in accordance with the Notification of 2006, the provisions of the Act of 1986 and in the best interest of the environment.

The tribunal held that Section 14 of the NGT Act, the Tribunal will have jurisdiction over all civil cases where a substantial question relating to environment arises. The Tribunal will also have jurisdiction where a person approaches the Tribunal for enforcement of any legal right relating to environment. It was held that the Tribunal has original as well as appellate jurisdiction in relation to substantial question relating to environment or where enforcement of a legal right relating to environment is the foundation of an application. The expression 'civil cases' used under Section 14(1) of the NGT Act has to be understood in contradistinction to 'criminal cases'. Civil case, therefore, would be an expression that would take in its ambit all legal proceedings except criminal cases that are governed by the provisions of the Criminal Procedure Code. The legislature has specifically used the expression 'all civil cases'. Once Section 14 is read with the provisions of Section 15, it can, without doubt, be concluded that the expression 'all civil cases' is an expression of wide magnitude and would take within its ambit cases where a substantial question or prayer relating to environment is raised before the Tribunal. The contents of the

application and the prayer thus should firstly satisfy the ingredients of it being in the nature of a civil case and secondly, it must relate to a substantial question of environment.
The Tribunal then examined what is a substantial question relating to 'environment'. The Tribunal held that their needs to be a direct nexus between the cases brought before the Tribunal and a substantial question relating to environment. The 'cause of action' as contemplated under the provisions of the NGT Act would be complete only when the stated three ingredients, i.e. firstly, civil cases, secondly, concerns or raises a substantial question of environment or an enforcement of a legal right relating to environment. The jurisdiction of the Tribunal thus, would extend to all such question arises in regard to implementation of the Schedule Acts, are fulfilled. The Tribunal may not have jurisdiction to entertain and decide such proceedings even when above nexus is established, as there is still another *sine qua* non for exercise of the jurisdiction by the Tribunal, that is, it must arise or be relatable to the implementation of the Acts specified in Schedule I of the NGT Act.

The Tribunal then examined the meaning of the word 'implementation'. The expression 'implementation' appears under different Acts even under environmental laws and is used differently in different contexts. It will derive its meaning from the context in which it has been used, but in every context this expression has been used liberally and would be construed accordingly. The expression, 'implementation' should be construed reasonably upon the cumulative effect of these provisions and the attending legislative intent. There should be a direct or indirect nexus between the pleaded cause of action and the environment, making it a substantial question of environment. In the present case, it will be obligatory to constitute appropriate expert committees in consonance with the provisions of the scheduled Acts and the Notifications issued there under otherwise this is bound to have adverse effects on effective prevention and control of pollution.
The tribunal held that if any activity or action of any authority under various provisions of the Acts, would directly affect the environment, then it would be a matter which would come within the ambit of Section 14. The members of the EAC/SEAC are an integral and inseparable part of the process of Environmental Clearance that is the ethos of environmental jurisprudence particularly with reference to the Scheduled Acts to the NGT Act. The question arising from implementation of Appendix VI of the Notification of 2006 would have an impact on environment. It would also involve an enforceable legal right of the project proponent and even public at large in relation to environment. Hence, they will have an enforceable legal right that EAC/SEAC should be constituted in accordance with law to consider their case for Environmental Clearance. Thus, examined from either of the point of views stated above the present case would fall within the ambit and scope of Section 14 of the NGT Act.
The tribunal held that to implement effectively the provisions of environmental law, EAC/ SEAC performs the most important and significant functions. If the members of this expert body are non- environmentalists and do not fall within the eligibility criteria of Appendix VI,then besides violation or infringement of such provisions, its direct impact would be on the environment. The EAC/SEAC has to perform functions of a very scientific and technical nature and has to analyse comprehensive terms of reference and environmental impact assessment report in respect of the project activity and then submit its report and recommendations to the

Government for grant/consideration of the appropriate authority. Appendix VI to the Notification of 2006 issued in furtherance to the powers vested by the Act and is subordinate/ delegated legislation and thus, would be an integral part of the Act. Therefore, compliance and proper implementation of the provisions falling under and arising from the specified Acts in Schedule I would be matters raising substantial questions of environment, hence covered under Section 14 of the NGT Act. The selection and appointment of the members of the EAC is duly provided under Appendix VI. It states the eligibility criteria in that regard. Satisfying the eligibility criteria is a *sine qua non* for being appointed to the committees. On one hand it states legal requirement for selection of the EAC members, on the other it gives a legal right *in rem* to ensure that appointments are made in accordance with law.

The Tribunal rejected the contention of the respondents that the applicant cannot invoke the provisions of section 14 and 16 on the ground that EIA notification was issued in 2006 prior to the coming into force of the NGT in 2010.

The tribunal held that the instant judgment would not vitiate the appointments of/or the recommendations made by such members/Chairperson of the EAC/SEAC in the past. The following directions were issued-

a) It is not necessary for this Tribunal to comment upon the validity, correctness or otherwise of Para 4 of Appendix VI to Notification of 2006, as it no longer remains on the statute. b) As far as expression 'public administration or management' appearing in Para 2 of Appendix VI to the Notification of 2006 is concerned, the Tribunal directs MoEF not to appoint experts as members/Chairperson of the EAC/SEAC under these head unless the said experts in the above field is/are directly relatable to the various fields of environmental jurisprudence) Tribunal direct MoEF to provide eligibility criteria and specific requirements for the person to be appointed as Chairperson of the EAC/SEAC in Appendix VI within one month from today. d) Till such prescription is made Tribunal directs MoEF not to appoint persons as Chairperson/ members of the EAC/SEAC who do not have experience in the field of environment under the above head and who do not satisfy the prescribed eligibility criteria as that would lead to improper consideration and disposal of application for clearance filed by the Project Proponent. Further, it is bound to affect prejudicially the purpose of environmental enactments and the environment itself.

Sunil Kumar Samantra
Vs
West Bengal PCB Ors

Misc Application No. 573/2013 in APPEAL NO. 67 OF 2013

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

Keywords: Condonation of delay, Section 16, mandatory, directory, *paramateria*

Appeal and Application dismissed

Dated: 24 July 2014

The present appeal was preferred against the order dated 10 April 2012 passed by the Pollution Control Appellate Authority, West Bengal upholding the order of closure passed by the West Bengal Pollution Control Board dated 8th February, 2012.

The appellant in the instant case is the sole proprietor of M/s. Samanta Engineering Works, which is engaged in the business of running an Auto Emission Testing Centre in West Bengal. The appellant had made an application for Letter of Offer for establishment of an Auto Emission Testing Centre before the Licensing Authority. In furtherance to which, the Licensing Authority called upon the Board to conduct an enquiry and to submit a report. The appellant was permitted to operate via two different licenses valid for a period of one year. The appellant applied for the renewal of said licenses in the prescribed format and was informed by the Board that their unit will be inspected. According to the appellant, the said inspection and technical hearing was satisfactory. The appellant brought to the notice of the officials that the copy of the inspection report was not provided to the appellant as such and was unaware about the contents thereof. Thereafter, the Chief Scientist of the Board issued a closure order against the appellant. Against this order, the appellant preferred an appeal before the Appellate Authority that dismissed the appeal rejecting the contentions raised by the appellant. Against the said order, the appellant has preferred the present appeal.

The appellant put forth that the appeal was barred by 104 Days and has filed a Miscellaneous Application No. 573 of 2013 praying for condonation. The appellant contended that Sections 4 to 24 of the Limitation Act, 1963 would be applicable to the application filed by the appellant, as the NGT Act does not expressly or impliedly exclude the applicability of the Limitation Act. It was further contended that the language of proviso to Section 16 of the NGT Act has not been worded by the legislature in a manner so as to completely divest the Tribunal from the jurisdiction of condoning of the delay beyond a total period of 90 days provided under proviso to Section 16. It was also by the appellant that the Tribunal being the first appellate judicial forum, should construe the law of limitation liberally. The respondents contested the above on the ground that the appeal is barred by 104 days and that the Tribunal has no jurisdiction to

condone or entertain the appeal when it is filed beyond a total period of 90 days i.e. 30+60 days in terms of proviso to Section 16 of the National Green Tribunal Act, 2010.

The Tribunal held that according to the application filed by the appellant for condonation of delay, there was a delay of 104 days but the appeal would be barred by 125 days as per facts. An appeal as contemplated under Section 16 against an order or decision or direction or determination, has to be filed within 30 days from the date on which the order is communicated to the aggrieved persons. Proviso to Section 16 of the NGT Act provides for a special limitation i.e. the appeal could be filed beyond the period of 30 days within a further period not exceeding 60 days, upon showing 'sufficient cause'. This means the tribunal cannot allow an appeal to be filed under Section 16 beyond a total period of 90 days. A limitation provided under special law must prevail over the general law of limitation; particularly in face of the overriding effect given to the NGT Act by the framers of the law in terms of Section 33 of the NGT Act. In terms of Section 33, the provisions of the NGT Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. The cumulative effect of all these factors would be that the special limitation prescribed under the NGT Act does not admit any exception to attract the applicability of the provisions of the Limitation Act. Section 16 of the NGT Act controls the very institution of an appeal in the Registry of the Tribunal. In terms of Section 16, the appeal can be filed 'within a further period not exceeding 60 days' but thereafter the Tribunal is not vested with the power to allow the appeal to be filed beyond the total period of 90 days. Thus, the tribunal loses its jurisdiction to entertain an appeal after the expiry of the special period of limitation provided under proviso to Section 16 of the NGT Act.
In furtherance to this, the tribunal gave the example of Section 34 of the Arbitration and Conciliation Act, 1996 that uses the expression 'not thereafter' while the provision in question uses the terms 'not exceeding'. Both these expressions use negative language. The intention is to divest the Courts/Tribunals from power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provisions of Section 5 of the Limitation Act or such analogous provisions would not be applicable. The use of negative words has an inbuilt element of 'mandatory'. The intent of legislation would be to necessarily implement those provisions as stated. Introduction or alteration of words, which would convert the mandatory into directory, may not be permissible. Affirmative words stand at a weaker footing than negative words for reading the provisions as 'mandatory'. Once negative expression is evident upon specific or necessary implication, such provisions must be construed as mandatory. The Tribunal held that legislative command must take precedence over equitable principle. The language of Section 16 of the NGT Act does not admit of any ambiguity, rather it is explicitly clear that the framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of total period of 90 days.
It was held that the Tribunal has no jurisdiction to condone the delay when the same is in excess of 90 days from the date of communication of the order to any person aggrieved.

The Tribunal having noticed various judgments of the Supreme Court and the High Courts for and against the proposition, stated that the undisputed principle that emerges and which has been consistently followed by the Supreme Court, is that a mere provision of the period of

limitation in the statute is not sufficient to displace the applicability of the provisions of the Limitation Act. But where the act is a complete code in itself and where the scheme of the Act and the language of the relevant provisions expressly or impliedly exclude the applicability of the general law of limitation, then such exclusion is accepted by the Court. Not only the scheme of the NGT Act, which is a self contained code, clearly demonstrates legislative intent for exclusion of the general law of limitation, but specifically gives precedence to the provisions of the NGT Act in terms of Section 33 of the NGT Act, which clearly means that the provisions of limitation contained in the NGT Act would prevail and by necessary implication would exclude the application of the provisions of the Limitation Act. Thus, it squarely satisfies the ingredients of Section 29(2) of the Limitation Act.
The Tribunal while rejected the contention of the appellant that since no penal consequences for default in not filing application within 90 days have been provided under the NGT Act, it should be construed that the legislature did not intend to exclude the application of the provisions of the Limitation Act from the NGT Act.

The provision of Section 16 of the NGT Act clearly provides the period of limitation and the consequences of default for not filing the appeal within the prescribed period of limitation. The Tribunal while with the contention of the appellant that the provisions of Section 16 of the NGT Act prescribing limitation are 'directory' and not 'mandatory' made to the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908, where language *paramateria* to Section 16 of the NGT Act has been used and has been held to be 'directory' in various cases. The Tribunal explained the distinction between the 'mandatory' and 'directory' in law and held that 'Mandatory' and 'directory' are two parallel expressions which are incapable of being used synonymously or alternatively for each other. What is 'mandatory' cannot be 'directory' and vice- versa. 'Mandatory' provisions should be fulfilled and obeyed exactly, substantial compliance is all that is necessary with the provisions of a 'directory' enactment.
If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. The distinction between mandatory and directory provisions is a well accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word 'shall' would be read as 'must' unless it was essential to read it as 'may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word 'shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.
The Tribunal considered the view that the provisions of Section 16 of the NGT Act are unexceptionally 'mandatory'. The said provision clearly conveys the legislative intent of excluding the application of the provisions of the Limitation Act, 1963. Further, it was held that the present appeal was barred by limitation and the Tribunal has no jurisdiction to condone the delay of 104 days as prayed. Resultantly, the application for condonation of delay was dismissed and appeal does not survive for consideration.

Bardani Mishra
V
State of Madhya Pradesh and others

Original Application No. 31/2014 (CZ)

Judicial and Expert Members: Mr. Justice U.D. Salvi, Mr. P.S. Rao

Keywords: MPPCB, Mining, stone crusher units, permission/license

Directions issued

Dated: 25 July 2014

The instant application was initiated in the High Tribunal of Madhya Pradesh in January 2013 for the Writ of Mandamus directing the respondents to take immediate action against illegal mining of sand and its transportation from Ken River and its Canal in District Panna. The High Tribunal of MP directed the Collectors of District Panna and Chhattarpur who were respondents in the instant case to ensure that no trucks were allowed to pass through the agriculture fields within their jurisdiction, as alleged in the petition. Subsequently, the High Tribunal of Madhya Pradesh passed an order transferring this petition to the Central Zone Bench, Bhopal of National Green Tribunal.

The Collector and District Magistrates of Chhattarpur and Panna affirmed that there was no illegal activity with regard to mining of sand in Ken River/Canal in and around Village LodhaPurva, District Panna and Village Harrai, District Chhattarpur and causeway (Rapta) which was allegedly being used for transportation of mineral and plying of trucks. The Sub-Divisional officer of Police, Chhattarpur Distrcit filed an affidavit affirming that there exists no mining mafia in the area in question and the mining permission was granted to Shiv Shankar Mishra for the year 2011 and 2013 for an extent of 4 hectares at Village Harrai but no mining activity is being conducted since 31.03.2013 and subsequent thereto the mining leases were re-sanctioned to one, Ashok Kumar Agnihotri on 01.04.2014 but no mining activities have been commenced by the said lease holder.
Subsequently, a news item appeared on 23.05.2014 reporting that large scale illegal mining is going on in various parts of Madhya Pradesh and it was also reported that mines/stone crushers are running without having a valid mining lease or without having a valid consent in and around the city of Bhopal. The newspaper report further included a list of such mining leaseholders and owners of stone crushers.

The State Pollution Control Board (MPPCB) furnished information received from Mining Department with regard to alleged illegal mining activity and running of stone crushers around Bhopal. The MPPCB submitted that 29 mines were inspected out of which 21 mines were found closed on account of expiry of their mining lease, 2 were found running without valid consent

and 4 were found running without consent in respect of which closure notices have been issued and 2 mines were found having consent but without installing proper equipment to regulate air pollution. Notices were issued to the said mines by the MPPCB. The status report by the MPPCB discloses that out of 6 mines, 3 of them at Village Chappri, Bhopal run by Smt. Rekha Kukreja, Smt. Sangita Saraf and Shri Lakhan Lal Sharma have duly taken the air pollution control measures and the equipment has been installed in the compliance of the closure notice and the persons running those stone crushers have applied for revocation of the closure notice, and the matter is under consideration. The MPPCB makes a statement that the applications for revocation of the closure directions made by them shall be duly considered in accordance with law. As regards the mine/crusher conducted by Shri Shailendra Premchandani at Village Parwalia Sadak, Bhopal, it is revealed that it is a complying unit but was mistakenly referred to as the unit to which closure notice was issued. As regards the mine of Smt. Suman Narwani at Khasra No. 355 and 356 at Village Sarwar, Bhopal, it is reported that the same is already closed and closure notice has been issued by the MPPCB to the stone crusher run by one, R.K.Narwani at the said site. According to the MPPCB, though the mine of Suman Narwani is closed, the stone crusher gets raw material for crushing from the mine of R.K. Narwani and now the application for consent has been submitted by the stone crusher run by R.K. Narwani. As regards the stone crusher run by Mohd. Sohel Khan at Village Jaitpura, Bhopal, the Board has noticed the failure of the stone crusher to install the requisite air pollution control equipment and to obtain EC from the State Environment Impact Assessment Authority concerning the renewal of the lease and as such closure notice has already been issued and steps have been taken for disconnection of electricity and other infrastructural facilities available to the stone crusher.

The Tribunal deemed it proper to closed the issue by directing MPPCB to pursue the matter and ensure that no mining activity or stone crusher units are allowed to go on without obtaining requisite permission/licence from the competent authorities and strictly following the pollution stands notified under the relevant statutes.

The President, Karur Mavatta Nilathadi
Vs
State of Tamil Nadu

Original Application No. 153 of 2014 (SZ)

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

Keywords: construction of bus stand, waterway, irrigation

Application dismissed

Dated: 30 July 2014

The instant application is filed against the Karur Municipality with regard to building a bus stand at Karupampalayam Panchayat, Thirumanilaiyur. The applicant prayed to the Tribunal to order the respondents to remove all obstructions created across the Thirumanilaiyur Rajavaikkal and canals branching from it, to restore the Thirumanilaiyur Rajavaikal to its natural status and to maintain the Thirumanillayur Rajavaikal free from obstructions.

The State Government issued an order to construct a bus stand at Thirumanilaiyur, Karur. The proposal of the respondents envisages filling up and blocking the canals for conversion to facilitate the setting up of the bus-stand. The respondent authorities filled the canals and leveled the surface, blocking the canal completely and also closing several small canals branching off the canal. The sole source of irrigation in the region is the Thirumanilyur Rajavaikal and the canals branching from it. It was contended by the applicants that the filling of the above canal would result in the deprival of water for irrigation to the farmers. The applicant claimed to have submitted several representations to the respondent authorities requesting them to remove the debris and clear the waterway of the canal. However, the respondents till date took no action. It was also put forth that the respondent authorities have not considered the environmental impact of their actions and the same is contrary to law and the action of the respondents is contrary to the Principles of Sustainable Development and Precautionary Principle and Inter Generational Equity.

The Tamil Nadu Pollution Control Board stated that during inspection, the site was found cleared of wild vegetation authorities and is now a vacant site. The construction works were not yet started. The Thirumanilaiyur– Sukkaliyur road and dry agriculture lands on the northern side, closed dyeing units and dry agriculture lands on the western side, industrial buildings and the Tamil Nadu State Transport Corporation depot on the eastern side and dry agriculture lands on the southern side surround the site. The irrigation canal is maintained by the Public Works department/Local Body. In any growing city, there will have to be increase in the public

facilities to cater to the needs of the growing population. The construction of a new bus stand in Karur is for the public need. As per the Environmental Impact Assessment Notification prior Environmental Clearance is not required for the construction of the bus stand. However, there are eight types of projects mentioned in the said notification which require prior EC. If the above proposed project attracts item No. 8 of the Notification dated 14.09.2006 as per the specifications and conditions mentioned therein, the above project requires prior EC from the competent authority. The Board submitted that the Tribunal may be pleased to pass appropriate order as it may deem fit and proper in this case.

The District Collector, Karur stated that present application is premature, as no work has commenced in the proposed site that is selected for the location of the new bus stand. Several writ petitions were filed before the High Tribunal of Madras in Madurai Bench challenging the resolution passed by the 5th respondent/Municipality dated with regard to the selection of the land for the location of the new bus stand and all these were dismissed by the High Tribunal on. Thereafter, the resolution was accepted by the Government and a Government order was passed which was also challenged in several writ petitions on the same issue which has been raised by the applicant in the instant application and the Madurai Bench of Madras High Tribunal passed a detailed order on dismissing all the writ petitions and cost was also imposed to the petitioners. The Government order stated that the Karur Municipality had passed the resolution for the formation of the bus stand for the welfare of the people of Karur, due to over density and due to the scarcity of place in the present bus stand in Karur Town. The land, which was selected and allotted for the formation of the new bus stand, does not pass through the canal. Further, there was no cultivation neither agriculture nor irrigation was carried out in the locality of the land for the past several years and the proposed land was barren wet land which was allotted for the construction of new bus stand. The proposed new bus stand was situated far away from the proposed land. The averment that the respondents have filled and blocked the canal is denied and the canal is not passing through the survey numbers mentioned in the Government order, which were selected for the new bus stand. With regard to the averments that no action was taken by the respondents for removal of debris and to clear the water way of the canal, not even the preliminary works were started till now and no tender has been floated for the preparation of design, drawings and for estimation of sanction of funds and then going for actual field work.

From the above pleadings made by both side, the following points emerge for determination.

1. Whether the applicant has made out a case calling for interference of the Tribunal for exercise of its jurisdiction under the National Green Tribunal (NGT) Act, 2010.
2. Whether the applicant is entitled for any direction to the respondents as asked for in view of all or any of the reasons mentioned in the application.

Advancing the arguments on behalf of the applicant Shri T.Mohan, learned counsel would submit that the 5th respondent/Karur Municipality has proposed to construct an integrated central bus stand in 8.29 acres and approach road on 0.91 acres and roads on 2.94 acres, altogether on 12.14 acres through the lands comprised in many field survey numbers shown in the application, pursuant to a Government order dated 20.06.2013. Though the construction of a bus stand is a welcome step, it should not be at the cost of environment and livelihood of

several hundreds of people including agriculturists. The authorities have not seen that the canal, which is a major irrigation canal and other channels branching off from the main canal run through a part of the land, comprised in the survey numbers. The proposal envisages filling up and blocking the canal by converting the lands for the purpose of the bus stand. Those lands were originally affected by the discharge of effluent from the dyeing units and in the recent past they have been recovered and the farmers have begun to cultivate the lands. If the respondents' are allowed to construct the bus stand by filling and blocking the canal, which is the sole source of irrigation in the region, it would certainly hamper the cultivation by deprival of water for irrigation.

For points No. 1 and 2, the Tribunal held that the subject matter covered under the G.O. which was challenged before the High Tribunal is exactly the same in the present application. While all the writ petitions were dismissed on 28.04.2014, the present application was filed on 30.05.2014. The applicant cannot be allowed to say that he had no knowledge about those proceedings. The contention put forth by the applicant that he was not a party in those writ proceedings cannot be a reason to allow him to re-agitate the same before this forum.The tribunal pointed out that the allegations made in the application that were very generic and did not indicate any direct violation of a specific statutory environmental obligation of a person showing either the applicant or a group of individuals are affected or likely to be affected by environmental consequences. They did not point out any damage to environment or property that is substantial or speak about any environmental consequences related to a specific activity or pointing to source of pollution. The applicant had not shown any substantial question involving or relating to environment or enforcement of any legal right relating to environment. Thus the averments in the application do not make out a case requiring exercise of jurisdiction of the Tribunal as envisaged under the provisions of the NGT Act, 2010.

Relying on the map prepared by the Director of Land Records, the Tribunal stated that it is quite clear that the main canal did not pass through any of the other survey numbers. Merely because the main canal is passing through the sand survey numbers, the entire project proposal for the bus stand cannot be rejected. It is contended by the learned counsel for the applicant that the channels branching off from the main canal are shown to be flowing are part and parcel of the proposed land and this also stood unnoticed by the authorities. No evidence was adduced to indicate as to the existence of the channels in the past. The main canal is passing on the northern side of the road at a distance of 375 m from the proposed new bus stand. The Tribunal held that the applicant is not is an agriculturist having any holding in region in question and neither is he an affected party. No complaint was made by any agriculturists. If aggrieved as contended by the applicant they would have approached the forum calling for interference. The Tribunal did not see any reasons or circumstances to doubt, disbelieve or reject the statements made by both the District Collector and the District Environmental Engineer concerned.

The construction of the integrated new bus stand to cater to the needs of the growing population when it is faced with over density and to increase the public facility is a positive step towards the welfare of the public at large. It is brought to the notice of the Tribunal that even the

resolution of the 5th respondent/Municipality with regard to the selection of the lands for location of the new bus stand was challenged before the Madurai Bench of the Madras High Tribunal by filing a number of writ petitions and when the writ petitions were dismissed, the G.O was challenged again by filing a number of writ petitions referred to above. Not satisfied with the dismissal of the writ petitions, the present application has been filed which does not make out a case for granting the reliefs sought for.

The application is dismissed.

Sukdeo Kolpe Anr
Vs
M/s Kopargoan Sah. Sakhar Karkhana Ltd.

Original Application No. 34/2014(WZ)

Judicial and Expert Members: Justice V.R. Kingaonkar, Dr. Ajaya.Deshpande
Keywords: sugar factory, pollution, discharge of untreated effluents

Application allowed partly

Dated: 30 July 2014

The application was filed by the applicants claiming compensation due to loss of agricultural crop and damage to their lands, because of discharge of untreated effluents by the sugar factory unit of the Respondents.

Applicant's case was that the Sugar Factory run by the Respondents used to discharge polluted water and effluents in their agricultural lands, as a result of such untreated discharge of effluents, their lands become uncultivable. The groundwater of the area is polluted. The water has become unpotable. The untreated water flows from the lands of Applicants and released in 'Godavari' through a Nulla. They made several complaints that remained unheeded. One of the Applicants had cultivated sugarcane crop, which was due for harvesting in the month of December 2013. In the midst of December 2013, the pipeline carrying spent wash of the Sugar Factory burst/broke open and, therefore, the spent wash gushed out in his agricultural land. Resultantly, the sugarcane crop standing in the area of 10-Rs was corroded. He made complaint with the Revenue Authority. The Revenue Authority, prepared panchanama in pursuance to his complaint. The Respondents had not taken necessary corrective measures to ensure that the Sugar Factory shall not discharge untreated wastewater in the nearby area. The groundwater quality of the land had deteriorated due to discharge of effluents from the Sugar Factory. The Respondent Nos.3 and 4, issued certain directions when the water sample analysis indicated that the water was contaminated, unpotable and not useful for any purpose. Still, however, as per last consent to operate order dated 6.4.2013 was granted to the Sugar Factory after accepting Bank Guarantee. Contamination of groundwater has resulted into pollution of well water and therefore, Applicant No.1 could not cultivate his land as it had become barren, due to such pollution, because of untreated effluent discharged by the Sugar Factory. The Applicants seek compensation of Rs. 25 lakhs and 20 lakhs respectively. They also seek directions against the Respondent Nos.1 and 2 for closure of the Sugar Factory. They also seek directions against MPCB, to take steps against the Sugar Factory to ensure that no damage is caused to the agriculturists of the area, due to pollution caused by the Sugar Factory. Considering rival pleadings and also submissions of learned Counsel for the parties, following issues arise for adjudication of the present Application.
(i) Whether agricultural land or part thereof owned by Applicant No.1 – Sukadeo, has become uncultivable or barren for certain period, as a result of discharge of untreated effluents in the

nearby Nulla, which caused pollution of groundwater and resulted into contamination of well water of the well situated in his land? If yes, what is approximate loss suffered by him in terms of money?
(ii) Whether Applicant No.2, suffered loss of sugarcane crop in or about 10-Rs land bearing Gut No.98, due to breaking of pipeline/bursting of pipeline carrying spent wash discharged by the Sugar Factory run by the Respondents Nos. 1 and 2 due to faulty maintenance of pipeline? If yes, whether the Sugar Factory is liable to pay compensation to Applicant No.1 – Sukadeo, for loss of sugarcane crop due to such discharge of spent wash by the Sugar Factory in his land?
(iii) Whether the Application is barred by Limitation?
(iv) Whether groundwater quality in the surrounding areas, is deteriorated due to Industrial effluents of the Respondent- Industry and has resulted into damage to fertility of the agricultural lands in the area and if yes, whether remedial measures are necessary for improvement of water quality and what steps the Respondent – Industry and Authorities are required to undertake.

On the issue of (i) & (ii), the Tribunal held that before updating all the equipment, the Sugar Factory had not taken due care to ensure zero discharge, though assurances were being given to install proper ETP. The MPCB had given interim directions vide communication for installation of proper ETP, furnishing of time bound programme to update ETP within one month, not to discharge substandard quality of effluents outside the factory premises in any condition and to furnish irrecoverable Bank Guarantee. The documents placed on record, go to show that inspite of repeated directions of the MPCB, the Respondent Nos. 1 and 2, had not taken due care to improve the system, in order to ensure zero discharge.

The adverse impact of pollution caused by the Sugar Factory, must have been avoided by the Sugar Factory. The precautionary principle is squarely applicable in the context of the present case. It was expected that the Respondent Nos.1 and 2, should take precaution to avoid such mishap. They did not take adequate precaution to avoid the same. The Sugar Factory was found to have discharged untreated water in the Nulla and subsequently it was being discharged in a well. The water analysis reports of the water samples collected during the relevant period are also indicative of the fact that the water found in the area was unfit for human use, agricultural use or for any other purpose. It is, no doubt, true that recently the Sugar Factory has improved the system and the effluent discharge being done scientifically. It also appears that certain incorrect reporting was done in the newspapers, however, that is not of much significance. Be that may as it is, fact remains that due to discharge of untreated effluent in the land owned by Applicant No.1–Sukdeo, at least for some period, may be of a year or so, his land became uncultivable. So also, is quite explicit that due to bursting of pipeline, running underneath the land of Applicant No.2 – Sakharam, also suffered loss due to corroding of sugarcane, in or about area of 10-Rs. The Respondent Nos.1 and 2, failed to demonstrate that they observed precautionary principle. The loss caused to the Applicants cannot be attributed to 'act of God', i.e. "*vis major*". Obviously, it is due to improper care taken by the Respondent Nos. 1 and 2, particularly, for the purpose of arresting discharge of spent wash and discharge of untreated water from the Sugar Factory, that such damage is caused. Needless to say, both the Applicants

are entitled to compensation for loss sustained by them and the Respondent Nos. 1 and 2, also shall be liable to restore the damage caused to the lands and groundwater in the area.

As regards quantum of compensation, the Tribunal held that the claim made by the applicants was highly inflated and that the quantum of compensation has to be assessed, of course, on the basis of hypothesis and goods work, having regard to the market value of the crops, overhead charges and relevant factors in the rural area. Considering aspects, Tribunal deemed it proper to hold that the Applicant No.1, is entitled to receive compensation of Rs.2 lakh and the Applicant No.2, is entitled to receive compensation of Rs.1.5 lakh from the Respondent Nos. 1 and 2.

With regard to point no (iii), the Tribunal held that the Application was well within limitation.

With regard to (iv) the Tribunal observed that the sampling exercise conducted by the MPCB, was random and that no scientific approach was adopted to design a sampling network and then establish an appropriate sampling frequency, so that reliable statistic information can be derived from such data. It would have been more appropriate on the part of MPCB, that in view of regular complaints, a scientific database should have been developed, on the groundwater status in the area. In absence of such database, the Tribunal finds it difficult to suggest specific remedial measures and also, the costs associated with such remediation.

The Tribunal held that in the instant case, probability of further contamination of groundwater still persists, as the reports of MPCB indicate that treated industrial effluents of the Respondent-Industry, are even now not meeting the norms and the critical parameters of BoD and CoD and are still highly exceeding the standards. The Tribunal directed the MPCB to take suitable legal action in the instant case, within next two weeks. It also directed the MPCB, to take immediate measures to formulate the comprehensive and scientific action plan for remediation and improvement of the groundwater quality in the surrounding areas. The MPCB may conduct necessary assessment of groundwater pollution in the vicinity of the Respondent-Industry and develop necessary action plan for restitution and restoration of the groundwater quality within next six months. The MPCB shall direct the Respondent-Industry to execute such action plan and if the Industry is unwilling or unable to execute such action plan, then MPCB shall execute the same on its own, may be by taking the help of an Expert Agencies, if required. The entire restitution and restoration exercise, shall be completed maximum in next two years. The entire costs of developing of action plan and also execution thereof, shall be borne by the Respondent-Industry, which shall be recovered by the MPCB from the Respondent-Industry.

The Tribunal partly allowed the Application and prescribed the manner for it:

(I) The Application is partly allowed. (II) Applicant No.1- Sukdeo, shall recover compensation of Rs. 2,00,000/- (two lakhs) and ApplicantNo.2 Sakharam, shall recover compensation of Rs. 1,50,000/- from the Respondent Nos.1 and 2, along with interest @ 18% p.a. from the date of the Application till said amount is paid by from the Respondent Nos.1 and 2 to them, under Section 14 read with Section 15 of the NGT Act, 2010.

(III) The Respondent Nos.1 and 2, shall restore damaged land to its original position at their own costs and also shall restore the water quality of the well in the area surrounding the Sugar Factory.

(IV) The MPCB shall prepare necessary action plan for restitution and restoration of groundwater quality in the surrounding areas and execute the same as detailed in above

paragraphs.

(V) The progress report of restitution and restoration works, shall be submitted to the NGT, (WZ) Bench Pune, at the end of each quarter by the MPCB

(VI) The MPCB shall issue necessary directions to the Respondent No.1 to improve their pollution control systems in next six (6) months. In case, the Respondent No.1, fails to improve the pollution control system, the MPCB, shall take further action of revoking/refusal of consent and/or closure of Industry.

(VII) Respondents to bear costs.

The Goa Foundation
Vs
State of Goa Anr.

Application No.14 (THC) of 2013 and
Applications No.16 (THC) of 2013,

Judicial and Expert Members: Justice V.R. Kingaonkar, Dr. AjayA.Deshpande

Keywords: Identification of forests, Canopy density, Forest Conservation Act, non forestry purposes, dense forest cover

Applications disposed of

Date: 30 July 2014.

The Tribunal delivered a common Judgment, as both Applications, raised related and identical dispute regarding the issue of setting the criteria for identification of forests in the State of Goa and implementation thereof. Both these Applications, have been filed by Goa Foundation, which is a society registered under the Societies Registration Act, 1960. Application No.14 (THC) of 2013, challenged the criteria that are applied in Goa for identification of private forest, Application No.16 (THC) of 2013, prays for identification of degraded forest lands and early completion of identification of private forests. The Applications were filed for pursuing the issue of identification and demarcation of private forests in the State of Goa, as a result of the order of Supreme Court of India in Godavarman's case dated 12.12.1996. The Applicants submitted that as per this order, the State Governments were required to identify and demarcate the forest areas and degraded forest areas. The Applicants submitted that subsequent to the said order, the State Govt. of Goa, had set up two consecutive Expert Committees in 1997 and 2000 to identify the private forest in the State of Goa on private and revenue lands. These two Committees relied on guidelines prepared by Goa Forest department in 1991, prior to the order in Godavarman's case. These guidelines and criteria were issued as a result of compliance of the Judgment of High Tribunal of Bombay, Goa Bench, in the matter of *Shivanand Salvekar v. Tree Officer* (WP No.162 of 1987), declaring that the Forest (Conservation) Act, 1980, is also applied to the 'forests' on the private and revenue lands. The criteria adopted by these Committees to identify the areas as a ' forest' would be as follows: 75% of tree composition should be the forestry species, The area should be contiguous to the Govt. forest and if in isolation, the minimum area should be 5 Ha. The Applicants submitted that there is no basis for criteria related to canopy density, as the Canopy density should not be less than 0.4. several forest areas, which are presently degraded and having canopy density of less than 0.4, but which were originally dense or medium dense forests and which must accordingly be identified as forests. The Applicants submitted that such lands cannot be unilaterally diverted to non-forestry purpose, except with prior approval under the Forest (Conservation) Act, 1980. In fact, if the

criteria No.3, was accepted, there would be no way of complying the directions given in terms of reference No.2 of the Supreme Court order dated 12.12.1996. It is also submission of the Applicants that the Forest (Conservation) Act, 1980, is a Central Legislation and, therefore, any criteria used for defining any land as 'forest' or 'non-forest', would have to be approved by the Central Govt. i.e. the Respondent No.2, and there is no document on record to show these criteria are approved by the Central Govt.

The Applicants submit that as per the Forest Survey of India, the Respondent No.3, forest vegetation in the country falls specifically in three mutually inclusive canopy density classes: (1) Very dense forest (with crown density) 0.7 to 1. (2) Moderate dense forest (with crown density) 0.4 to 0.7, (3) Open forest (with crown density) 0.1 to 0.4 .Therefore, the argument of the Applicants that for the purpose of implementation of the Forest (Conservation) Act, all the Authorities including the Supreme Court of India, have clearly accepted that the areas of natural vegetation, having tree canopy density varying anywhere between 0.1 to 0.4, are to be considered as forest for the purpose of applicability of the Forest (Conservation) Act, 1980 and thereafter determination of NPV and CA. The Applicants further submit that the report of the Forest Survey of India, 2009, shows that the category of open forest (crown density of 0.1 to 0.4) is almost the same in extent, as both the categories of very dense forest and moderate dense forests are put together. The Applicants further submitted that criteria of minimum 5 Ha, area, is also defeating the purpose and the mandate of the Forest (Conservation) Act, 1980 and also, the order of the Supreme Court in Godavarman's case.

The applicants sought the following relief in Application No.14 (THC)/2013: **(a)** For an order quashing the criteria Nos.2 and 3 of the Forest guidelines/criteria and the order of the Respondent No.1, if any, approving the same.

The Applicant prayed for following prayers in the Application No.16 (THC)/2013:
(a) For an order directing the Govt. of Goa to complete the process of identification of private forest in the State, within a time bound period in terms of Apex Court's order dated 12.12.1996 and report compliance;
(b) For an order directing the Govt. of Goa to complete the process of notifying degraded forest within the State i.e. the areas which were earlier forest but stand degraded, denuded or cleared, in terms of Apex Court's order dated 12.12.1996 and report compliance.

The Forest Department, Govt. of Goa, has filed the affidavits from time to time and has opposed both the Applications. The forest department submitted that pursuant to the orders of the Supreme Court, dated 12.12.1996, the State Govt. had appointed Sawant Committee for the purpose of identification of forest lands in the State of Goa, which submitted its report and identified that total 13.0798 Ha of forest land has been diverted for various purposes. Respondents claimed that the expert committees have already considered all aspects of Apex Tribunal direction dated 12.12.96. The forest department further stated that the State Govt. has specifically constituted two (2) Committees; one for North Goa and another for South Goa, for the purpose of identification of balance areas of private forests in the State, which were not

covered by Sawant Committee and Karapurkar Committee.

The Respondents are categorizing the assets of forest cover in three (3) classes as under: (1) Very dense forest (with crown density) 0.7 to 1. (2) Moderate dense forest (with crown density) 0.4 to 0.7, (3) Open forest (with crown density) 0.1 to 0.4 The Respondents submitted the process of demarcating in the private forest on the site, as identified by Sawant and Karapurkar Committees. In this process, identification team would first visually assess fulfillment of the criteria in a prospective land, then confirm extent of forest expanse through the land surveyed, then verify the fulfillment of other criteria and then conclude its identification, i.e. whether it is a private forest or not? It is submission of the Respondents that the reports of the Forest Survey of India (FSI), indicate in general the vegetation spread/area, category wise, over a State and it can no way be construed as identification criteria for forest lands. The criteria adopted by FSI have not been approved either by the State or the Central Govt. and findings of the reports by FSI are used for suitable guidance in planning afforestation activities.

The following issues arose for adjudication of the Applications:

1. Whether the Tribunal has jurisdiction to consider and alter or newly fix the forest identification criteria?
2. Whether the forest identification criteria set out by the Govt. of Goa, needs modification, as prayed in the Applications?
3. Whether the Tribunal can issue directions for expediting forest identification and demarcation process, as prayed in the Applications?
4. Whether the Applications are by barred limitation?

The applicant relied upon the order of Supreme Court dated where in the Judgment relied upon and accepted recommendations of Kanchan Chopra Committee, which has considered 10% canopy density for diverting forest. It was also highlighted that the international organizations like the Food and Agricultural Organization (FAO), adopts the criteria of 0.5 Ha for identification of forest, whereas FSI adopts 1 Ha. She further submits that State of Goa has finalized the criteria of 5 Ha and 10% canopy density based on certain evaluation criteria, like not worthy, not meaningful, not viable etc. as reflected in the communication sent by State government to MoEF in 1991, which scientifically and rationally cannot be accepted. She further submits that the present criteria are finalized in 1991 by the Goa State, however, the order of the Supreme Court dated 12.12.1996, identifying forest and also identifying the areas, which were earlier forest but stand degraded, denuded or cleared. The applicants claim that the State of Goa should have formulated revised criteria for identification of forest based on specific directions of the Supreme Court in 1996. Moreover, the directions of 2008, are also very clear, regarding applicability of NPV for forest, having more than 0.1 canopy density and therefore, present criteria is not in compliance with the directions of the Supreme Court and there is need that this Tribunal shall direct the State Government to adopt criteria for forest identification of more than 0.1 canopy density and minimum area of 1Ha.

The respondents submitted that the State Government had formed two Expert Committees, namely Sawant and karapurkar committee's, to identify private forest areas in compliance of the orders of the Apex Tribunal in case of TN Godavarman vs. Union of India. These Committees adopted and relied upon the state specific criteria for identification of forest that was evolved, in 1991, based on scientific inputs and socio-economic and topographical considerations that are unique to the State of Goa. The Apex Tribunal examined both the Savant and Karapurkar Committee reports. It was contended that deciding the forest identification criteria is a policy decision within the domain of the State Government and the State Government has rightly finalized the criteria in May 1991, considering various aspects and there is no need to revisit this criteria.

The Tribunal held that subsequent to the orders of Supreme Court dated 12.12.1996, each State Govt. was mandated to form an Expert Committee for identification of forest areas. Perusal of orders of the Supreme Court shows that identification criteria, though specifically not enumerated, the Supreme Court enlisted the task assigned to such Expert Committees. To illustratively apply this methodology to obtain actual numerical values for different forest types for each bio-geographical zone of the country.
To determine on the basis of established principles of public finance who should pay the costs of restoration and/or compensation with respect to each category of values of forest. Which projects deserve to be exempted from payment of NPV, the judges have gone through the report of CEC in IA No.826 and IA No.566, regarding calculation of NPV, which has been relied up on by the Applicant for justifying its prayers. The report mentions that the Forest Survey of India while undertaking forest cover mapping depicts three (3) canopy density classes viz very dense, (greater than 70% crown density), moderately dense (40-70% crown density) and open (10-40% crown density). The report further mentions "Champion and Seth" have classified the Forest of India in 16 major groups. The CEC further grouped 16 major forest types in this ecological class depending upon their ecological functions, based on experience and the judgment of experts, mentioning that it is not very rigid. Though it can be gathered that CEC went in to the details of calculation of NPV payable on use of forest land, of various types for non-forest purposes and has also gone into details of calculation of NPV of different eco value/canopy density classes, the conclusive findings/ recommendations on identification criteria could not be produced before the Tribunal. The Supreme Court had noted in NPV judgment of 2008 that the expert committee report contains detailed study of the relevant factors. It was found that the forest cover maps depict mainly three (3) tree canopy density classes viz; very dense, moderately dense and open.

The Tribunal held that after examining the orders of the Supreme Court dated 12.12.1996, all the States have formed Expert Committees for identification of forest and have also submitted progress reports before the Apex Court. As mentioned earlier, State of Rajasthan, has approached the Supreme Court with separate identification criteria. The State of Madhya Pradesh and also State of Medhalaya, have also their separate forestidentification criteria, which reports have already been submitted before the Apex Court. The state's have evolved their own forest identification criteria and have already started the work in 1996-97 itself towards

compliance of directions of Supreme Court. All these facts are part of proceeding in T.N. Godavaraman case, which is still under consideration of the Apex court. The Tribunal held that the change in the criteria is not within our domain since the Apex Tribunal is seized of the matter in which same issue is under consideration. And, therefore, this Tribunal is not inclined to give its opinion or finding regarding modification or otherwise identification criteria for private forest to be adopted by Goa State. And therefore the Issue mentioned at 1 is answered in "Negative".

The second prayer of the Applicants is related to early completion of forest identification process. It has been brought on record that out of 256 Sq. Km. potential forest areas, work related to only 67 Sq Km has been completed by two Committees. Secondly, it is claimed that two new Committees are also trying to expedite the work. The Tribunal agreed with the contention of the Applicants that delay in identification and demarcation of forest, may be resulting into illegal cutting of the trees and also, diversion of land-use in some cases, though the State Government has put embargo on issuance of 'Sanad' in some cases, where the plots are not identified till this date. It may be possible that such delay in identification and demarcation may result into tree cutting and damage to the forest. The Supreme Court in "Indian Council for Environment Legal Action", 1996 (5) SCC 281, has emphasized implementation of laws. When law is to be implemented, it is utmost necessary that the provisions are effectively enforced in time bound manner. And therefore, the Issue No. 3 is answered in "Affirmative". The Tribunal directed the Chief Secretary of Goa, to call a meeting of all the concerned and work out time bound action plan for early completion of forest identification and demarcation in the State of Goa, within next six weeks and submit a time bound program to this Tribunal within eight (8) weeks from today. The Applications are accordingly disposed of, without costs, with liberty to Applicants to approach Supreme Court regarding the forest identification criteria, if so advised.

Godavari Magasvargiya Mastya Vyavsai Sahakari Sanstha Mayradit

Vs

The Ganga Sugar Energy Ltd. Ors

Original Application No. 30/2013(WZ)

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

Keywords: Industrial waste, Mannath lake, pollution, fishermen, Sugar factory

Application disposed of

Date: 30 July 2014

One Shri Vitthal Bhungase under Section 14, 15 and 17 of National Green Tribunal Act, 2010 seeking following reliefs, files the Application:

(I) Strict actions may kindly be taken against the Respondent No.1 and 2 for their roles and involvements in creating the environmental damage, supporting and assisting the illegal anti-environment Acts.
(II) Directions may kindly be given to the Respondent No.1 that releasing industrial wastes, molasses and chemical mixed water must be stopped, so that purity of Mazalgaon Right Canal and Mannath Lake shall be maintained.
(III) Directions may kindly be given to Respondent Nos.3 to 7 that necessary legal action from time to time against Respondent No.1 for discharging and spreading pollutant in the Mazalgaon Right Canal and Mannath lake may be taken as per law.
(IV) That fine may kindly be imposed on the Respondent No.1 and 2 for making pollution, supporting the anti-environmental actions at Mazalgaon Right Canal and Mannath Lake and nearby area.

(V) The Respondent No.1-Sugar Factory i.e. the Gangakhed Sugar and Energy Ltd., at Vijaynagar, Makhani, Taluka Gangakhed, Dist. Parbhani may kindly be directed that the Applicant and its members may be compensated for the loss sustained by them to
the tune of Rs.60 lacs and to constitute an expert committee to finalize the actual loss sustained by the Applicant and his community members due to pollution in Mannath Lake, Gangakhed Taluka District Parbhani.
(VI) Expenses for filing this Application and expense for legal consultation may also kindly be given to the Applicant from Respondents. The Respondent No.1-factory and Respondent No.2 has compelled the Applicant to approach this Tribunal and hence the Respondent may kindly be asked to pay compensation to the Applicant and his community.

(VII) The injunction may kindly be granted so that no person or organization shall throw waste or discharge industrial wastes into the Mazalgaon Right Canal and Mannath Lake. Directions may be given for strict implementation of such Rules framed.

The Application is of composite nature alleging continuous non-compliance of environmental norms by Respondent no.1-Industry and non- performance of obligations by the regulatory and enforcing agencies arrayed as Respondent Nos.3 to 7 on one hand and seeking environmental damages for pollution of "Mannat lake" and loss of water resources, fisheries and ecology due to discharge of pollutants by the Respondent No.1. The Applicant claims to be from fishermen community and living on the earnings of the fishing derived from the "Mannat lake". The Applicant is also a member of registered Co-operative Society working for the collective benefit and over all progress of the society members who are dependent on fishing activities carried out in Mannat lake as a source of their livelihood.

The Applicant has arrayed M/s. Gangakhed Sugar and Energy Ltd. who have its industrial plants in the vicinity as Respondent No.1 while Respondent No.2 is Chairman of Respondent No.1industry. Respondent No.3 is Environment Department, Government of Maharashtra while Respondent No.4 is Department of Fisheries, Govt. of Maharashtra. The Respondent No.5 is Collector of Parbhani and Respondent No.6 is MPCB, an authority that is expected to implement various environmental legislations in the State. Respondent No.7 is Irrigation Department and is in-charge of said Mannat lake and Mazalgaon Right Canal.

Considering the rival pleadings and also submissions of learned counsel for parties, following issues are framed for adjudication of the present Application:
a) Whether the Application is barred by limitation of time?
b) Whether the Mannat lake is polluted causing loss of fisheries and also resulting into undesirable water quality for fisheries and agricultural use?
c) Whether the Applicant has made out a case of loss of fisheries due to the deteriorated water quality of Mannat lake due to industrial discharges of Respondent No.1? If yes, whether the Respondent No.1 is liable to pay any restitution or compensation costs?

The Tribunal has heard the learned counsel for the parties. They have also carefully perused the documents placed on record. The counsel for the Applicant submits that the Application has been filed under Section 14 and 15 of National Green Tribunal Act, 2010, due to regular indiscriminate discharge of untreated effluent from Respondent No.1-Industry resulting into pollution of the canal and the Mannat Lake. It is his argument that every incident of untreated effluent released by the Industry is a separate cause of action. He also submits that there is a gross inaction by the Respondent Authorities who have failed to control such pollution. His claim is that though Applicant is not challenging the consent etc. given to the Industry, even by considering the first undisputed incident of untreated effluent discharge of June-July 2010, the Application is within the Limitation period of five years prescribed under Section 15(3) of National Green Tribunal Act.

The Counsel for Respondents have also raised objection that the Application is not supported with Affidavit nor the Applicant has produced any authority from the other claimants for the compensation. He further submits that though the society was dissolved and is under the administrator, the Applicant is misleading the Tribunal and the officials, by signing the papers as an office bearer of the said society. The Tribunal has taken a note of this and will deal with the issues subsequently.

The Tribunal is concerned with the issues raised by Counsel of Respondent Nos.1 and 2. The Counsel for the Applicant submits that the Applicant is unaware of the procedures and might have signed some papers as office (bearer of the Society, however, there is no intention to mislead or misguide the Tribunal. They have gone through the entire documents and failed to find any credible evidence about the damages to the fisheries due to the said incident. No doubt, the water quality was deteriorated; however, whether the fisheries stock was affected could not be established by the Applicant and by the Respondent No 4. The correspondence from Fisheries department is generally refereeing to the possible effects on fisheries in case of discharge of effluents by the Respondent-1. The fisheries department seems to have not assessed the effect on fisheries through scientific means, if they had seen such probability. In any case, in case of water pollution issues, they should have immediately informed and involved MPCB, who is the specialized organization for the necessary investigations. In the absence of such critical information, the Tribunal is not inclined to accept the claim made by the Applicant about damage to fisheries. The CIFE, which is specialized agency, also finds that presently the water quality of Mannat Lake is fit for fishery.

The Tribunal, therefore, wishes to segregate the culpability of the Respondent No.1due to the incident occurred in June-July 2010 into two parts, i.e. towards the restitution/restoration of environment and another is compensation. There is already a report placed on record by the Irrigation Department wherein they have raised a claim of Rs.16,33,000/-along with in 6% p.a. from date of the bill of demand till date of payment inas a cost of replenishment of the Water and also operation and maintenance charges which was incurred in the afterthought of the said incident. This cost can be taken as a cost of restoration of environment as admittedly, the Pollution of Mannat Lake is agreed even by the Respondent No.1and the release of water has been adopted as an emergency measure for remediation of lake water quality. This cost does not include the loss of further revenue from the beneficial use of such water for irrigation or for other purposes.

The Tribunal is not inclined to grant any compensation to the Applicant because he failed to establish loss to his income from fishery. Though the Tribunal expects the Respondent No.1 to assist the local fishermen community through Respondent 4, Fisheries Department, to improve their fishery through proper training, guidance and also provision of some infrastructure, as a part of CSR Activities.

Accordingly the Tribunal is inclined to partially allow the Application in following terms:

a) The Application is partly allowed.

b) The Respondent No.1 is directed to strictly comply the consented standard and Respondent No.6 shall ensure the compliances through regular monitoring. In case of violation, Respondent No.6 is at liberty to take stringent action, as deemed fit.

c) The Respondent No.1 shall pay the cost of replenishment of water in Mannat lake and cost of environment damages in the powers conferred upon this Tribunal vide Section 15(1) of National Green Tribunal Act.

d) The Respondent No.1-Industry shall also bear the costs of investigation by the Collector, Parbhani and also Central Industries of Fisheries Education (CIFE) Parbhani.

e) The Respondent No.1 is liable to pay Rs.5,00,000/-(Rs. Five lacks) towards the environment restitution costs to Collector, Parbhani who shall spend this amount for environment awareness initiative and also performances like plantation etc. f)The Respondent No.1 shall pay Rs. 1.0 lakhs to the Applicant as cost of litigation.

g) All these amounts shall be recovered by Collector, Parbhani from the amount of Rs. 50,00,000/-deposited by the Industry with him, and the balance amount may be refunded to the Respondent-1.Application is disposed of. No costs.

Shobha Phadanvis
Vs
State of Maharashtra Ors

Misc Application No. 50/2014 (WZ)
Misc Application No. 49/2014 (WZ)

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

Keywords: Forest clearance, cutting of trees, compliance

Application allowed and disposed of

Dated: 5thAugust, 2014

The Tribunal delivered a Judgment in the Application No. 135 (THC)/2013, Shobha Phadanavis Vs State of Maharashtra and Ors, on 13th January, 2014. This Tribunal was constrained to continue with directions regarding the specific permission to be obtained from the Tribunal, as per the interim orders issued by the High Court of Bombay, Nagpur Bench, dated 30th April, 2014 in WP No.1277 of 2000. The relevant paragraph of the said Judgment is reproduced for ready reference;

"Considering foregoing discussion, we are of the opinion that the Application will have to be partly allowed in order to protect Environment and ecology, as well as the Forests area. Consequently, we partly allow the Application and give following directions:

The the interim orders given by Hon'ble High Court of Bombay, Nagpur Bench shall continue to operate, as the state government has not submitted the necessary data and reports on the present status of forest and an updated action plan to increase the forest cover in the state to the desired level and also, comprehensive statement of the compliance of various directions of Apex court and High Court, issued in this regard. The Tribunal is required to continue the interim orders on Pre-cautionary Principle basis in the absence of above information and Tribunal is willing to reconsider the position if the state government approaches the Tribunal with necessary data, reports and action plan. The said interim orders shall be part of this final order."

Three applications were received seeking permission of the Tribunal for cutting of the trees for the projects, which have been given necessary Forest Clearance (FC) by the Govt. of India. The major concern of this Tribunal and also, the High Court while issuing such interim direction was to ensure the effective and time bound enforcement of various conditions stipulated in the FCs for its compliance. In all these cases, the Project Proponents (PP) have submitted necessary NPV and also, afforestation cost to the forest department and now it is incumbent on the forest department to ensure that necessary afforestation program is carried out at the selected locations, in order to ensure sustainable development. The tribunal had sought the undertaking from the Project Proponents to ensure compliance of such conditions and it cannot be the stand

of the Project Proponents that once they deposit NPV and afforestation costs to the forest department, their role in the compliance is over. In fact, the Project Proponents, need to develop their own environmental and social responsibility framework as already notified by the MoEF and shall regularly ensure the compliance of all the statutory environmental conditions by closely working with the forest officials to ensure the compliance. Needless to say, six months Compliance Report, as stipulated in the FC, envisages a time bound and effective compliance of the conditions, which need to be pro-actively ensured by the Project Proponents. The Project Proponents have given undertakings to this effect. The tribunal allowed the Misc. Applications i.e. Misc.Application No.30/2013, Misc. Application No.49/2014, Misc. Application No.50/2014, with the condition that the forest department and the respective Project Proponents shall file quarterly progress reports of the compliance for next two years to the Registrar, NGT (WZ) Bench, Pune. Application disposed of.

Braj Foundation
Vs
Govt. of U.P. Ors.

Original Application No. 278/2013

Misc Application No. 110/2014

Judicial and Expert Members: Justice Dr. P. Jyothimani, Justice M.S. Nambiar, Dr. G.K. Pandey, Dr. P.C. Mishra, Mr. Ranjan Chatterjee

Keywords: proposals, afforestation, contempt of court, forest land, Braj foundation, MoU

Application allowed and disposed of

Dated: 5thAugust, 2014

The Applicant is a registered trust constituted to preserve world heritage for humanity, seeking for a direction against the respondents to execute the Memorandum of Understanding (M.O.U) and to handover forest lands to the applicant trust for the development and afforestation of those sites on the mutually decided targets as can be achieved by dividing the financial load as per the capacity of the department and the applicant.According to the applicant trust, the Braj Foundation, heritage has suffered in recent decade which warrants immediate action.

The U.P. Forest Department in the advertisement and the applicant submitted an application on 01.07.2010 apart from the additional information of detailed work done, on 27.07.2010. It is stated that at the instance of the respondent Government as per the letter dated 04.01.2011 seeking information about the signing authority of the Braj Foundation, particulars were furnished apart from the required fees for MOU. It appears that there has been some reminder from the respondent Government on 02.02.2011 based on which certain clarification were made by the applicant on 28.02.2012. It is the case of the applicant that the respondent has communicated on 05.03.2012 informing that the applicant has been shortlisted for the afforestation of the forest area. It is also the case of the applicant that in response to certain letters from the respondent, the applicant has informed that the signing authority on behalf of the applicant is Mr. Rajneesh Kapur and on behalf of the sponsoring party the agreement shall be signed by an executive of HR-CSR Department. A copy of Site plan was also stated to have been submitted assuring the respondent that if empanelled, the applicant shall convert the entire barren forest area into lush green forest. After seeking permission from the Department of Forest, U.P. and obtaining clarifications from the applicant, it appears that the applicant has deposited a sum of Rs. 6000 towards the processing fees. It is the case of the applicant that the Principal Chief Conservator of Forests has written a letter on 09.07.2012 to the Principal

Secretary of Forests, stating that it is the State government, which alone can enter such M O U. The special Secretary of Forest, Government of U.P in the letter dated 26.10.2013 addressed to the Secretary, Ministry of Environment and Forest, Government of India is stated to have informed that the applicant foundation has been selected for the plantation work in Mathura District. However, no further action was taken by the respondent state government to permit the applicant to proceed with the work. It was due to the delaying tactics of the respondents, not only the afforestation of the Vrindavan area stood neglected but also the efforts of NGO's like the applicant have been discouraged.

The applicants accused the respondents of conduct that amounts to neglect of taking care for the ecological balance, to protect and improve the environment and to safeguard the forest and wildlife and in spite of the fact that by a transparent method the applicant has been selected for the afforestation purposes, the respondent State failed to act and thus the applicant has no other remedy than filing the present application.

Responding to this, the State of Haryana, stated that the area of Braj development is not within the territory of State of Haryana. State of Uttar Pradesh namely respondent no 1, 3 and 4 submitted that the State Government had initiated process to implement the guidelines issued by the Ministry of Environment and Forest dated 07.06.1999 for participation of private Sector through involvement of NGO's and Forest Department in afforestation. Pursuant to the advertisement, about 68 proposals were received by the department and on scrutiny it was found that none of the 68 proposals were eligible. In so far as it related to Braj Foundation, as against the requirement of 5 years of registration as NGO it was only having 3.5 years. Since all the proposals were found to be ineligible, expression of interest was issued again, pursuant to which 58 proposals were received and the applicant. The State Government contended that no tripartite agreement will have any authority of law unless and until it precedes the sanction by the State/Central Government who are the authorities under the Forest Conservation Act and merely by making application to the State Government, an NGO cannot claim any right to carry on afforestation work in the Government land.

The State Government also contended that there is no enforceable contractual obligation on the part of the Government. It was also stated that in any event, it is not open to any private Organization or agency to claim as a matter of right to take possession of the Government land in the guise of making development or afforestation. It is also stated that the Forest Department, Uttar Pradesh Government itself has taken massive efforts in undertaking afforestation and soil and moisture conservation and formulating a composite development plan stated to have already been started. About 22,300 saplings of various local species are stated to have been planted by the Government already. Apart from installation of new irrigation work, it is also stated that the Department itself has professionally trained manpower, technical know-how and funds for afforestation. Owing to the availability of adequate funds, the Government is thinking in terms of dropping involvement of NGO's in the afforestation process. It is also stated that by allowing the third parties to do the developmental work, there is a possibility of illegal encroachment and mining of lands which the Government desires

not to encourage.The government contended that the government as a matter of policy has decided not to give any of the portion of Mathura and Vrindavan to any private individual or any NGO and itself intends to prepare a scheme for maintaining and beautifying Mathura and lands in Vrindavan. The Government submitted a policy decision taken by the government not to involve any private individual in beautifying Vrindavan.

The Government of U.P. has issued a public notification on 26/06/2010 inviting proposals from NGOs for carrying out afforestation work in U.P. The applicant applied to the Government on 1/7/2010 and the application is still pending. In the mean time the Government appears to have taken a decision that the beautification of Mathura including Vrindavan will be taken up by the Government itself, as the Government has sufficient funds. An MOU was entered into by one Sri K. Raja Mohan, Divisional Director, Social Forestry Division, Mathura of the Forest Dept of the Government of U.P. on one hand, the applicant trust as a second party and N.T.P.C. But it is not known as to under what authority the Divisional Forest Officer of the Forest Dept has become a party in the said MOU. However, in as much as the Govt. has issued a public notification as stated above on 26/02/2010 and the applicant has also applied pursuant to that, in effect the MOU has become insignificant.

The court held that the MOU dated 07/03/2008 has no legal sanction. The signature of the officer of the Government does not contain any official seal. The court held that the applicant trust has made application on 01/07/2010. This application is based on the public advertisement of the Forest Department dated 26/06/2010 inviting proposals and therefore it can be held that the notification of the Government is 'An Invitation to Treat'. The application of the applicant dated 1/10/2010 is an offer made by the applicant, which is yet to be accepted by the Government to make it as an agreement enforceable by law. Even otherwise, the applicant trust cannot claim any right to carry out the work by taking possession of the Government lands. Therefore on the face of it there is no concluded contract between the parties so as to enable the applicant to insist the Government to follow. Whether the conduct of the officials of the state government would amount to implied consent or not is again not for this Tribunal to adjudicate. It is for the applicant to work out his remedy in the manner known to law. The court held that once the state Government that is the authority, has taken a decision as a matter of policy not to involve any private individuals, it is not for this Tribunal to give any contrary directions. It is so even in respect of NGOs like that of the applicant which is no doubt a reputed organization consisting of eminent persons. Therefore viewed from any angle, the applicant trust is not entitled for any remedy asked for in the main application. For these reasons the main application deserves to be dismissed.

The Tribunal then addressed the issue of U.P. Government for an alleged contempt. As narrated in the beginning of this judgment, the Government of U.P. which was stated to have decided to formulate a comprehensive scheme for beautifying the Braj area has taken some time to produce the said scheme and policy document before the Tribunal. The Tribunal concluded that there was no deliberate violation so as to initiate contempt proceedings against the officials of the U.P govt.

The Tribunal said that the National Green Tribunal Act 2010 under which this Tribunal is created, itself was enacted by the Parliament of India to give effect to the true spirit of the terms of Article 253 of the Constitution. The U.N. Conference on Human Environment held at Stockholm in which India was a participating country, it was decided to call upon the member States of the U.N. not only to take appropriate steps for protection and improvement of the human environment, but in a subsequent conference held at Rio de Janeiro, on Environment and Development in June 1992 in which also India was a participant by way of a resolution all member States were called upon to provide effective access to judicial and administrative proceeding including redressal and remedy apart from developing national laws regarding liability and the compensation for the victims of pollution and other Environmental damages. The National Green Tribunal is distinct from other tribunals either created as per the provisions of the Constitution of India or otherwise. It is a constitutional creature with a specific purpose on the basis of certain principles like sustainable development, precautionary principle, and polluter pay principle. The NGT, which proceeds to adjudicate the disputes, which involve substantial questions relating to environment, consists of Expert Members from various fields connected with environment apart from Judicial Members selected by a committee constituted as per the Act with its Chairperson who is either a sitting or a Retired Judge of the Supreme Court of India. It was held that this Tribunal has inherent power of not only enforcing its orders but also treating with any person who either disobeys or violates its orders. Even otherwise the NGT Act itself confers enormous power on the Tribunal to deal with any person who fails to comply with the order or award either by punishing with imprisonment up to 3 years or to impose a fine up-to 10 Crores under Section 26 While such powers are given in the Act itself one need not traverse to any other statute like Contempt of Courts Act. Section 26 of the NGT Act empowers the Tribunal to deal with any person who disobeys its order. However in the present case prima facie, the Respondent U.P. Government has not committed any disobedience of our order.

With reference to the application filed under Contempt of court Act, the court held that under the provisions of the National Green Tribunal Act there is absolutely nothing to presume that the National Green Tribunal is either subordinate to any High Court or under the powers of superintendence of any High Court. In fact under the Act all the awards/decisions/orders are appealable to the Honorable Supreme Court of India u/s. 22 on the grounds available under section 100 Code of Civil Procedure 1908, like the second appeal provision which only relates to the substantial questions of law. Therefore the decision of the Tribunal is subject to regular appeal to the Supreme Court. Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to the Order 39 Rule 2-A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A Parliamentary statute indisputably can create a tribunal and might say that noncompliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess to execute

their own order. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary orderhas also the power to implement its order. Further, the Act that is self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the Tribunal all powers in order to make its order effective."

The court made certain observations regarding the management scheme for eco- restoration of Mathura and said that it would have been appreciable if such scheme was already implemented. The court reiterated that the entire contents of the scheme are really scientific and would be fascinating and fruitful if it is implemented in true spirit by the implementing agency, namely the Social Forestry Division, Mathura, as it is seen in the scheme itself. The total outlay of the management scheme is stated to be Rs.95542.80/- thousands with the goal of the scheme as "Ecological Restoration through Removal of Invasive Species and Reestablishment of appropriate native plant communities, offering assistance in utilizing the opportunities extended for ravine reclamation through improved vegetative cover supported by appropriate soil and water conservation measures". The project aims to strengthen the eco-restoration to improve the governance of natural resources. The scheme also contains the different density of forest blocks in Mathura apart from soil condition, wildlife- census, financial estimate etc. The Government of U. P., Haryana and Rajasthan shall also take steps to preserve the Parikrama path apart from restricting the growth of buildings and develop large number of native trees and plantations on both sides of the Parikrama passage. The Government of U.P., Haryana and Rajasthan were directed to declare both sides of at least 100 Mts, all along Braj Parikrama route as 'No Development Zone' where no new Ashrams, Hotels, Buildings and Industrial Units will be permitted except shelters for pilgrims to protect them from the rains, scorching sun and cold weather expeditiously and in any event not more than nine months. The shelters may include rest rooms & refreshment facilities. The drinking water, medical facilities shall also be made available to the pilgrims. The Application is allowed and disposed of.

Murli Manohar Sharma
Vs
Union of India Ors.

Misc Application No. 73/2013

Judicial and Expert Members: Justice Dr.P.Jyothimani, Dr. P.C.Mishra

Keywords: Baitarani River, flow of river, Drawing of water, Pelletization, Kanupur Major Irrigation project, Anandapur Irrigation Barrage

Application is dismissed

Dated: 5thAugust, 2014

The applicant filed the application, praying for a declaration that the changing of natural flow and course of Baitarani River by respondents is illegal with a further direction to the State Govt. to ensure that any one including the said respondents does not obstruct the natural flow of water in the above-said river. The applicant also contended that that the water of Baitarani is required for various projects like the Kanupur Major Irrigation project for irrigation of 48000 acres of lands, Anandapur Irrigation Barrage to irrigate 150,000 acres of lands in the north Odisha coastal areas, many minor irrigation projects, domestic water supplies to 8 urban complexes apart from many water-based industries and that the 4th respondent ,M/S Baitarani River pellets Ltd. proposed to construct 4 .0 MTPA iron ore beneficiation plant at Tanto village and a tailing dam at Nalda in Barbil Tahsil of Keonjhar District.

The applicant questioned the rights given to the said respondents on various grounds including the following: i) that the drawing of such water will affect its natural flow and affect the steady supply of water to the villagers ii) that the conduct of respondents 4 & 5 in laying pipelines even before grant of permission is illegal, iii) that by excess drawing of water, there is a possibility alteration of the natural flow of the river water iv) that the state government has failed to adhere to its water policy v) that there was no consultation the Baitarani RBO for conflict resolution vi) that the common heritage of the people was ignored and that it involves public interest.

The MoEF stated that the project proponent in accordance with the EIA Notification 2006 had prepared the EIA report in respect of the 4th respondent. It is also stated that the permission for drawal of water is granted by the Department of Water Resources of the State Government. The MoEF, states that Environmental Clearance was granted to the 4th respondent imposing certain specific conditions. The MoEF is also monitoring the 4th respondent through its Regional Office and in case of any violation action under Environment Protection Act 1986 will be initiated. It is also stated by the 1st respondent that as per conditions of clearance, if there is a

proposal for diversion of forestland, necessary permission must be obtained under the Forest (Conservation) Act 1980. As the environment clearance in this case has been granted as early as on 19-02-2009, which is much before the coming in to force of the National Green Tribunal Act 2010 which is effective from 18-10-2010, the issue can not be raised before this Tribunal.

State of Odisha, stated that the procedure for allocation of water has been strictly followed as laid down by the Odisha Irrigation (Amendment) Rules 2010. The State Govt denied the allegation that it has failed to adhere to the concept of water-plan. It is stated that action is being taken for effective, efficient, equitable and sustainable management of water resources of the State.

The District Collector denied the allegation raised by the applicant and adopting the reply filed by the State Government and admitted that the fourth respondent was directed to stop the laying of slurry pipelines and the construction work of beneficiation plant over non-forest land until final order is obtained under the Forest (Conservation) Act.

The fourth respondent - project proponent stated that the proposal of the project to process iron-ore fines, which are low grade iron ore fines which otherwise cannot be used in the steel industry , can be converted to high grade concentrate and used only for pelletization for further use in the steel making process. The project envisage use of unusable materials into usable products with the benefits of better utilization of mineral resources in India and facilitate mineral conservation, reduce high grade iron-ore mining which benefits the environment and that it reduces environmental impact.

The Fourth respondent also raised an objection about the maintainability of the application and claimed that the order challenged by the applicant in so far as it relates to the fourth respondent dated 11.02.2009, which is prior to the coming into force of the National Green Tribunal 2010. Further the issues involved do not pertain to any of the Statutes

After considering the submissions of the both the sides, the following issues were formulated by the court:
A. Whether the applicant is entitled for the relief of setting aside the order of the respondent no. 2 dated 11-02-2009 and other prayers made by him?
B. Whether the Original Application is maintainable?
C. Whether the application for amendment of the Original Application can be entertained?

The three issues being interconnected were addressed together. The court said that the relief claimed by the applicant not only relates to the maintenance of the natural flow of River Baitarani but also challenging the letter of the 2nd respondent permitting withdrawal of water by the 4th respondent project proponent from Baitarani River to be used for the project of the iron ore beneficiation plant. It is clear that the State Government of Odisha has passed the said order of permission. Clause no. 8 of the impugned order makes it abundantly clear that the said order has been passed as per the powers conferred on the State under 'Orissa Irrigation Act 1959

and Rules 1961.The said clause reads as follows:
8. The drawal of water is in accordance with the provision of Orissa Irrigation Acts 1959 and Rules, 1961 and amendments made from time to time.' Therefore it is crystal clear from the very contents of the order impugned that ,the order challenged herein is not one passed under any one of the seven Acts enumerated in the Schedule 1 of the National Green Tribunal Act 2010. The court held that in the light of Section 14 of the NGT Act, which has created this Tribunal, restricting its jurisdiction only in respect of certain Acts, and they have no jurisdiction in the matter. But the next question is in the light of the objects of the Act, which is very wide as stated in the Preamble as- 'An Act to provide for establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.' Can this Tribunal act as a passive spectator, when a complaint is made that natural flow of running water in a river is being illegally directed, especially when The Water (Prevention and Control of Pollution) Act 1974, in its Preamble uses the word 'restoring of wholesomeness of water', as the object? The answer in our view is in the negative. But on the facts of this case, it is the categorical stand of the MoEF in its reply that it has not only given environment clearance to the project of the 4th respondent but there are no complaint from any one about the breach of conditions by the project proponent. Moreover, the impugned order itself has made sufficient safeguards saying, 'The Industry will not disturb the normal flow of water so that riparian rights in the down stream will be affected and the industry shall have no claim on that account.' Therefore, it is always open to the applicant or any other person to obtain adequate remedy. There is one other issue, as submitted by the learned counsel for the 4th respondent namely, the order impugned is dated 11-02-2009, which is before the NGT Act came in to existence which is on 18-10-2010 and on this score the application can not be entertained. Even otherwise, there is a question of limitation. An order passed in 2009 cannot be allowed to be questioned in 2012. Apart from the fact that this Tribunal has no jurisdiction, even as per the NGT Act the Tribunal can entertain only if an application is made within six months from the date of cause of action. However, in the event of sufficient cause shown by the applicant that he has been prevented for sufficient reasons to approach the Tribunal, a further period of sixty days can be condoned. Beyond that period the Tribunal itself has no powers to entertain any application for any reason, which is a settled law. That is also the purport of the proviso to section 14(3) which states: 'Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.'

As held by the Supreme Court in *N.C. Dhoundial Vs Union of India and others,* in the context of the jurisdiction of National Human Rights Commission, under the Protection of Human Rights Act, the period of limitation that is basically procedural in nature, it can also operate as fetters of jurisdiction.

The court said that they are unable to accept the contention of the learned counsel for the

applicant, except observing that it shall be the duty of the project proponent to scrupulously follow the conditions contemplated under the order of the 2nd respondent dated 11-02-2009 as subsequently extended as well as the conditions laid down in the environment clearance granted by the MoEF dated 19-02-2009. The court concluded that the main application is not maintainable and so the amendment application is also not maintainable and hence liable to be dismissed. The court held that if the applicant desires to challenge the Forest Clearance granted to the 4th respondent, the same has to be by a different process even if it is in the same forum. An appeal under the NGT Act is different from an application. An appeal and an application can be heard together, if the subject matter is the same. An application may even be converted to an Appeal in the interest of rendering substantial justice. Here, the case of the applicant cannot come anywhere near the said concepts. The applicant can not disown knowledge about this project from 2009, especially when there are records to show that his own brother was involved in a criminal case of riot in place of the project proponent and F I R has also been registered. The tribunal dismissed both the Original Application No. 60 of 2012 and M.A .No 73 of 2013. As the main application and amendment application are dismissed, M.A.No. 229 of 2012 and M.A.No.13 of 2013 filed by the project proponent is dismissed as nothing survives.

Shankar Raghunath Jog
Vs
M/s. S. Kantilal Co. Pvt. Ltd.

Original Application No. 15/2013(THC)(WZ)

Original Application No. 24/2013(WZ)

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

Keywords: Iron ore mine, Project-life, Mining, Environmental Impact Assessment, Environmental Clearance

Application dismissed

Dated: 6thAugust, 2014

Originally the P.I.L. No.6 of 2012 was filed in the High Court of Bombay and Goa by Applicant-Shankar Raghunath Jog seeking following reliefs- Writ of Mandamus quashing the environmental clearances given to Molhem Concramoli Iron Ore Mine and to Melca Dongor Iron Ore Mine and Writ of Mandamus requiring the Respondent No.2 to restrain any mining activities in the concerned mines after the quashing of the environmental clearances. The High Court of Bombay and Goa transferred the case to the Tribunal.

Molhem Concramoli Iron Ore Mine and Melca Dongor Iron Ore Mine were granted Environment Clearances on September 29th, 2008 and October 29th, 2008 and both were challenged before the High Court after considerable delay of about three (3) years or more and as such, the question of Limitation was raised by the Project Proponents.

The Applicant sought relief on the following grounds:

(a) The MoEF failed to consider project life of the mines which is a requirement under EIA Notification, 2006.
(b) The MoEF failed to properly conduct the environment impact, nor the consultation with locally affected people was undertaken.

The Respondent sought dismissal of the Application on account of latches and delay, however the court said that it finds it difficult to dismiss the Application on ground of latches and delay in as much as the High Court, Bench at Goa did not dismiss the Writ Petition on such a ground.

The issues involved in the Application are as under:

1) Whether in the facts and circumstances of the present case, the "project life" of a mine must be determined and considered under the EIA Notification, 2006 before extension of lease

period or granting expansion of the lease for mining?

2) Whether in the facts and circumstances of the present case, the MoEF failed to conduct Environment Impact Assessment and public consultation process while granting the EC in question to the extension of lease period under the EC issued in favour of Respondent No.1 and 2 which is/are under challenge? If yes, whether the impugned ECs are liable to be struck down?

The Applicant argued that the concept of "project life" is totally different from concept of "lease life" and while granting extension of lease or while granting new lease, the project life has to be assessed. He would submit that the Environment Impact Assessment ought to be undertaken in order to determine "project life of the lease". He contended that indiscriminate lease period cannot be fixed while granting leases by the MoEF in respect of mines. He would further submit that the Expert Appraisal Committee must look into nature of the mine, life of the mine, environment damage which is likely to be caused due to extraction of the mined material and on basis of such assessment, the "project life" shall be determined. It was contended that fresh mining leases after 2007 must be granted EC only on basis of the assessment of "project life".

The court referred to to *Dictum* of the Supreme Court in case of "***Tarkeshwar Sio Thakur Jiu Vrs. Bar DassDey 8 and Co. and Ors., 1979 S.C.C.(3) 106***". In the given case, it has been held that Section 3(d) of the Mines and Minerals (Regulation and Development) Act, 1957 is of wide amplitude and that term "Mining Operation" is spacious enough to comprehend every activity by which the mineral extracted or obtained irrespective of whether such activity is carried out on surface or in the bowels of the earth". So also in case of "***Bharat Coking Coal Ltd. Vrs. State of Bihar, 1990 S.C.C. (4) 557***", it is held that definition of "Mines" includes even mere usage of equipment, goods, trucks etc. for cutting soil.

Thus, "winning activity" whether for the purpose of business or not would amount to "Mining Operation". The court held that in case of such "Mining Activity", of superficial nature or the "Mining Activity" for which there may not be any particular lease period fixed nor "life of the lease" is determinable. Yet it would be regarded as "Mining Activity". Secondly, a lessee may be interested in short-term lease though the stock of the Mineral material is quite huge. In such a case, the Appraisal Committee may not determine the life of the mine when it is unnecessary to do so.

Next the Applicant contended that Rule 24(a) of the Mineral Concession Rule as well as para (a) of the EIA Notification, 2006. He would submit that role of the Appraisal Committee is to look into nature of the mine in order to consider life of the mine with a view to see that lease period does not go beyond life of the mine nor it allows the lessee to extract everything available from the mine and leave only earth/soil at the place.

The court concluded that it would not be proper to hold that the MoEF failed to consider "project life" of the mines which is requirement under the EIA Notification, 2006. Nor this Tribunal can introduce such type of criteria for future assessment in the process of EAC. The court said that they have no substantial reason to hold that MoEF failed to conduct Public Consultation with locality affected people in the present case while granting extension of the lease period in favour of the Respondent No.1 and Respondent No.2. It is difficult to mandate

that the EAC must determine "project life" and must make it *co-terminus* with period of extension of the lease period as and when any extension of lease is sought. The court said that they can not transgress into the domain of the Expert Appraisal Committee's work by introducing a new concept of assigning task to determine "project life" before submitting any report in respect of grant of lease or renewal of lease or rejection of the proposal for lease to the Regulatory Authority. In our opinion, it must be left to the discretion of the said committee.

The court refused to grant affirmative relief in favour of the Applicant. Application is accordingly dismissed. The amount of costs deposited by the Applicant (Rs.25,000/-) to be refunded to him.

BL Mishra
Vs
Collector Chhatarpur

Original Application No. 22/2013
(CZ07-08-2014)

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

Keywords: encroachment, No Construction Zone, FTL, Kishore Sagar lake, Pollution

Application allowed and disposed of

Dated: 6thAugust, 2014

The Application was filed by the Applicant alleging that in the Kishore Sagar Lake, Chhattarpur, MP constructions both, residential and commercial by way of encroachment have been made within the lake and the District Administration and local authorities are allowing constructions to come up and thereby the lake is getting polluted and the water body itself has shrunk inside as a result of the above. Notices were issued taking note of the fact that as a result of the encroachment not only the lake is shrinking in size but also as a result of the construction of residential and commercial buildings, pollution was being caused to the water body. Names of 10 applicants who submitted applications for being allowed to intervene as their shops which have been constructed by the Municipal Council, Chhattarpur on the embankment of the Kishore Sagar Lake, were also alleged to be falling within the boundary of the lake and the lake area, were allowed to intervene in the matter. The respondents were directed to submit maps indicating the area and boundary of the lake to determine the extent of encroachment and as a result of such encroachment the pollution being caused within the lake area. Subsequently, the Director, Directorate of Town and Country Planning submitted a reply and an official map showing the extent of the lake as well as the No Construction Zone demarcated.

Since the identification of the area with the FTL of the lake and the No Construction Zone has been done in the maps, the court directed that any construction falling within the 9 metres zone and constructed after 1978 shall be ordered to be removed / demolished and cost incurred may be recovered from the encroachers after issuing notices by the concerned authorities/District Collector. Likewise, any construction within the 10 metres zone after 2008 shall also be liable to be removed and the District Collector shall identify such constructions or get the same identified from the competent officers with the direction to remove the same. As such no action is required to be taken against the shop owners to whom shops were allotted by the Municipal Council, Chhattarpur. Since, the application was filed on the basis of the report submitted by the SDM, Chhattarpur on 14.06.2011, the court held the matter to stand concluded and action is required to be taken only on the basis of the area of lake identified and notified by such notification. So far as the problem with regard to the pollution in the waterbody, the municipal

authorities in consultation with the Regional Office of the MP Pollution Control Board shall ensure that no untreated sewage from the surrounding areas is allowed to flow into the Kishore Sagar Lake in Chhattarpur. The Collector shall be the overall incharge and responsible for ensuring that suitable measures are adopted by the municipal authorities to check the aforesaid pollution in the lake and whatever measures are required to be taken, shall be taken and completed within a period of six months, if not already taken. If any machinery/equipment which has already been installed but not functional, shall be made operational and functional so that no polluted water or sewage is allowed to accumulate and let into the lake. At the same time, the municipal authorities shall also ensure that no municipal solid waste or domestic waste is allowed to enter or thrown into the lake so as to affect the quality of the water in the lake and no pollution is caused as a result thereof. The State Pollution Control Board shall ensure the regular monitoring of the quality of water and issue instructions to the local authorities for taking remedial steps wherever required. The District Administration and local authorities particularly municipality shall take steps to carry out afforestation around the lake, particularly in the No Construction Zone and also install permanent boundary pillars around the lake so that no further encroachment is made into the lake area and the lake area is protected for all times. The plantation with regard to creation of green belt between the FTL and 10 metres. No Construction Zone shall be carried out with species suitable to the site and the same shall be completed before the end of the monsoon season, 2014 with all measures to protect and ensure survival of trees so planted. Plantation shall be carried out in consultation with the local Forest officials.

Original Application No. 22/2013 stands disposed of. The pending Misc. Application Nos. 171/2014, 172/2014, 173/2014 and 174/2014 also accordingly stand disposed of.

NisargaAnr
Vs
Conservator of Forests Ors.

Original Application No. 19(THC)/2013(WZ)

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

Keywords: Property, Construction, Felling of Trees, Private Forest, Restoration

Application partly allowed and partly dismissed

Dated: 8 August 2014

The Applicants filed a Writ Petition High Court of Bombay, at Goa and the petition was transferred to this Tribunal. Applicant No.1 and Applicant No.2, are registered Societies. The first four Respondents are the State Authorities. The Respondent No.5 is the purchaser of part of land Survey No.156/1-B, of village Bethora and has developed the said property for commercial/residential purpose. The Respondent Nos.6 to 52, are the purchasers of the various plots of the said property.

The Applicants contend that is that Survey No.156/1-B of Bethora village was thickly forested and inaccessible by road and was contiguous to the forestland. In 2004, a new bypass road was completed through the forests of Ponda, which passes through the lands in village Bethora. Some of the trees were selectively felled. They made grievances to the forest department and by filing a Writ Petition No.334 of 2006, the Applicant No.2, sought demarcation of forests on the private lands. The High Court passed an interim order dated October 17th, 2006, in that matter, directing the Authorities not to issue conservation 'Sanad' for any private property with tree cover without approval of the forest department. The Applicant No.1, learnt that there was a large scale tree felling in Survey No.156/1-B, and that the forest department had carried out a panchanama at the spot. On the date of panchanama i.e. on 29th February, 2008, in all 120 trees, within area of 4Ha were found to have been illegally cut of species including Kinder, Matta and other forest species. There was no permission obtained prior to felling of the trees. Those trees were being felled with malafide intention to destroy the forest cover. The Applicant No.1, approached to the Chief Conservator of Forests with delegation of local villagers and requested him to form a Committee of forest officers to survey the plot to which he orally agreed. The Applicants came to know that the Respondent No.3 has granted the Developer conservation 'Sanad'. NOC issued by the Respondent No.1, and the conversation 'Sanad' are illegal and liable to be quashed, being contrary to the orders of the Supreme Court in the matter of ***T.N.GodavarmanThirumulkpadvs Union of India*** **(1997)2 SCC 267.** The Applicants, therefore, seek quashing of NOC as well as conversation 'Sanad'. They also seek restoration of land in question to its original status.

The Developer (Respondent No.5) denied that the land SurveyNo.156/1-B, is a 'Private Forest'. He further alleged that adjoining land Survey No.151/1A, had already been fully developed. He contended that he purchased part of Survey No.156/1-B, of village Bethora, and applied for sub-division of the property to the office of the Town Planner, Ponda. The Sarpanch of village Bethora, gave his NOC for causing sub-division of the said land. According to him, the plot of land purchased by him falls within 'Settlement Zone' and is not at all a part of 'private forest' and as such, could be developed for residential purpose. He asserted that as per his Application, the Collector, North Goa, issued conversion 'Sanad' in his favour for use of land to Non-Agricultural purpose in terms of Section 32 of the Goa Land Revenue Code, 1968. On these premises, he sought dismissal of the Application.
The following issues arose for determination:

1. Whether the Application is barred by limitation and as such liable to be dismissed?
2. Whether the disputed parcel of land bearing Survey No.156/1-B, of Bethora village (PondaTaluka) is a 'Private Forest'?
3. Whether the NOC issued by the Respondent No.1, and the conversion 'Sanad' issued by the Respondent No.4, in favour of Developer (Respondent No.5) are liable to be quashed, being illegal and untenable in the eye of Law, being contrary to the provisions of the Forest (Conservation) Act, 1980?
4. Whether the Developer (Respondent No.5), is liable to restore the land in question to its original position or for any compensatory relief, due to deforestation, without prior permission of the competent Authority for felling of trees standing in the land Survey No.156/1-B?

The court said that at the outset, the land is not recognized as 'private forest' in the Revenue Record and the Govt. of Goa appointed two Committees, namely; Sawant Committee and thereafter Dr. Karapurkar Committee, to identify 'private forests' in Goa in pursuance to the directions of the Supreme Court in "***T.N. Godavarman Thirumulkpadvs Union of India*".** Subsequently, the interim report of Sawant Committee, rejected Satellite Imaginary and Topo-sheets, as one of the criteria for identifying the 'forest', for the reason that it would at the best show natural green cover, the same cannot the court held that once criteria of Google Imaginary maps and Topo-sheets, is given descent burial by the second interim report of Sawant Committee, it would be unjust and improper to reapply and reconsider the same criteria for the present case. One cannot be oblivious of the fact that otherwise also the Google Imaginary impressions are likely to give incorrect information, because the presence of greencover may include presence of shrubs, natural plantations, crops, non-forestry species of trees so on and so forth. Neither Sawant Committee, nor Dr. Karapurkar Committee, has identified land survey No.156/1-B, as 'private forest'. There is hardly any evidence to show that the part of said land purchased by the Developer, is contiguous to the Govt. forests. As stated before, the said parcel of land is not recorded as 'private forest' in the revenue record. Thus, looked from any angle, it is difficult to say that the said land is a ''private forest'.

After relying on the arguments of the applicant, the court held that the conduct of Developer

shows that without obtaining permission for tree cutting a large number of trees The court however found no merit in the argument that the land in question, is a private forest, but was shown having density of less than 0.3, in order to suppress true facts.

Court held that it is manifest that the Developer got cleared part of the area without obtaining prior permission for felling of trees in his overzealous attempt to obtain NOC from the Forest Department. The Developer wanted to commence the development process as expeditiously as possible. His attempt was to make early profiting business. His acquittal from criminal charges, would not absolve him from civilliability/responsibilityand he would be liable for compensatory afforestation.

The court partly allowed the Application and partly dismissed the same as follows:

(I) The Application, as regards main prayers in respect of declaration and restoration of land, is dismissed.

(II) The Respondent No.5, (Developer), is directed to pay an amount of Rs.24,00,000/- for the purpose of afforestation, which shall be credited to the account of State Forest Department, within period of four weeks. If the Amount is not so credited then it be recovered with interest @ 18% P.A. from today till date of recovery and shall be utilized for afforestation purpose.

(III) The Chief Conservator of Forest shall give six monthly reports about the progress of afforestation work to this Tribunal.

(IV) The above amount shall be deposited by the Respondent No.5, in the office of Chief Conservator of Forests, State of Goa within period of four (4) weeks. In default of payment, all the properties of the Respondent No.5, shall be confiscated and sold in auction by the Collector, North Goa, and sale proceeds shall be deposited with the office of Conservator of Forests, as if, it is land revenue arrears.

(V) The Respondent No.5, shall pay Rs. 1,00,000/- (One lakh) as costs of litigation to the Applicants and shall bear his own costs.

Society for Environmental Protection Amravati
Vs
Union of India Ors.
Original Application No. 157(THC)/2013

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

Keywords: Thermal Power Plant, Amravati city, EC grant, EIA, public consultation, Ministry of Environment and Forests

Application disposed off

Dated: 8 August 2014

The Application was filed against the establishment of a coal based Thermal Power Plant Project (TPP), of the Respondent No.5, which allegedly would not only destroy environment of Amravati city but would also deprive farmers of Amravati district from irrigation facility, made available to them by the Respondent No.3, through Upper Wardha Dam. Ministry of Environment and Forests (MoEF), Govt. of India, is the Respondent No.1, the Irrigation Department, Govt. of Maharashtra is the Respondent No.2, while Vidarbha Irrigation Development Corporation (VIDC), is the Respondent No.3. Maharashtra Pollution Control Board (MPCB), which implements environmental regulations in the State, is the Respondent No.4. M/s Indiabull Power Ltd, who is developing the Thermal Power Plant, is the Respondent No.5.

The following were the prayers of the Applicant:

a) Issue a writ of certiorari, and/or any other appropriate writ, order or direction, directing the Respondents to immediately stop proceeding with proposed project of Power Plant at NandgaonPeth, Amravati.

b) It be held and declared that the Respondent No.2 should call the public opinion particularly farmers and residents of the vicinity and after hearing them, should reconsider the permission granted to the Respondent No.5 to start the power project at NandgaonPeth, Amravati.

The Respondent 5 relied on the Judgment of High Court dated 1 and 2 March, 2013, in Writ Petition Nos. 757 of 2011, and 758 of 2011 and PIL No.19 and 20 of 2011 that settled the issue of allocation of 87.6 MCM of water to the Respondent No.5 – Company by the Respondent Nos. 2 and 3, by holding that:

" 76. To sum up, then, our conclusions are as under :

(i) The impugned decision of the State Government and Vidharbha Irrigation Development Corporation

in February 2009 to allocate 87.60 MCM of water to the power plant of respondent No.5- Sofia Power Company Ltd (Now IndiabullsPower Limited) was not contrary to law or arbitrary or violative of the Governor's directives under Article 371(2)of the Constitution."
Respondent No.5 contended that the issue of allocation of water to the Respondent No.5, Company cannot be now challenged before this Tribunal, in view of principle of *Res Judicata* and principle analogues to it.

The Respondent No.5, submitted that based on permissions from various statutory Authorities, the Respondents have invested huge amount on the project development. It is was also brought to the notice of the court that EC granted was challenged before the National Environment Appellate Authority (NEAA) by the Society of Backlog Removal and Development, Amravati, by filing Appeal No.12 of 2009, on various grounds, including on the issue of possible environmental impact of the proposed power project. However, the Authority vide its order dated 22nd May, 2009, declined to admit the Appeal, and the said order has not been stayed or quashed and therefore holds good. It is, therefore, claimed by the Respondent-5 that EC granted to them has attained finality and cannot be challenged now before this Tribunal.

The court considered the following issues after considering rival pleadings following issues arise for adjudication:
(i) Whether the Application is within Limitation?
(ii) Whether the thermal power plant of the Respondent-5 is being operated as per the conditions of EC granted by MoEF and consent granted by MPCB? Whether there is any adverse impact of the thermal power plant in the surrounding areas as apprehended by the Applicant?
(iii)What is interpretation of Rule 7(III), regarding exemption of public hearing in the EIA Notification, 2006?

Issue (i) :
The court heldthat considering that the issues raised are of substantial nature related to Environment and also, the fact that this being the case which got transferred from the Hon'ble High Court by specific order, the Application shall be proceeded with. However, the Tribunal noted that the issue of allocation of water has already been settled by the Judgment of High Court. Hence, this Application is considered without going into the water allocation aspects raised in the petition.

Issue (ii):
Considering the records and discussions, though the MPCB has submitted the compliance of consent conditions by Respondent-5 industry for one unit, it is necessary that a comprehensive compliance monitoring needs to be done by the MoEF and MPCB, preferably on joint visit basis, to ensure compliance of EC/consent conditions in most effective manner, both on and off site. The Issue No.(ii) is, therefore, answered as partly affirmative subject to further verification of compliances.
Issue (iii):

Section 7 (i), (III), (i) of EIA Notification, 2006 reads as under:

*III. **Stage (3)** –Public Consultation – (1) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and category B-1 projects or activities shall undertake Public Consultation, except the following:- (a) xxxxxxxxxxxxxxx*

(b) all projects or activities located within industrial estate or parks [item 7(c) of the Schedule] approved by the concerned authorities, and which are not disallowed in such approvals.

(c) xxxxxxxxxxxxxxx

The concept of 'public hearing' in the Environmental Clearance, under the EIA Notification mandating 'obtaining of prior EC,' was first promulgated on 27th January, 1994 as amended in 1997, and underwent several amendments till 2004. The notification listed down thirty (30) odd industrial categories, which requiredprior EC. The EIA Notification, 1994, (amended till 2002), did not mandate industrial estates/areas, to obtain prior EC before same being established. The Legislature has given utmost importance to ascertain the public views in the entire EC procedure by making provision of public hearing and consultation before appraisal of specified development projects for grant of EC. Similarly, reverse flow of dissemination of information about grant of EC and the conditions stipulated therein, are described elaborately in the EIA Notification, 2006. The intention of legislature is very clear, which aims to improve public consultation before grant of EC and information dissemination about decision taken on grant of EC, which has resulted in increased focus on public hearing mechanism under the 2006 Notification. Clause of the relevant part (b), reads "*all projects or activities located within industrial estates or parks [Item 7(c) of the Schedule] approved by the concerned Authorities and which are not disallowed in such approval*." It is, therefore, necessary to interpret this particular category for clarity on the issue. The Tribunal is competent and authorized to deal with disputes related to "*substantial question relating to environment (including enforcement of any legal right relating to environment)*" to implementation of Acts listed in Schedule-I of NGT Act, 2010 and the EIA Notification squarely falls within domain of the scope of NGT as the same has been notified under Environment (Protection) Act, 1986, which is the Act listed in Schedule-I. The 'public hearing'/consultation is undisputedly a legal right endowed by the EIA Notification, 2006 to the people in the project area and also public at large. The Tribunal, therefore, will endeavor to settle this dispute on the requirement/exemption granted under Rule-7 (i)(III) (b) of the EIA Notification,2006.

The plain and proper reading of this clause brings focus on two components of the sentence, namely; "within industrial areas and parks [Item 7(c) of Schedule]" and "approved by the concerned Authorities".

The NGT, in the case of ***Wilfred J. Vs MoEF*** (Original Application No.74 of 2014) decided on July 17, 2014, has observed:

132......"*It is also a well-known rule of construction that a provision of a statute must be construed so as to give it a sensible meaning. Legislature expects the Courts to observe the maxim ut res magisvaleat quam pareat. The Supreme Court, in the case of **H.S. Vankani v. State of Gujarat**, (2010) 4 SCC 301, stated that "it is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd*

inconvenience or anomaly.

The court agreed to the stand taken by the MoEF *that "exemption from public consultation, as provided for under Para 7(i) III. Stage (3) (i)(b) of EIA Notification 2006, is only available to the projects or activities located within the industrial estate or parks which have EIA Notification 2006 as provided for under item 7(c) of the Schedule*". The 'concerned Authorities' for interpreting this Clause are already well defined in Regulation-2 of the Notification. This provision only exempts such projects located in Industrial area or park, which are already appraised on cumulative basis for their environmental impacts, for activity inside the entire industrial area/park.The court was of the view that public hearing can only be exempted for all the projects located within industrial estates and parks which have been granted necessary EC by the concerned Authorities specified under EIA 2006 notification and which are not disallowed in such approval. The court held that proposition shall be applicable with immediate effect, prospectively in view of the said projects, which have been granted EC being now protected by principle of 'fait accompli', and it would be difficult to make the entire process reversible. The MoEF shall issue immediate directions to all the concerned Authorities and also issue necessary orders in this context, bringing this Judgment, to the notice of all concerned.

The application was disposed off with the following directions by the court:

(I) We hold that "*exemption from public consultation, as provided for under Para 7(i) III. Stage (3) (i) (b) of EIA Notification 2006, is only available to the projects or activities located within the industrial estate or parks which have obtained environmental clearance under EIA Notification 2006 as provided for under item 7(c) of the Schedule*".

(II) The industries, which are being appraised as on today and hereafter, shall be appraised for Environmental Clearance based on the above criteria by the MoEF and respective SEIAA. This direction shall apply prospectively.

(III) The MPCB, shall take necessary action as mentioned in earlier paras, in view of its Expert Committee's report, which highlighted need of improvement in sampling and monitoring mechanism of the Board in future.

(IV) The MoEF shall conduct inspection of Respondent No.5 – industry in next three (3) months to ascertain comprehensive compliance of EC granted to the Respondent – Industry and in case of any non-compliance, suitable action be initiated. MoEF shall also ascertain cumulative impacts related to thermal power plants in the surrounding areas in this appraisal process. A status report including action taken, if any, shall be submitted to Tribunal in 3 months.

(V) The MoEF and MPCB shall regularly inspect the compliance at Respondent-5 industry, and are liberty to take suitable
action in case of non-compliance.

(VI) The Application is disposed of. No costs.

Neeraj Chourasiya
Vs
State of M.P. 4 Ors
Original Application No. 28/2014(CZ)

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

Keywords: Storm water, untreated sewage, Betwa River, Water supply, MPPCB

Application disposed of

Dated: 11thAugust, 2014

The application was filed by the Applicant regarding the storm water drain being constructed by the Municipal Council Vidisha in accordance with the Detailed Project Report (DPR) prepared by it and approved by the State Government. There was an apprehension that the storm water drain would be mis-utilised for carrying untreated sewage water upstream of the river Betwa which would cause serious health hazard since the drinking water supply (Water Works) site is located downstream of the point where the storm water drain is being constructed and is going to enter the river Betwa.

The MPPCB accepted the fact that the storm water drain, to some extent, may carry untreated sewage and as per the present DPR, there is no provision for construction of any sewage treatment plant for checking untreated water including the sewage from entering the river Betwa as the existing sewage treatment plant is on the other side of the river which would not be of any use so far as the present storm water drain, under construction, is concerned.

The court held that the project would require the reconsideration and re-examination so as to seek the opinion of the MPPCB regarding the apprehensions which have been raised by the Applicant more particularly of allowing inflow of untreated sewage into the storm water drain and thereby enter into the river Betwa upstream the site of the water supply for the city of Vidisha.

The court directed that provisions with regard to the Water (Prevention and Control of Pollution) Act, 1974 and more particularly provisions contained under Section 24, 25 and 26 are required to be looked into as also the requirement for setting up of the sewage treatment plant in the present case at the suitable point alongwith the storm water drain to prevent untreated sewage from entering the river Betwa at the upstream point before the drinking water is drawn from the river. The Municipal Council Vidisha/Respondent No. 5 was directed to resubmit its DPR to the Regional Office of the MPPCB at Bhopal and the MPPCB shall within four weeks examine the same with their suggestion in consultation with the Municipal Council for checking

the inflow of untreated sewage into the storm water drain and thereby into the river and also setting up of sewage treatment plant at a proper location.

The court directed that regular monitoring of the site and discharge from the plant of the Respondent No. 6 shall be carried out and Respondent No. 6 shall also take all necessary steps which are required for the operation of the said mechanism so that no effluent discharge without being treated is allowed to pollute the water as apprehended by the Applicant. The court also gave the applicant the liberty to approach the tribunal subsequently in this matter in case the Applicant at any point of time feels aggrieved by any action on the part of the Respondent No. 6.

Respondent No. 4, District Collector, Vidisha was directed to have the entire area inspected, monitor and remove all the encroachments and ensure that no unauthorised brick kiln is allowed to operate along the river Betwa and also ensure that in case there are any licences granted to such brick kilns, the terms and conditions of such licence are complied with. Such of the brick kilns which are unauthorized or do not have any valid licence shall be removed forthwith.
The application was disposed of. No order as to costs.

Sangli Zilla Sudhar Samiti
Vs
The Chief Secretary PWD State of Maharashtra

Original Application No. 73/2014(WZ)

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

Keywords: cutting of trees, widening of road

Application partly allowed

Dated: 12thAugust, 2014

The Applicant, being a social group of local residents seeked the following directions by way of the application-
A) Directions may be given to the Respondents not to cut down 124 fully grown-up trees by Respondents or through their agents, Servants, contractors or any authorized person on their behalf, without considering the optional plan of road expansion.
B) Directions may be given to the Respondents to revise the proposed plan of 6-lane wide road in between Pushpraj Chowk to Vishrambag Chowk on Sangli - Miraj Road and prepare new plan taking into consideration minimum fully grown up trees would have to be cut down while broadening the said road.
C) Directions may be given to the Respondents suggestions; objections and opinions of all the public including the Applicants may be invited while making new plan of the road widening in between Pushpraj Chowk to Vishrambag Chowk on Sangli – Miraj Road and then only final work of widening of the said road would be carried out.
D) Directions may kindly be issued to the Respondents to strictly follow the directions and guidelines issued by the High Court in PIL No. 93/2009.

It was alleged by them that the Respondents have undertaken work for expansion of a public road between Sangli and Miraj on the stretch of 1.6 km, and the Respondents are likely to cut a large number of trees, in all 124 in number, notwithstanding the fact that such huge felling of trees is unnecessary for the purpose of widening of that public road. The Applicant alleged that though several representations were made to the Authorities concerned, yet no prohibitory action was taken and work was continued illegally. According to the Applicant, work of widening of road between 'Pushpraj Chowk' to 'Vishrambaugh Chowk' in respect of proposed six (6) lane wide road as per the plan, may be executed appropriately by sacrificing minimum and fully grown trees, without cutting unnecessarily a large number of trees.
TheRespondents agreed to relook at the matter.

As per theMaharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, nothing in the section shall apply to felling of trees on or along the public roads undertaken by the Public Works Department (PWD) of the State or Central Government. In other words, felling of trees for public purpose that would be undertaken by the PWD, is exempted from applicability of provisions of Section 21(1) of the said Act, in view of proviso. The proviso commences with non-obstante Clause and as such, it is difficult to countenance the argument of the Applicant and hence, they court said thatthey are not inclined to consider the Application so as to give prohibitory directions.The court held that minimum felling of trees as required for the public works and that too covered by the proviso appended to Section 21 (1) of the aforesaid Act, will have to be permitted.

Under the circumstances stated above, the Application was partly allowed in terms of statement of the Executive Engineer, PWD as shown in the reply dated 11.8.2014, namely; only thirty-seven trees be removed and cut down for the purpose of execution of project in question and no further felling of trees will be undertaken. The Sub-Divisional Engineer of PWD, states that already four (4) trees have been felled down before project work has commenced and additional thirty-seven (37) trees are to be removed and identity of those trees will be pointed out before the work will commence.
PWD was directed to plant five trees in lieu of each tree (5:1), which is fell or cut along side the same road, if the open space is available, as far as possible, of the same specie and if it is not so possible of other good quality.
Application was partly allowed.

Paryavaran and Manv Sanrakshan Samiti
Vs
M/s Macker Rel Ventures Ors.

Original Application No. 153/2014(CZ)

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

Keywords: Environment Clearance, State Level Environment Impact Assessment Authority, Bhopal, Director of Town and Country Planning

Application disposed of

Dated: 13 August 2014

This application has been filed by the Applicant alleging that the Respondent No. 1 undertook construction of a residential complex at Village Katara, Tehsil Huzur, District Bhopal, MP. It was alleged that the construction has been going on and carried out by Respondent No. 1 without Environmental Clearance (EC) and it is essential on the part of Respondent No.1 to apply and obtain EC in accordance with the EIA Notification, 2006. The Tribunal issued notices to the Respondents.

The Respondent No. 1 has started construction without obtaining necessary EC in accordance with EIA, 2006 and after the matter is brought to their notice, the construction has been stopped. It has further been submitted that the Respondent No. 1 has approached State Level Environment Impact Assessment Authority (SEIAA) for grant of EC in the above matter for the said project. However, since for a considerable period of time SIEAA has not been constituted and therefore, the application submitted by the Respondent No. 1 could not be processed. Now the SIEAA has been constituted and the fresh application filed by Respondent No. 1 dated 04.08.2014 shall be considered in accordance with law.

The court directed that the Respondent No. 1 shall not proceed with construction of the project without obtaining due EC from SEIAA.The court held that it does not wish to interfere or make any observation with regard to any action which the SIEAA may have initiated prior to filing of this application on the basis of the letter dated 08.10.2013 (Annexure A-5). It is also necessary to mention that in accordance with the conditions imposed by Director of Town and Country Planning (T&CP), no occupation of the building shall be allowed without inspection by the T&CP and without obtaining completion certificate.

The Application was disposed of. No order as to cost.

S. Munuswami and others
Vs
The Chairman Tamil Nadu Pollution Control Board and Others

Original Application No. 152/2013(SZ)

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

Keywords: Carbon Black pollution, inspection, restoration, SIPCOT Industrial complex,

Application disposed of

Dated: 13 August 2014

This application is filed by the applicants for directions to the 1st and 2nd respondents to take action against the 7th respondent for the pollution caused and to make an inspection and take steps to curb the carbon black pollution in the area, to adopt and implement a time bound, scientific technically sound process for the restoration of the affected areas and take necessary steps to restore it to its original form and to form a monitoring committee which includes all the stake holders as well as the concerned members of civil society and local communities to oversee the restoration of the Pappankuppam and Sitharajakandigai villages.

The 7th respondent/Company located at the SIPCOT Industrial complex at Gummidipoondi is engaged in the business of manufacturing carbon black and un-vulcanized rubber compound. Alleging air and water pollution caused by the 7th respondent's unit, a writ petition was filed by one Shri T. Rose Pillai before the High Court of Madras whereby a direction was sought for to the 1st respondent/Board and the District Collector, Thiruvallur District to take appropriate action on the representation of the writ petitioner. The writ petition was disposed of by an order dated 10.01.2012 by the High Court with directions to the 1st and 3rd respondents herein to consider the representation of the writ petitioner and take appropriate decision in accordance with law after giving notice to the 7th respondent/Company herein. Following the order of the High Court, the 7th respondent sent a detailed reply in respect of the allegations made in the writ petition to the 1st respondent/Board by a letter dated 24.04.2012 and also by another letter dated 30.06.2012 asserting the same. The 1st respondent/Board, who considered the representation of the writ petitioner and also the reply of the 7th respondent sent a letter dated 20.01.2013 to the 7th respondent.
A reading of the said communication found in Page 59 of the typeset of papers filed by the 7th respondent would indicate the following conclusions of the Board at that time:
(i) The 7th respondent's unit has achieved Zero Liquid Discharge. (ii)Various air pollution control measures have been installed in the respondent's unit. (iii) The emission levels of *Sulphur dioxide* (SO2) and Nitrogen Oxide (NO2) are within the norms and standards prescribed

by the Board, as was the particulate matter emissions. (iv)Bore-wells have been sunk with the approval of SIPCOT (v) SIPCOT has agreed to supply 0.5 MGD of water daily to the 7threspondent's unit. (vi) Frequent inspections are carried out at the unit. (vii) As per the results of such inspections, the factory is operating without affecting the people and the environment with due observance of the conditions imposed in the consent, environmental clearance and the effective functioning of the ETP and air pollution preventive and control equipment.

While the matter stood thus, the authorities of the 1st respondent/Board made an inspection of the 7th respondent's unit on 10.03.2013 and 11.03.2013 during which the villagers made demands through representation seeking infrastructure improvement. On 12.03.2013, an assembly of about 30 to 40 people in the main gate of the 7th respondent's unit raising slogans was dispersed by intervention of police force and normalcy was restored. During the time of inspection, the operation of the unit was stopped for a thorough checkup of the equipment. Pursuant to the said inspection, a show cause notice was issued on 11.03.2013 by the Board enumerating violation of the provisions of the Air Act, 1981 as follows :(i)The renewal order expired on 31.03.2012. (ii) The unit has not complied with the conditions of renewal consent order issued under the Air Act as follows: (a) The unit has neither provided desulphurization plant nor provided proposal for the same. (b) The unit has not connected the online monitoring system (Particulate Matter) with CARE AIR Centre. (iii) The unit reported that they have 11 reactors out of which 8 were in operation during inspection. However, consent has been issued for only 3 reactors. The unit is operating the other reactors without valid consent of the Board. (iv) The unit has not taken any effective steps for the control of fugitive emission from various sections of the unit in spite of repeated complaints from the neighbouring village. (v) The unit has not provided continuous online monitors for monitoring Particulate Matter in the stacks attached to the pelletizing and drying section, stack attached to the reactors (outlet of bag filter), purge gas filter stacks and packing section stack which are potential sources of carbon particle emission. The absence of such monitors in the above sections/stacks makes it difficult to assess the sudden and huge emission of carbon particle during abnormal operations and during odd hours. (vi) Though the villagers are frequently complaining about the sudden and huge emission of carbon particles from the unit, the unit is not maintaining any records of such release of carbon particles due to abnormal operations.

On receipt of the said show cause notice, the 7th respondent issued a detailed reply on 27.03.2013 listing the following preventive and precautionary measures taken and assured to be taken.

"1. We have sound maintenance practices on the carbon black conveying equipments. However, it will be strengthened further by periodical maintenance.

2. On the high raised areas, we have started cleaning on regular interval in order to avoid the possibility of any dust particles moving towards wind direction. 3. Installation of continuous particulate monitoring in dryer, purge gas filter and process bag filter are in progress and will be completed by July 2013. Boiler stacks are connected with CPM and trial is on progress. The same will be connected with CARE AIR Centre by midweek of April 2013. 4. Ambient air monitoring and source monitoring from stacks are carried out on monthly basis by a NABL accredited laboratory. As per the norms and all occasion results are much lower than the prescribed values by MoEF. (The results of last 11 months monitoring are enclosed f o r

your kind information). 5. We will install online particulate monitoring stations at appropriate places by August, 2013 in consultation with TNPCB."

On consideration of the reply-dated 27.03.2013, the Board by its letter dated 06.06.2013 gave the 7th respondent a personal hearing. At that time an opportunity was given to the representative of the 7th respondent to place its views on the compliance of directions proposed by the Board. Being satisfied with the compliance of the directions of the Board, the Chairman of the Board issued an order for renewal of consent. Accordingly, a renewal of consent order was issued on 29.08.2013 under Air Act, 1981 and Water Act, 1974. While renewing the consent order, certain conditions were imposed in respect of STP, ETP, Air Pollution Control Measures, Online Stack Monitoring System for the stacks attached to the pelletizers, driers, purge gas filters and packing system and connect them to CARE Air Centre of Board within three months. The unit was directed to carry out a detailed study on the sources of emissions, level of various pollutants, air pollution control measures provided, their efficiency, improvements etc. The industry was directed to operate not more than nine reactors at any point of time, and explore the possibility of locating the stack for the Drier of Line 4 as close to the existing stack of the Drier Stack Line 3 without affecting norms prescribed by the Department of Industrial Safety and Health, Directorate of Town and Country Planning etc. The unit should maintain records of abnormal incidents in the plant and to report any such incident to the Board, it should adhere to with the stipulation of MoEF, Govt. of India regarding the provision of Flue Gas De-sulphuization System etc.

The only grievance ventilated by the applicants as could be seen from the averments placed by them is that the 7th respondent's industry is a carbon black manufacturing industry from where the carbon black particles emanate, spread and settle on the lands, water bodies, floors and walls and they are all contaminated. It remains to be stated whether the applicants have substantiated on all or anyone of the allegations made in the application. Neither have they placed any materials nor have made any attempt to prove the allegations made in the application in respect of the alleged air and water pollution. Being a statutory authority, the 1st respondent/Board has noticed the above and has made an inspection of the 7th respondent's unit on the mentioned dates pursuant to which, a show cause notice was served on the 7th respondent narrating the violations, which were noticed. After placing a detailed reply, the representative of the 7th respondent appeared before the Chairman of the Board and placed the preventive and precautionary measures which were taken and to be taken. Being satisfied with the same, the consent under Water and Air Acts was renewed to the 7th respondent's unit but with all necessary conditions as stated above. Contending that the 7th respondent has taken all possible measures to ensure that no pollution is caused, the learned counsel pointed out that the unit has been operating at ZLD, thereby the waste water left and unutilized is applied to other uses such as for road washing, gardening and green belt development. The 7th respondent's unit includes Dual Media Filter, Filter Water Tank, STP, Rapid Sand Filter, Reverse Osmosis Plant, De-mineralizing Plant, Boiler and Turbine, Air Cooler Condenser, Effluent Treatment Reverse Osmosis Plant, Multiple Effect Evaporator, Oily Water Treatment Plant and Solar Plant. The output from the RO Plant is used in the manufacturing process and the RO residue is subject to evaporation and stored in leak-proof bags and disposed of at the Tamil Nadu Waste Water Management Facility at Gummidipoondi. A detailed description of the management of

water and effluent at the 7th respondent's unit is narrated at Page No. 84 of the 7th respondent's type set of papers which was recognized by the 1st respondent/Board in the letter dated 21.01.2013 as seen in Page No. 59 of the type set of the 7th respondent. As far as air pollution is concerned, the 7th respondent has taken steps to ensure that no gases or particulate matter are allowed to escape into the atmosphere and no noxious or poisonous gases are emitted in the manufacturing process. It is pertinent to point out that the emission from the unit is well within the standards and norms specified by the 1st respondent/Board, which fact has also been taken note of by the 1st respondent/Board in the aforesaid letter dated 21.01.2013. The 7th respondent's unit has installed an online monitoring system through which data are transmitted to the CARE Air System of the Board. All stacks and ambient conditions are checked on monthly basis by Aqua Designs India Pvt., Ltd, approved by the National Accreditation Board for Testing and Calibration Laboratory and the results are submitted to the Board. The monthly reports of the Board for June and July, 2013 regarding the water analysis of the samples collected from the oil pits, tube settler, STP, and the bore wells would be indicative of the fact that the unit is periodically inspected by the Board. All the above factual positions are admitted by the Board. According to the Board, the 7th respondent has taken all possible measures to ensure that no pollution is caused by the unit and the survey/inspection conducted at the 7th respondent's unit reveals that the 7th respondent's unit was operating well within the prescribed parameters and norms and the unit has achieved ZLD. The unit did not discharge any effluents outside its premises. In so far as the allegations made by the applicants in respect of drawal of water is concerned, the 5th respondent/SIPCOT would state in the reply affidavit that the 7th respondent unit was allotted Plot.No. K.16 measuring 58 acres at SIPCOT Industrial Complex, Gummidipoondi, Thiruvallur District on lease in the year 1996 and the allottee was permitted to draw 0.50 MGD from SIPCOT through Araniyar Water Supply Scheme and executed the water supply agreement with SIPCOT for drawal of the above quantum of water. The SIPCOT also gave permission to erect 2 Nos. of bore wells in the year 1997 and 12 Nos. of bore wells in the year 2001, prior to the enactment of 'Tamil Nadu Groundwater (Development and Management) Act, 2003' which was repealed by an Ordinance in the year 2013. Thus, the contention of the applicants that the 7th respondent has not obtained approval for existing bore wells has no force. Equally, in view of the reply by the SIPCOT that the 7th respondent's unit is drawing 1 MG of groundwater per day is found to be baseless and the contention put forth by the applicants' side in that regard has to be rejected. It was also contended by the learned counsel for the applicants that the water of the temple tank was thoroughly polluted by the discharge of treated or untreated effluent outside the premises of the unit. The reply given by the Board is that the 7th respondent's unit is not discharging any effluent outside the premises and has also provided air pollution control measures in all possible sources of emission stands good answer to the above contention. Hence, the allegations of pollution made by the applicants against the 7th respondent are devoid of merits. The 1st respondent/Board is directed to make periodic inspection and monitor the implementation of preventive and precautionary measures in respect of air and water pollution so that pollution free environment is ensured in and around the 7th respondent's unit.

Application is disposed of.

Dr. Subhash C. Pandey Ors.
Vs
Union of India and 6 Ors

Original Application No. 135/2014(CZ)

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

Keywords: No construction zone, green belt, Department of Town & Country Planning, Panchayat, Kaliasote

Application disposed of

Dated: 20 August 2014

This Applicant filed the application against the inaction on the part of the Respondents to implement the mandate of no Construction Zone as well as maintaining 33 mts green belt area from the boundary of the river course of Kaliasote at Bhopal.
Notices were ordered to be issued and at the same time, interim order was also issued directing Department of Town & Country Planning, Bhopal for carrying out the inspection of the premises of the builders/developers submit whether the 33 mts. distance from the river front for maintaining the No Construction Zone as well as developing the same as a green belt has been carried out or not.

It was also submitted during one of the hearings that despite interim order, construction has been going on unchecked and the authorities concerned are not taking any measures to stop the same and instances of two developers were mentioned during the hearing. The said report has been taken on record with copies to the parties and the Applicant. The Tribunal on 22.07.2014, on the basis of the above report, noted that two developers namely M/s Sagar Premium Plaza and Indus Builders and Developers had been carrying out the construction despite the interim orders of the Tribunal and also that such construction was being made within the No Construction Zone.

With regard to the issue of encroachment into the water body i.e. river Kaliasote as well as not maintaining the green belt for protection of environment as also allowing construction to be carried out within the No Construction Zone and even on the river bed, as has been submitted in the application and of causing pollution and disturbing the environment, the court considered Article 48 (A), and Article 51-A.(g).The issue which has been raised pertains to environment and therefore, falls within the scope and jurisdiction of this Tribunal under Section 14 of the National Green Tribunal Act, 2010. The court took on record the stand of the State by way of its submission in M.A. No. 347/2014 submitted before this Tribunal on 16.07.2014. the

submission is reproduced as under-***"Submission in pursuance of the order dated 27.05.2014***
The Respondents No. 1 and 4 most humbly submits as follows: 1. That the Tribunal vide its order dated 27.05.2014 passed the following directions: i. To explain whether any construction has been carried out in 30/33 meters distance of green belt area required to be maintained. ii. To submit copy of the survey-sheet showing the source of the Kaliasot River along with the flood plain zone and the 33 meters green-belt are required tobe maintained as No Construction Zone. iii. On a map the construction activity going on by the developers enumerated at serial No. 1 to 20 should be indicated. iv. In case any construction is reported to be going on either in the river bed or the flood plain area or 33 meters green-belt area, the same shall be immediately stopped by the respondents. v. A spot inspection should be carried out within three days and necessaryaction should be ensured. vi. The survey sheets indicating the course of river, flood zone and the green-belt as also the encroachments and building constructions and the sameshould be submitted before this Court before the next date of hearing failing which the Director Town and Country Planning shall remain personally present in Court to explain the position. The Tribunal accepted that the State has categorically taken a stand that a joint inspection was carried out from 16th July, 2014 at the instance of various officials including those of the Town & Country Planning Department, the Municipal Council, Kolar and the Revenue officials to verify "the actual ground position pertaining to the violation of the development permission and construction activities". After carrying out the aforesaid inspection the persons who prima facie admitted to be in violation of the above norms were issued notices copies of which have been filed before us by way of Annexure-RR/2 as a specimen. The court directed the Respondent/State and the authorities who have issued notices, to complete the task of considering the replies, if any, and hearing the parties concerned and pass necessary orders in accordance with law within four weeks from today. Wherever the 33 Mts. no Construction Zone has been found to have been violated steps for removing such constructions shall be ordered to be taken by the party violating the norms which shall also ensure removal of all debris and also in case the said party fails to take these aforesaid steps, the State shall be at liberty to remove such constructions and recover costs from the violators.It is further directed that apart from the removal of such constructions raised within the 33 Mts. No Construction Area as has been indicated in the superimposed satellite images which have been filed at Annexure RR-3 along with the said M.A. No. 347/2014 wherein by blue line indicates the course of river and green line along with the same to be within the 33 mts. limit for developing green belt. As prima facie found by the State officials the said 33 mts. area shall be developed by carrying out extensive plantation work as a green belt along with the course of the river Kaliasot. Apart from this, the State shall put permanent boundary pillars for indicating the 33 mts. zone to the extent they have given in these satellite images which have been filed and further along the course of the river beyond the point which has not been included in the satellite images which have been filed before us which shall be maintained as No Construction Zone and developed as a green belt. The task of identifying the area and the No Construction Zone will not be restricted only in the case of persons to whom notices have been issued post the inspection carried out by the Respondent agencies and departments or the ones enumerated by the Applicant but shall be a continuous process and shall be carried out throughout the course of the river on both sides. The aforesaid task shall be carried out independently and shall

be completed within a period of three months from the date of this order by the Respondents. The State and more particularly the Panchayati Raj Department shall through the Chief Secretary/Respondent No.1 issue necessary orders to the local authorities along such river bodies and river course to ensure that at all times 33 Mts. area is maintained and the green belts along the river course are raised by all the local bodies including the Village Panchayats which shall ensure planting, protection and survival of the trees and if necessary assistance of the Forest Department, Govt. of Madhya Pradesh shall be provided. We may also note that the development of the green belt along with river Kaliasot on both sides to the extent of 33 mts. area shall be carried out within this season of monsoon 2014 and shall be completed and report submitted before this Tribunal within three months. The court directed the State Pollution Control Board shall submit a report before it within four weeks after carrying out site inspection with regard to the installation and the measures undertaken for the treatment of the sewage and effluents being discharged into the river Kaliasot. If local municipalities and the local authorities, Village Panchayats etc. have not cared to put such conditions while granting permissions, they shall immediately within four weeks insist upon the developers either by way of common effluent plant or individual ones for carrying out such works which are essential for protection of the river as well as for treatment of the sewage before its discharge into the river course. We also understand that municipalities while granting the permissions, it was submitted before us, have included the aforesaid condition with regard to the sewage treatment and disposal of municipal solid waste and for the aforesaid purposes 25 percent of the area being developed by the developers is mortgaged with the local authorities and only after inspection is carried out and completion certificate is issued permission is granted to the developers for sale/disposal of structures built on such 25 percent mortgaged area. The Town & Country Planning Department and Municipality shall carry out a survey of all the premises which have been developed and to whom permissions have been granted in the last 10 years wherein such requirements have been incorporated in the permissions granted and also submit by way of an affidavit where such measures have been put in place, are in operation and also where completion certificates have been issued to such developers and the date on which the said completion certificates were issued for such premises and whether possession is being handed over before the completion certificate is granted.

26. It was also submitted before us that in many cases the common areas, which are shown in the plans and left open, are often utilized at later point of time by the developers for construction. The Tribunal direct the State to issue the necessary guidelines for the aforesaid purpose that such permissions should not be issued automatically as these initial development plans give rise to legitimate expectations of persons who are investing or purchasing such properties in the hope knowing very well that certain areas would be left open for common amenities and common use and later if such permissions are altered, it would affect the life of such occupants and their right to clean pollution free environment guaranteed under Article 21 of the Constitution. The need today as has been mentioned in Article 48(A) and 51(A)(g) is for 'Protection' and 'Improvement' of the environment. With the density of population increasing the need is for more open spaces rather than to curtail the same. These are such measures, which must be kept in mind while granting such permissions to developers. The problem with regard to the treatment of sewage and also disposal to the municipal solid waste rain water

harvesting and use of grey water needs to be taken care of in a more professional manner and developers cannot shirk their responsibility by handing over the premises to the society/ individuals who may be short of funds for taking care of such issues. In the permissions granted to ten developers incorporation of conditions for ensuring their accountability towards suchmeasures must be ensured. The compliance report of the action taken by the various authorities shall be submitted before this Tribunal before 20th November, 2014.
The Application was disposed of.

E. Sivananthan Iyyappanthangal, Chennai
Vs
Tamil Nadu Pollution Control Board Chennai and 4 others
Appeal No. 27/2014(SZ)

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

Keywords: Pollution control, Order of closure

Appeal Dismissed

Dated: 21 August 2014

The appeal challenges an interim order of the Appellate Authority - Pollution Control made in Appeal No. 36 of 2013 during the pendency of the same. M/s. Om Shakthi Engineering works preferred the said Appeal challenging an order of closure made by the Pollution Control Board (TNPCB). Challenging the same, the original Writ Appeal was filed and it is also seen by the Tribunal already. The Respondent challenged the order of closure of the Unit wherein fabricating/manufacturing process of gates, windows, grills etc. and metal works are being carried on. It is pertinent to point out that it is also one of the issues pending before the Appellate Authority and need not be taken up for consideration by the Tribunal. Apart from that, it is also the case of the 4th respondent that the Unit has never caused any problem since the noise level is within the prescribed limit. Thus, from the materials, it could be seen that the order of the closure of the Unit of the 4th respondent is being challenged on both the grounds before the Appellate Authority. In the circumstances, the Tribunal was unable to notice any reason or force in the contention put forth by the appellant that the Appellate Authority while pending the appeal should not order a noise test. The Tribunal was unable to notice any merit in the contention put forth by the appellant before the Tribunal at this stage. Hence the Appeal was dismissed.

Ajay Pandey Baba
Vs
State of M.P. Ors
Original Application No. 15/2014(CZ)

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

Keywords: Sulabh Shouchalay, Water Pollution, MPPCB, untreated sewage, Dal Sagar Lake, Seoni

Dated : 22 August 2014
Application disposed of

The application has been filed by the Applicant raising a grievance with regard to the construction of Sulab Shouchalay by the Seoni Municipality, on the banks of Dal Sagar lake in Seoni alleging that untreated waste is being allowed to flow from the said Shouchalay into the Dal Sagar lake and thereby polluting the lake.Vide order dated 09.07.2014, this Tribunal directed impleadment of Regional Officer of the MPPCB, Jabalpur as party with further direction to carry out inspection of the disputed site and submit a report.
So far as the disputed Shouchalay the banks of the Dal Sagar lake in Seoni is concerned, it is given out that untreated sewage from the Shouchalays not being allowed to flow into the Dal Sagar lake and instead a separate septic tank has been constructed for treatment and discharge of sewage generated in the Shouchalay near the banks of the lake, though, it is submitted that the effluents from the said septic tank over flows into the nallah on the opposite side of the lake. It is categorically stated that no untreated sewage is allowed to pollute the water of the lake. The court directed Respondent No. 1 to ensure that the Respondent No.4 Municipal Council, Seoni immediately sends a proposal with a plan and estimate for establishment of sewage treatment plant for the city of Seoni if already not yet initiated the process so as to ensure that no untreated sewage is allowed to pollute the river. The court granted three months time to the Respondent No. 1 and 4 for carrying out the task of preparation of a project report and for ensuring starting of the work for the establishment of STP at Seoni.
The application was disposed of.

Ramesh Agrawal

Vs

Union of India Ors

Appeal No. 8/2013(CZ)

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

Keywords: Environment Clearance, EIA, Sustainable development, Precautionary Principle

Appeal dismissed

Dated: 22 August 2014

This is an appeal filed under Section 16(h) of the National Green Tribunal Act, 2010 challenging the Environmental Clearance (for short EC) granted to Respondent No. 3 National Thermal Power Corporation Ltd. (for short NTPC) under the Environment Impact Assessment (for short EIA) Notification, 2006 by the Respondent No. 1, Ministry of Environment & Forests (for short MoEF) 2 for setting up of 2x800 MW coal based Lara Super Thermal Power Project (for short STPP) at Armuda, Chhapora, Bodajharia, Devalpura, Mahloi, Riyapillai, Lara, Jhilgitar and Kandagarh villages in Taluk Pussore, District Raigarh, Chhattisgarh contending that the approval granted is in clear violation of the 'Precautionary Principle' and principle of 'Sustainable Development' and also in violation of principles governing administrative decision making, viz. the duty to give reasons and application of mind to relevant consideration.

After considering the contentions of the Appellant and Respondent, the following points emerged for adjudication:

i. Whether the appeal filed by the Appellant is within the period of limitation?

The court accepted the same as the respondent too had not controverted the facts or disputed the medical records of the Appellant who reportedly got injured in a shooting incident and had to undergo treatment for gunshot wounds as well as attend follow up procedures till February, 2013 and despite the fact that notice was sent to him by the Project Proponent, he was unable to travel to Delhi for filing this appeal. In the facts and circumstances, The Tribunal are inclined to allow the MA No. 165/2013 and condone the delay.

ii. Whether non furnishing of information regarding the exact boundaries along with coordinates of the proposed project site in the draft EIA report and not making them available

during the public hearing vitiates the whole process of appraisal and granting EC?

Issue No. 2 was decided against the Appellant and The Tribunal hold that in the facts and circumstances of the present case non-providing of the coordinates in the DEIAR was neither deliberate nor motivated by any malafides and as such it does not vitiate the whole process of appraisal and grant of EC particularly when the same was provided in the final Environment Impact Assessment Report which was considered by the MoEF and the impact of development on environment has been taken care of and examined and no adverse impact found so as not to grant clearance, but precautionary measures by way of conditions were imposed while granting the EC.

iii. Whether there is any concealment/suppression or misrepresentation of facts on the land acquired, its nature and category for the establishment of the project?

IT cannot be held that the Project Proponent had concealed or misrepresented about the acquisition of agricultural land for establishing the project. Even in the final EIA report submitted by the Project Proponent the land use pattern of the study area was also furnished as soon as the acquisition details were finalized and made available by the concerned authorities of the State. Details of agricultural land and forest land were included as also the fact that several clarifications were sought from the Project Proponent by the EAC in this regard and necessary inputs were provided before the EC was granted. The issue of land acquisition came out once the information was submitted by way of reply to the appeal by the respondent. Had it been the intention to suppress the same there was no reason for the respondents to disclose the same and no issue to this effect could have been raised by the Appellant. These are thus issues of afterthought raised during the hearing of appeal.

iv. Whether acquiring the total land in the beginning itself for the ultimate capacity of the project i.e. 5x800 MW is in consonance with the prescribed norms when the project itself has been revised to be executed in 2 stages with stage-I getting EC for installation of 2x800 MW units and in such case, the land acquisition for the entire ultimate capacity of 5x800 MW is permissible?

The court held that in the facts and circumstances of this case looking to the original capacity as proposed of 5x800 MW generation and having confined the first stage to 2x800 MW it cannot be held that the land requirement should have been restricted for 2x800 MW capacity alone. The Tribunal do not in the present case in the absence of any material before us to suggest that the

acquisition of land by NTPC, a Public Sector Undertaking of the Govt. of India of such large tracts of land was actuated by any ulterior motive so as to call for interference in this matter.

v. Whether the averments made by the Appellant on non-finalization and non-inclusion of R&R plan both in draft as well as in final EIA report and not placing it before the public during public hearing violates the EIA Notification 2006?

The court said that they were unable to accept the aforesaid contention of the Appellant that failure on the part of the Project Proponent of not having finalised and not included the R&R plan in the draft as well as in the final EIA report vitiates the EC so as to violate the provision of the EIA Notification, 2006.

vi. Whether the appraisal of the project is based on outdated data and wrong and incomplete EIA study and lack of detailed scrutiny and failure to discuss on the Cumulative Impact Assessment by the EAC, as alleged by the Appellant, vitiates the process of granting the EC?

The court held that as submitted by the Learned Counsel for the Project Proponent that due to installation of high efficiency Electrostatic Precipitators the emission of particulate matter shall be limited to 50 mg/Nm3 and the incremental ground level of the particulate matter due to operation of the stage-I of 2 x 800 MW of the project shall be order of 1.03μg/m3. Therefore there is no possibility of exceeding the standards prescribed under National Ambient Air Quality Standards (NAAQS) by the Project Proponent and as such no interference is called for by this Tribunal.

vii. Does the EIA Report take into account the emission from sources other than stack

The court held that the answer to the point No. vii is in affirmative and no interference is called for by this Tribunal

viii. Whether the water requirement for the project and the cumulative impact of the project on river Mahanadi has been studied and it fulfills the environmental norms?

The Appellant has highlighted the impact on river Mahanadi in the Appeal and expressed his apprehensions whether river Mahanadi will be able to meet the water requirement of various power projects including the project of the Respondent NTPC and other activities on its course. As per the ToR data on source of water and its availability and territorial and river ecology has to be collected. The EIA report details the surface water quality and the Project Proponent stated that the backwaters of Hirakund Reservoir on river Mahanadi existing within 10 km. of the

project are not having any ecologically sensitive wetlands and the notification on the Wetlands (Conservation & Management) Rules, 2010 are not violated in this case and both the Central and State Water Commissions have undertaken detailed study on the availability of water in Mahanadi before according the water commitment to the project and only the surplus water flowing in the river during the monsoon period will be tapped by constructing a barrage and utilized for the project. Thus The Tribunal find that on consideration of the relevant material the appraisals have been made and no exception can be taken to the same.

ix. Whether the issues raised during the public hearing have been addressed and taken into consideration while finalizing the EIA report based on which EAC appraised the project and MoEF granted the EC?

The Appellant has contended that the public was not informed about the true impact of the project. However, the Respondent NTPC in its reply has averred that questions raised by the public and NTPC's response were recorded and submitted to the EAC and they find place in the final EIA report. They also argued that the objections raised by the public were due to lack of understanding of the issues by the public rather than the deficiency in the EIA report. On perusal of the written submissions of the Appellant listing the issues raised during the public hearing and NTPC's response, which are furnished in a tabular form, The Tribunal are of the opinion that the questions were recorded and answered by the Respondent NTPC which as per the Appellant are not to his satisfaction. Nonetheless, all were answered and response recorded and the EAC was the authority that needs to scrutinise the validity of the NTPC's response which it has done in the meeting. Therefore the contention of the Appellant is not well founded.

x. Whether the contention of the Appellant that the EIA study does not include information on significant pollutants emitted due to establishment of the power plant in question, is correct?

Taking into account of the overall impact of the project and since sufficient safeguards have been incorporated in the conditions while granting the EC and regular monitoring of pollutants is a necessity once the project comes into being the apprehension expressed by the Appellant is not significant enough to take into account when considered with the overall process of EIA preparation, appraisal and grant of EC.

The court held that the EC granted based on such recommendation of the EAC was in

accordance with Para IV. Stage (4), Sub-para (iii) and as per procedure prescribed for Appraisal in Appendix V cannot be found fault with. Having said so The Tribunal may add that the objections which were raised by the Appellant are the same as those which have been raised in this appeal which The Tribunal have already dealt with above and The Tribunal have found no merit in the same. As such The Tribunal find no merit in the submission and the same is accordingly rejected. The grant of EC to the NTPC Respondent No. 3 vide letter dated 31.12.2012 does not call for any interference. The appeal is accordingly dismissed. There shall be no order as to costs.

Sandeep Sanghavi
Vs
Tree officer
Original Application No. 33/2014 (WZ)
Judicial and Expert Members: Justice V.R. Kingaonkar, Ajaya.Deshpande

Keywords: illegal cutting of trees, doctrine of public trust, The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, Tree Authority
Application allowed
Dated: 25 August 2014

The Applicants sought following reliefs:
a) The application / petition be allowed as above with all reliefs.
b) That the said Act is enacted by the legislature for special purpose of curbing illegal axing of trees within urban areas, therefore the acts of the respondents itself wash out the very purpose of The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and therefore direction be given to respondent no. 2 shall be followed scrupulously and that the existing tree authority shall be abolished, turned down and all its operations shall be restricted till formation of new tree authority as per the provisions of The Maharashtra (Urban Area) Protection and Prevention of Trees Act, 1975.
c) The resolution passed by Respondent no. 3 dated 03.10.2012 be quashed and set aside and be held as null and void.
d) The Tribunal may kindly be pleased to call all records and proceedings of Tree Authority and details with quantitative date form year 1996 to till today.
e) The respondents be perpetually restrained from taking decision to cut old / new trees on Talegaon Dabhade (Jijamata Chouk to Talegaon Station Road) and further be perpetually restrained from causing harm to birds nest and trees on the said road.
f) During Pendency and final hearing and disposal of the present application on merits the illegal and indiscriminate cutting of old tree on "Jijamata Chouk to Talegaon Station Road" in the Talegaon Dabhade village. road in Talegaon Dabhade village be restrain by an temporary injunction and Status Quo to be maintained till final Hearing or final disposal of this application.
g) During pendency and final hearing of the application on merits the execution and operation of the Resolution dated 03. 10. 2012 passed by the Respondents no 3 be stayed and be stopped to be executed.
h) It is humbly prayed to the Tribunal to appoint Court Commissioner to verify the factual position of the spot and to file his report before this Tribunal.
i) It is humbly prayed to the Tribunal that, if Respondent no. 1, 2 and 3 or any citizen wants to cut any tree within the jurisdiction of Respondent no. 2 i.e. Talegaon Dabhade than they must inform to the Tribunal by filing their affidavit for necessary permission.
j) That the Application of the Applicant may kindly be decreed with costs.

k) That the any necessary Amendment in Application kindly may allow.
l) Any just, equitable order in the interest of environment and justice may be passed. The court held that there appears no dispute about the fact that the Municipal Council is likely to undertake road-widening project in question. It also appears that for the purpose of road widening, Municipal Council, Talegaon Dabhade, has adopted a resolution dated 3rd October, 2012. Perusal of the said resolution goes to show that it has been decided that for widening of the road trees, which are along the side of the electric transformers and poles or within encroached areas, shall be removed at preliminary stage and thereafter minimum number of trees, which would create obstruction in the process of widening of the road, shall be removed.

The Applicants have challenged implementation of the said resolution in view of the fact that after passing of such resolution a public notice was issued and objections were called for from the members of public. A large number of public members including some of the organizations submitted their objections on various grounds. So also, the public members started movement of signatures to protest tree cutting proposal in order to save the greenery in the town. According to the Applicants, trees alongside the road are old, there are nestlings of birds and some of the birds are protected species, which are likely to be ousted due to loss of trees, which will be felled. Thus, felling of the trees will cause degradation of environment, loss of ecology and will also cause loss to protected species of birds.

The Application is opposed by Municipal Council, Talegaon Dabhade, Tree Officer and other Authorities on various grounds. Chief bone of contention, on their behalf, is that widening of road is for benefit of public at large. It is further contended that tree cutting is not intended to cause loss to environment, but is for the purpose of ensuring convenience of the members of public. The court noticed that there is a clear flaw in the procedure adopted by Municipal Council, Talegaon Dabhade, even before publication of Notice for calling objections from the members of public. The provisions of the Maharashtra (Urban Area) Protection and Preservation of Trees Act, 1975, would require the Municipal Council to apply to the Tree Authority for permission for felling of trees. The first stage, therefore, as contemplated in Section 8 (2) of the Maharashtra (Urban Area) Protection and Preservation of Trees Act, 1975, is to apply in writing to the Tree Authority for permission to cut/fell the trees. The application must be accompanied by the description of tree/trees and the site plan indicating position of trees required to be felled and the reasons thereof. Admittedly, no such Application has been filed by Municipal Council, Talegaon Dabhade. No copy of such Application is placed on record. Learned Advocate for Municipal Council, Talegaon Dabhade, fairly states on instructions that no such Application was presented before the competent Tree Authority before publication of the Notice in question. According to him, the Notice was published in order to ascertain response of the members of public and it was only exercise to know sentiments of the public members. The Tribunal found that the exercise is futile in the eye of law. They do not want to comment on the procedure undertaken by Municipal Council, Talegaon Dabhade, and the steps taken under the relevant provisions of the Maharashtra (Urban Area) Protection and Preservation of Trees Act, 1975, inasmuch as regarding constitution of Tree Authority, identification of trees, decision on the objections, so on and so forth, as there are the issues

which will be required to be thrashed out at the subsequent stage. The Tribunal expects Municipal Council, Talegaon Dabhade to take reasonable decision, to ensure that minimum environmental damage is caused in keeping with the principle of Sustainable Development and the principle of Doctrine of 'Public Trust'.

The court allowed the Application. The Respondents are restrained from felling/cutting of trees for the purpose of alleged project of road widening, in question, i.e. between 'JijamataChowk to Railway Station Chowk', in any manner by themselves or through any Agency nominated by them and are directed that without following due procedure, they shall not publish any such Notification, henceforth, and shall ensure that identification of trees, to be felled or cut, be made before making any publication of Notice and the Application be made to the competent Tree Officer, prior to taking decision for seeking permission. The Application is accordingly allowed with no costs.

Kishore Kodwani
Vs
District Collector Indore

Original Application No. 19/2013(CZ)

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

Keywords: cutting of trees, translocation of trees, Urban agglomeration, Indore, afforestation

Application disposed of

Dated: 25 August, 2014

On 28.07.2014 the Tribunal had recorded that for the 'Urban agglomeration' of the city of Indore there was plan for planting approximately of 2.5 lakh trees and that the drive would be carried out through various agencies including the Indore Municipal Corporation.
The respondents in their submission clarified that the planting of 2.5 lakh trees was not confined to the Urban agglomeration area of the city of Indore alone but for the entire District. Details furnished to the court stated that the Forest Department for planting of about 20800+37912 trees, the Municipal Corporation, Indore which in turn shall be carrying out plantation of nearly 8698 trees and the Indore Development Authority (IDA) about 20158 trees. Misc. Application No. 417/2014 is allowed and the aforesaid information be taken on record and also noted that the concerned departments and agencies have taken adequate steps for carrying out effective measures for afforestation, protection of the trees as well as ensuring their survival. It is more important that the protection and ensuring survivals of the trees has to be carried out.
The Applicant pointed out that in the past several years, crores of rupees has been spent and however, only about 85,000 trees exist. The court directed the respondents to introspect with regard to the claims which have been made by all the concerned regarding the large scale planting of trees as claimed by them and see the factual position which has been brought out by them before this Tribunal regarding the present trees existing in the city of Indore. The Tree Officer concerned shall evaluate the need for cutting of the trees on the basis of the guidelines already available including the requirement for such cutting of trees. The local bodies, Public Works Department, concerned agencies and government departments as well as other institutions which may be carrying out public works or developmental works, must exercise the option of looking into the possibility of translocation of trees if it is inevitable to remove the trees for undertaking such developmental works. The court directed the State Government would issue necessary directions to all Tree Officers that while considering the request to cutting of trees, they shall examine the possibility of translocation and make it mandatory. The entire issue of maintaining the green area within the city of a minimum of atleast 30 % must always be kept in mind as the trees, the open spaces and the green areas not only protect the environment but are also helpful in purifying the air in the cities which are getting congested and polluted as a result of various factors and more particularly because of ever increasing

vehicular traffic.
While dealing with the application submitted by the Executive Engineer, PWD, Indore for the aforesaid permission, The Tribunal permit the aforesaid task to be done as directed by the Tree Officer. The Tree Officer in consultation with the Municipal Corporation, Forest Department or IDA shall also identify and direct the place where afforestation and plantation of 630 trees must be carried out. The necessary amount to be deposited with the State agencies for carrying out the aforesaid task at the same time for translocation of 33 trees shall also be identified and be earmarked. Before proceeding with the project, the Tree Officer shall be satisfied with regard to the competency and capability of the agency through which the aforesaid task of translocation of trees is liable to be done at the instance of the PWD. It was prayed that by the above order, the major component with regard to the raising and protection of trees and of the green belt and its survival has been taken care of and additional staff has been provided, he may be permitted while disposing of the above application to raise the grievance against the Ministry of Petroleum and Natural Gas as well as Ministry of Road Transport and Ministry of Environment pertaining to BRTS and public transport requirement of CNG and BS-IV compliant vehicles.

Such prayer was accepted and the Applicant was granted the liberty of being free to raise the issue with regard to the public transport and the requirement of having public transport vehicles which are compliant of BS-IV as well as running on CNG fuel in the urban agglomeration in the city of Indore as highlighted in the Soumitra Choudhary Report submitted to the Government of India.
Original Application No. 19/2013 stands disposed of. The Misc. Application Nos. 189/2014, 249/2014, 412/2014, 413/2014, 417/2014, 420/2014 and 421/2014 filed by various parties also stand disposed, accordingly.

Laxmi Narayan Sahu
Vs
State of M.P. and 7 Ors

Original Application No. 151/2014(CZ)

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

Keywords: cutting of trees, translocation of trees, SEIAA, Pollution, Water Act, Air Act, Environmental Clearance

Application disposed of
Dated: 26 August 2014

This is an application filed under Section 14 of the NGT Act, 2010 by the Applicant alleging that the Respondent No. 8 has been granted mining lease for excavation of stones/boulders from Khasra No. 7, a private agriculture land measuring 2.56 hectares, in PatwariHalka, NayakCharsi, Tehsil and District Betul (M.P.) for the purpose of road widening work. It was also stated by the Applicant that the Respondent No. 8 has established a stone crusher unit in Khasra No. 3 measuring 2.225 hectares in the same village. Initially it was submitted that the mine is being operated without obtaining consent under the Water (Prevention & Control of Pollution) Act, 1974 and & Air (Prevention & Control of Pollution) Act, 1981 and as such this Tribunal vide its order dtd. 30.05.2014 ordered for issuance of notices.

In the reply of the Respondent No. 5, SEIAA it has been stated that the Respondent No. 8 was granted Environment Clearance (for short 'EC') for stone/boulder quarry on 10.05.2013 on certain conditions which are incorporated in the said EC. The MPPCB in their reply at para No. 3 have clearly stated that the Respondent No. 8 has a 'valid consent' under the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981 for both, the stone quarry and stone crusher. Copies of the consent have been filed as Annexure R-7/1 & 7-2 along with the reply. Thus, so far as the main issues regarding which notices had been issued by this Tribunal vide its order dtd. 30.05.2014 that the Respondent No. 8 is operating the stone/boulder quarry and the stone crusher without obtaining the requisite consent under the Air and Water Acts are concerned, The Tribunal are satisfied from the reply of Respondent No.

It has also been stated by Counsel appearing for the State that the renewal of the temporary permit is subject to the grant of consent under Air and Water Acts to the Project Proponent/ Respondent No. 8. It has been noted by us that Project Proponent/Respondent No. 8 is required under terms of the EC to obtain necessary permission under Air and Water Acts. There are specific provisions with regard to the measures to be taken by the Project Proponent for controlling pollution both under Air as well the Water Act. The MPPCB/Respondent No. 7

before granting the permissions which are due to expire on 31.08.2014 shall record its satisfaction with regard to safety measures and pollution mitigation measures required to be adopted including curtaining of site and planting of trees as mentioned at Sl. No. 6 & 7 of the EC and fulfilling the condition of transportation of the material in covered vehicles etc. shall be duly noted and satisfaction recorded before renewal of the permission is granted. The aforesaid inspection shall be carried out prior to the renewal of the permission and report submitted along with the affidavit of the Regional Officer of the MPPCB. The temporary permit for the quarry shall apply in respect of the Stone Crusher also.

The Application stands disposed of. The Respondents shall file their compliance report within 15 days.

Misc. Application No. 422/2014 filed by the Respondent No. 8 also stands disposed of.

Environment Support Group Bangalore
Vs
The Union of India and others

Original Application No. 12/2013(SZ)

and

Original Application No. 6/2013(SZ)

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

Keywords: Public Trust Doctrine, precautionary principle, sustainable development, environmental clearance
Application disposed of

Dated: 27thAugust, 2014

The Applicant Trust is registered under the Indian Trusts Act, 1882. The Applicant approached the Tribunal for redressal of his grievances on the following grounds:

A. The diversion of *AmritMahalKaval* land in Challakeretaluk is in violation of the Forest (Conservation) Act, 1980.
B. The diversion of land is in violation of the Public Trust Doctrine, the Principle of Sustainable Development, Principle of Intergenerational Equity, Principle of Prior and Informed Consent, etc.
C. The respondents have not considered the fact that the *Amrit Mahal Kavals*are statutorily recognized forests as per The Karnataka Forest Act, 1963.The diversion of about 9273 acres of *Amrit Mahal Kavals* in Challakeretaluk without the permission of the Central Government is, in violation of section 2 of the Forest (Conservation) Act, 1980.
D. The present clearances granted to Respondents 10-16 herein are also in comprehensive violation of *T.N. Godavarman Thirumalpad v. Union of India, AIR 1997 S.C. 1228*.
E. The respondents have not seen that the diversion of the *Amrit Mahal Kavals* will cause serious prejudice to the environment, ecology and to the local pastoral and agrarian communities who have no other source of livelihood.
F. The respondents have violated the Biological Diversity Act, 2002 in granting the impugned clearances.
G. The respondents have not considered the fact that the impugned clearances have been granted in violation of the National Forest Policy.
H. The respondents have not considered the fact that the *Amrit Mahal Kavals* are the main source of fodder for the cattle reared by the local population and the impugned diversion will result in loss of their source of livelihood and is violation of rights guaranteed under Article 21 of the

Constitution of India.
I. The statutory authorities have not seen the fact that respondent Nos. 10 to 16 have commenced construction/ developmental activities without obtaining any clearance from the competent authorities.

The Application No. 6 of 2013 (SZ) filed by an individual social activist, and Application No. 12 of 2013 (SZ) filed by a Trust both involved in environmental issues and campaigns are concentrating on preservation and maintenance of *Amrit Mahal Kaval*s from any diversion or encroachment and for further other consequential reliefs on the grounds averred in the applications.

1 Whether the applications are liable to be dismissed since they are barred by limitation.
The court held that in the instant case, the applicants as seen above have attempted to set aside the allotments made in favour of the respondents/allottee project proponents calling them as 'diversion' and the Tribunal has held supra that the applicants are not entitled for the said relief since it is barred by time. Apart from the said relief, the applicants have also complained of environmental degradation and ecological imbalance are being caused by the scientific, industrial, and research activities of the respondents/allottee project proponents by making necessary averments and also sought for reliefs thereon. There cannot be any impediment in law to enquire on those issues and consider merits or otherwise of rival contentions thereon by the Tribunal.

2: Whether the *Amirt Mahal Kaval* lands allotted to the respondents/allottee Project proponents are forest lands:
3: Whether the respondents/allottee Project proponents are to be restrained from carrying on their proposed activities in view of the environmental degradation and ecological imbalance as alleged by the applicants .
4: What is the effect of the application of Doctrine of Sustainable Development on the factual matrix of the instant case?
5: Whether the respondents/allottee project proponents have obtained necessary clearances and approvals from the authorities for establishing the projects as contended by the applicants.
In order to ascertain the ground reality, the Tribunal thought it fit to constitute a Fact Finding Committee (FFC) with eminent persons to assist the Tribunal and appraise the Tribunal with a report since the parties were in controversy regarding the factual position and ground reality in respect of *Amrit Mahal Kaval*. Accordingly, Tribunal appointed (1) Dr.S. Ravichandra Reddy, Retired Professor of Ecology, Bangalore University, Bangalrore as the Chairman and (2) Dr. K.V. Anantharaman, Deputy Director, Sci."C" (Retd.), Central Silk Board, Bangalore as the Member of the FFC to study as per the Terms of Reference given below and submit a report:
Terms of Reference: The Terms of Reference (ToR) given by the Tribunal were specified by the court.

The court in length cited various applicable case laws discussed the applicability of the Doctrine of Sustainable Development, it is held that the respondents/allottee Project proponents are not

to be restrained from carrying on their proposed projects in view of the allegations made by the applicants that the proposed project, if allowed would cause environmental degradation and ecological imbalance. But, the respondents/allottee Project proponents shall carry on their further activities in respect of the proposed projects subject to the directions issued by the Tribunal and only after obtaining necessary Environmental Clearance and Consent for Establishment as the case may from the authorities as stated infra.
The point Nos. 2, 3, 4 and 5 are decided accordingly.

6: To what relief the applicants are entitled to?
In so far as the other reliefs sought for by the applicants, it is held that they are premature and the applicants are given liberty to raise the contentions both legal and factual at necessary stage at appropriate forum and when warranted. Both MoEF and KSPCB are directed to strictly comply with the observations and also the directions given to them at the time of grant of Environmental Clearance and or Consent for Establishment as the case may be.

In addition to directions given under different heads at appropriate sections of the judgment, the following "Specific" directions were given to the MoEF, KSPCB and the Allottee Project Proponents:
1. At the time of granting EC or CFE to the Project Proponents who have been allotted sites in the land in question, the MoEF and/or KSPCB as the case may be, are directed to take strict note of the observations and comments made in this judgment regarding several environmental issues and concerns raised by the applicants and include verifiable and measurable "conditions" regarding the same to be complied in full, at all stages, by the project proponents.
2. Citing an Office Memorandum issued by the MoEF, M/s. Sagitaur Ventures India Pvt. Limited, the 14th Respondent in Application no. 6 of 2013, claims that it need not obtain EC from the MoEF. The Solar thermal power technology is still at its infancy. Its impacts on environment are being investigated in many research institutes across the globe and newer and newer information on this aspect in emerging. In fact, the applicant placed before the tribunal a few of the recent literature on this aspect and took the court through the significant findings in this regard. Keeping these and the averments made by the applicant on the subject in mind and also guided by the "Precautionary Principle"- one of the legs of the concept of "Sustainable Development", the MoEF was directed to revisit the exemption order with regard to EC given to M/s. Sagitaur Ventures India Pvt. Limited and pass suitable orders in the light of recent research findings and other relevant materials available.
3. KSPCB was directed to issue the Consent to Establish to M/s. Sagitaur Ventures India Pvt. Limited only after satisfying itself with the compliance of all items listed in the Office Memorandum No. J-11013/41/2006-IA.II (1) dated 30th June, 2011 issued by the MoEF.
4. The KSSIDC and the IISc are directed to permit the villagers to offer pooja, celebrate festivals and conduct traditional rituals on concerned days at the temples located in the sites allotted to them in the land under question, during and even after their establishment and subsequent operation.
5. The BARC is directed to shift the temporary fence abutting the mud road near the south western corner of their land suitably and open up a passage to the villagers to enable them to

reach their respective agricultural lands and also Kaluvehalli village.

The BARC and IISc are directed to evolve and implement a joint action to plan to enable free movement of villagers from Khudapura to Old Sheep farm through their respective premises.

The ISRO is directed to provide water to the villagers of Ullarti village through the borewells located in the site allotted to them, on a continuous basis i.e., during the establishment and operating phases of the organization.

The applications are disposed of accordingly.

Vidhan Mishra
Vs
Union of India Ors

Appeal No. 04/2013

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

Keywords: EC, compliance, planting of trees, Chattisgarh,
Appeal disposed of

Dated: 28thAugust, 2014

This appeal was registered under the provisions of Section 16 of the National Green Tribunal Act, 2010 after the Original Writ Petition No. 17/2012 filed by the Appellant before the High Court of Judicature at Bilaspur, Chhattisgarh was transferred in terms of the directions of the Supreme Court in the case of Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 326.

The main issues which were highlighted by the Learned Counsel for the Appellant with regard to the compliance of the terms of the EC are concerned, the specific points raised were particularly with reference to specific Condition No. (xxviii) and (xxix).With regard to these, the Respondent No. 8 submitted an affidavit on 26.08.2014 wherein the General Manager of Respondent No. 8 Project Proponent has given the details of the works under the CSR activity undertaken by the Respondent No. 8.On the basis of this the court found the issues, which have been highlighted, and the works undertaken by Respondent No. 8 in their affidavits, stand corroborated and after filing of the replies no specific objections have been raised by the Appellant. The court said that they would like to get a specific information from the CECB on the aforesaid issue whether the requirement of establishment of green belt under condition no. xxv is a separate and distinct one and has been implemented as such by the Project Proponent Respondent No. 8 or not and also direct the Respondent No. 8 to submit its response on the same by way of an affidavit.
The Respondent No. 8 admitted before the court that so far as the requirement of the development of the fruit orchards is concerned at present, the Project Proponent has developed orchard in an approximate area of 40 acres and the remaining 33 acres shall be developed in due course in a phased manner as required under the Conditions of CSR. It was also been submitted that Respondent No. 8 has created an organization named 'ChiragMahila Vikas Samithi' comprising 300 women members of 8 project affected villages. This Samithi would ultimately be maintaining the orchard and will be responsible for marketing of the product, benefit sharing etc. amongst themselves for which comprehensive scheme has already been drawn up. The CECB shall submit before us a copy of the specimen of By-laws, which may have been framed with regard to the above Samithi. In case no such By- laws, rules or regulations have been

drawn up, it will be the responsibility of the Project Proponent along with the CECB to draw such By-laws for taking care of the aforesaid issues.

The court said that the issue with regard to creation of fodder banks is also very important as the requirement under the conditions of EC for creation of fodder banks was particularly introduced on account of the fact that major portion of the pasture lands (charagah) used by the famers and their cattle in the project affected villages have been handed over to the Project Proponent for establishment of their plant. While creation of fodder banks is important, a company such the Respondent No. 8 which has expertise as well as manpower, can certainly guide the project affected persons for developing fodder farms and cultivating good quality fodder for their cattle. The present trend of cutting and uprooting of weeds and grass should be replaced by the aforesaid means by scientific cultivation.

The responsibility for ensuring the compliance of the terms and conditions of the EC mainly lies with the CECB and it shall be their responsibility to carry out periodical inspection with regard to the same and submit quarterly report on the aforesaid through the Regional Office in this behalf.While going through the affidavits submitted by the Respondent No. 8 dated 26.08.2014, the bench noticed that the Respondent No. 8 has developed the village approach road for the benefit of the project-affected persons. The Learned Counsel appearing for the Respondent Project Proponent, after having taken instructions from his client submitted that within the next two months, i.e. during the present monsoon season itself, they would take steps for raising avenue plantation with tall plants of local tree species as far as possible all along the approach road and also take steps for ensuring regular watering, protection and survival by placing tree guards around the trees planted so to protect them from any damage from stray animals, etc. as also employ the project affected persons on preferential basis for the above task.

Court held that the need is to ensure continuous monitoring of CSR activities as well as their continuance. With the requirement of CSR having been introduced in the Companies Act itself, the company like Respondent No. 8 must come forward with the task of carrying out the CSR activities as has been envisaged under the Company Act i.e., a minimum of 2% of the average net profit. For the aforesaid, a plan shall be drawn up and submitted before the CECB and also for identifying issues of CSR, the requirement and needs of the people of the area and the project affected persons shall be taken into account by calling a meeting of the local panchayats or the village samitis which have been created in the area or presenting proposals during the meetings of the Gram Sabhas. Since the issue that was left after the order dated 28.11.2013 pertains only to carrying out and complying with conditions of the EC, which the court was satisfied has been carried out by the Project Proponent/Respondent No. 8, as evident from the affidavit of Respondent no. 7, the court disposed off the Appeal. However, while disposing of this appeal, the compliance on the issues which have been highlighted above and points that have been raised requiring further action on the part of the Respondent No. 8, the compliance shall be made to that effect within two months and compliance report and affidavits be filed in the matter within one month thereafter.

The Appeal No. 04 of 2013 accordingly stands disposed of.

Paryavaran and Manv Sanrakshan Samiti
Vs
M/s Arms Resl Estate Developers Pvt. Ors.

Original Application No. 154/2014 (CZ)
Original Application No. 192/2014 (CZ) (M.A.No. 436/2014)
Original Application No. 194/2014 (CZ)

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

Keywords: Environment Clearance, EIA, Sustainable development, Precautionary Principle Application disposed of

Dated: 2 September 2014

The applications pertain to alleged construction being carried out by the Respondent No. 1 Project Proponent in contravention of the EIA Notification, 2006 and without having obtained the necessary Environmental Clearance (for short, 'EC') as required by the Project Proponent under the said notification. It is not in dispute that the Respondent No. 1, in each of these cases the Project Proponent, applied for the grant of EC and the final decision on the same has not been taken so far by the State Level Environment Impact Assessment Authority (for short, 'SEIAA').

The court directed SEIAA to take a decision in the matter in accordance with law on the pending applications of each of the Project Proponents in these three cases. In case on any account, if a final decision could not be arrived at or further query is required to be raised and clarification sought in the next meeting, the SEIAA will take a final decision positively in the subsequent meeting within six weeks from today and communicate the same to the Project Proponent. The court also directed, the Project Proponents, awaiting the outcome of their application, shall not carry out any further construction and shall

Original Application No. 154 of 2014, Original Application No. 192 of 2014 and Original Application No. 194 of 2014 stand disposed of. No order as to cost. The matter shall be placed before this Tribunal for reporting compliance on 20th October, 2014.

Rajesh Dixit
Vs
State of M.P. and 11 Ors.

Original Application No. 24/2014(THC)(CZ)

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

Keywords: Illegal mining, private/revenue land, wildlife sanctuary, Panna National Park, Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986
Application disposed of

Dated: 3rdSeptember, 2014

The application came to be registered by this Tribunal after the same was transferred by the High Court of Madhya Pradesh at Jabalpur vide order dated 09.01.2014 where originally Writ Petition No. 7754/2005 was filed by the Applicant. The Writ Petition was filed as Public Interest Litigation alleging that mining of stones, diamonds and other major mineral in District Panna in revenue lands as well as in the forest areas, was seriously affecting the nature and environment such as deforestation, soil erosion, damage to wildlife etc. as the same was being carried out allegedly illegally in areas covered even in the Panna Wildlife Sanctuary, Panna National Park, Panna Tiger Reserve and other forest areas. It was therefore prayed that the Respondents be directed to produce all documents and information pertaining to the aforesaid on all types of mining activities in District Panna and further all over Madhya Pradesh.

In the original Writ Petition the issue raised was general in nature as also in the relief clause. However, it appears from the reply submitted by the State Government on 25.09.2006 that the Applicant confined himself to the issue of illegal mining of diamonds in forest areas in District Panna (M.P.). When the case was heard, four issues were highlighted and identified for consideration and on which the response of the Respondents was sought by the Tribunal which also incidentally relates to illegal mining of diamonds in the District Panna more particularly in the forest areas allegedly contrary to the provision under the Forest (Conservation) Act, 1980 and other related Acts which prohibit non-forest activities in the forest areas.

The position that stands now is that the said Corporation is carrying out the activities, as was submitted by the Learned Counsel for the State, with proper permissions and clearances under the Environment (Protection) Act, 1986 and Forest (Conservation) Act, 1980. As regards the averments made in the application that the illegal mining is being carried out and such activity is not restricted to areas for which the leases have been granted and mining is going on in the garb of such permission in different areas particularly in the forest areas, are concerned, no specific instances of such areas and persons have been identified or mentioned in the pleadings. There is also no mention with regard to such activities being carried out either by the Corporation or by individuals. In the absence of any such information or specific pleadings to that affect, it is difficult for the Tribunal to proceed to examine the aforesaid issue. As far as the

mining by private individuals is concerned, in response to the queries which were raised by the Tribunal after hearing the Applicant and the Counsel as enumerated in the order dated 13.03.2014. It was submitted by the State that apart from the mining being carried out by the NMDC, Prevailing Customary practice of shallow mining of diamonds on private and revenue lands by local miners is being practiced in the area in question in the Panna District. It was submitted that this practice has been going on from time immemorial and it is recognized as customary law and with the formation of erstwhile Vindhya Pradesh and subsequently Madhya Pradesh the said customary mining has been permitted in the area. It has further been made clear that no shallow mining for diamonds is permitted in any forest area but confined to revenue / private lands as distinct from forest land. It has also been stated that with a view to recognize and also to regulate the aforesaid system of mining by local persons, the State Government vide Circular dated 28.05.2004 has informed the District Collector or, Panna regarding the publication of Heera Parichalan Nidhi Rules, 2000 for regulating and recognizing the aforesaid Shallow Mining of Diamonds. It has been submitted that the salient features of the above permissions are that the mining leases for plot size of 8x8 meters are granted to individual local persons who may be the applicants.

It has also been submitted that such licenses for Shallow Diamond Mining are sanctioned annually commencing from 1st January and ending on 31st December of every calendar year. The Respondents have also annexed the list of such licences having been granted by the State in the form of Annexure R/12 C for the year 2014 which indicates the names of persons, area/ village in which such permission has been granted, Khasra No. of land, classification of the land i.e. private / revenue land and lastly the period for which it has been granted. The total number of such permissions granted for the year 2014 is 550 as per the aforesaid list.
The court held that so far as the mining activity by the NMDC, a Government of India undertaking is concerned, no doubt such activity has been permitted to be carried out in forest area with due permission both under Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986 and notifications issued thereunder. As far as the mining activities by the private individuals are concerned, the same has been recognized as a customary practice from time immemorial as submitted by the Learned Counsel for the State and since 2001, the same is being regulated by rules framed by the Government in this behalf and as per the terms and conditions which have been reproduced above which highlights inter-alia that such permissions are limited to an area of 8x8 meters, the same are either granted on private / revenue land (excluding Forest Land) and such permissions irrespective of the date of their commencement, expire on 31st December of every calendar year. Adequate measures and safeguards have been put in place for regulating the activity of mining and no illegal mining was permitted.The court accepted what has been submitted by the Respondent State, however the need of the hour for the State and its functionaries including the Forest Officials is to ensure that no illegal mining is allowed to be carried out in the forest areas including the Panna Wildlife Sanctuary, Panna National Park and Panna Tiger Reserve and in case such mining of diamonds or any other mineral is found, the same shall be stopped immediately and action taken against the persons concerned in accordance with law. It shall be the responsibility of the District Collector through officials of the Mining Department, Revenue Department and Forest Department to ensure that

such activity is not permitted and if any illegal mining is noticed it shall be immediately taken care of and stopped and persons brought to book.
Original Application No. 24 of 2014 disposed off. No orders as to cost.

Dr. Udaykumar Vasantrao Jagtap
Vs
Saswad Municipal Council Ors
Original Application No. 46/2013(WZ)

Judicial and Expert Members: V.R. Kingaonkar, Dr. AjayA. Deshpande

Keywords: solid waste disposal, pollution of river water, untreated sewage,
Application Disposed of

Dated: 4thSeptember, 2014

TheApplication is filed under Section 14(1)(2) read with 15 and 18 of the National Green Tribunal Act, 2010, The Applicant, named above is Doctor by profession. He alleges that that untreated sewage and the Municipal Solid Waste (MSW) disposal practices adopted by the Municipal Council of Saswad, District Pune, are causing pollution of the water flowing through river 'Karha' and its streams and other water bodies.

After going through the pleadings of the contesting parties, the court listed the following issues for consideration:

I) Whether Saswad Municipal Council, is complying with the Environmental Regulations?

II) What directions can be given to the Respondents for ensuring compliance of Environmental Regulations, through time bound works?

Issue (I) The Municipal areas generate large quality of sewage and MSW. With increasing population and also economic growth, the rate of consumption of water and generation of waste material is increasing in the urban areas. This poses a serious challenge for small Municipal Councils, as an adequate sewage treatment and MSW processing, are capital intensive, technically challenging and complex, besides high maintenance activity, which are generally opposed by the people, who are staying nearby to the STP and MSW plants. In the instant case too, though the Council has installed small STP in the form of oxidation ditch, way long ago, the same could not be operated and maintained due to various reasons, but primarily due to negligence from the Council. However, with growing population and increased quantity of sewage, the problem of water pollution of rivers, is getting severe. This is further aggrieved due to the fact that most of the rivers in this region are not perennial and the population is dependent either on reservoirs or groundwater for drinking purpose. Under these circumstances, pollution of river water is caused due to untreated sewage and has become a serious concern. Admittedly, the Municipal Council does not treat any of its sewage though they have an existing STP with an old oxidation ditch, which is lying in dilapidated condition. The Council also is not treating its MSW in compliance with the Municipal Solid Waste (Management & Handling) Rules, 2000 and just dumping its waste at Survey No.88. The Municipal Council is required to provide necessary treatment to its sewage in compliance with the provisions of the Water (Prevention & Control of Pollution) Act, 1974. Further, the Council is required to provide necessary MSW treatment and processing facility in compliance with the Municipal Solid Waste (Management & Handling) Rules, 2000. Admittedly, the Council is not

complying with both the Regulations and, therefore, it can be concluded that the Council is not complying with the Environmental Regulations. The court found that that since atleast 2000 the MSW Rules ought to have been implemented, may be in phase wise manner, but till filing of the Application, there is no affirmative action taken by Saswad Municipal Council. Hence, the issue No.I is answered in the Affirmative.

Re: Issue (II) As discussed above, the sewage treatment and MSW management in the small class Municipalities, is a tricky issue. The report of CPCB on the status of sewage treatment in India, 2012, highlighted seriousness of untreated sewage from the Municipal areas. Even, it has been observed that the Municipalities, which are more financially sound and that are more autonomous in functioning, are also in non-compliance zone. In the instant case too, the compliance levels are absolutely below the mark. In the present case, with the approach and efforts shown by the Respondent No.1, to take aid and support of other Governmental organizations, including the Collector, to tackle this problem. Mere optimism will not work for effective compliance of the Regulations. The court said that unless a time bound program is outlined, backed up with judicial order, the compliance will not be achieved in a realistic manner, by overcoming various procedural and operational hindrances. The issue No.II is therefore, answered in the Affirmative.The court to partly allowed the Application with the certain directions. The Application is thus allowed as follows:

I) The Municipal Council shall fully commission their MSW plant of Kumbharvalan, in Survey No.88, on or before 31 March 2015.

II) The Municipal Council shall start phase-wise shifting of the MSW generated on daily basis to the MSW facility, after rainy season and commence composting activity simultaneously.

III) The Council shall ensure that while transporting of such solid waste, no nuisance shall be caused to the people in the vicinity and sufficient care in the form of covering of trucks and also, spreading of suitable chemicals etc. shall be practiced for odour operation control and also, effective composting is ensured.

IV) The Council and the Maharashtra Jeevan Pradhikaran, are directed to ensure that oxidation ditch is made operational to achieve the discharge norms of the MPCB within next six (6) month and latest before 31st May, 2015, under any circumstances, without failure.

V) The MPCB shall monitor the compliance of above directions on quarterly basis and may obtain CPM chart from the Municipal Council for completion of these works to monitor the same quarterly basis of which a report be submitted to this Tribunal at end of each quarter henceforth.

VI) The Collector, Pune, is directed to ensure the compliance of above directions. He shall review the progress of both the activities on monthly basis till May 2015 and ensure that no administrative hurdles or glitches obstruct for timely completion of the project.

VII) In the event of failure of Municipal Council and Maharashtra Jeevan Pradhikaran (MJP) to adhere to above time limits. MPCB may execute the balance work, under the provisions of Section 30 of Water (Prevention and Control of Pollution) Act 1974, besides taking suitable legal action.

VIII) The Respondent No.1 shall pay cost of Rs.10,000/- to the Applicant.

Application Disposed of.

The Goa Foundation Anr.
Vs
Marmugao Planning Development Authority Ors.

Original Application No. 37/2013THC (wz)

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

Keywords: NOC, private forest, felling of trees, Godavarman case, Forest
Application partly allowed

Dated: 4thSeptember, 2014

The present Application was originally filed in the High Court of Bombay, Bench at Goa as Writ Petition, which was transferred, to the National Green Tribunal vide order of High Court, at Goa. The Applicants seek to raise a dispute connected with implementation of the Forest Conservation Act, 1980 in the State of Goa and enforcement of the directives of the Supreme Court in the "***Godavarman matter***". This Application is filed for order of quashing Conservation Sanad and the development permission of Sancoale village as the same is identified by the Forest Department as "*forest*" in accordance with definition of the "*forest*" as per the Ruling of Supreme Court in "***Godavarman matter***".

The court framed the following issues for determination in the present Application for its final adjudication.
(1) Whether the Application is barred by limitation and as such liable to be dismissed ?
(2) Whether the land in question is a "private forest"?
(3) Whether the NOC/permission granted in favour of Respondent Nos.6 and 41 are liable to be quashed, being illegal and untenable in the eye of law, being contravened to Forest Conservation Act, 1980?
(4) Whether the developers are liable to restore the land in question to its original position or for compensatory measures due to deforestation without prior permission of competent authorities for felling of trees standing on?

The core issue was, whether the property of Respondent No.6 and 41 at land S.no.113/2 of village Soncoale, is a private forest. It is not disputed that this land is not recognized and notified as private forest in revenue record till this date.
It is an admitted fact that Govt. of Goa appointed two (2) Committees, namely; Sawant Committee and thereafter Dr. Karapurkar Committee, to identify 'private forests' in Goa in pursuance to the directions of the Supreme Court in "*T.N.Godavarman Thirumulkpadvs Union of India*"**.** The High Court of Bombay, Bench at Goa, in its Judgment dated 27.11.1990, held that the term "Forest" is not specifically defined under the Forest (Conservation) Act, 1980 and as such, it has to be given dictionary meaning.

The Applicants put forth that Sawant and Dr. Karapurkar Committees have identified four (4) survey numbers in Soncoale village as private forests and the subject property at S.No.113/2 has not so far been surveyed and identified as private forest. She emphasized that both the reports clearly mentions the identification process is incomplete and that's why the State Government has further constituted two (2) Districts Level Committees for the continuation of Private Forest identification process. It is her contention that the South Goa Committee in November 2013 has visited the area and noted that the stretch of area of villages Sancoale, Dobolim and Chicalin village are necessary to surveyed for identification of private forest. In short, her submission is that, mere non listing of the subject property in either Sawant or Dr. Karapurkar Committee reports does not conclude that the subject property is not a private forest. The court noted the submissions made by Respondents that the Sawant and Dr. Karapurkar Committees have visited the Soncoale village as a part of identification process, and have identified four (4) S. Nos. as private forests.

In fact, the report also identifies the S.nos. of areas of which even a part is likely to be the private forest. He submits that the first identification process is a screening exercise mostly on ocular observations, by the expert committee members, which is subsequently followed by rigorous procedure of identification and demarcation of forest. The Learned Sr. Counsel submits that the forest department cannot be allowed, again and again, to visit a particular village for identification of Private forest over such a long and substantial time. This will create total lack of clarity and stall the entire development process. He agrees that once identification process is done, the further process of survey, investigations, public consultation, demonstration and notification will take time and is a quite elaborate process. However, his contention is that the identification process is a onetime process and should not be used as a fishing activity for adding more and more areas for further investigation. The forest identification criteria laid down by Sawant and Dr. Karapurkar Committees are the pre-requisites of the identification of private forest. In the present case, admittedly neither Sawant nor Karapurkar Committee nor the South Goa Committee has identified the subject property as a private forest, in part or full. It is also to be noted that the area of the subject property is only two (2) hectare and there is no record to show that it is contiguous to any Government forest. Under these circumstances, it is difficult to countenance the argument of learned Counsel for the Applicants.

The court heldthat the Application is destitute of substance. However, it is manifest that the Developer got cleared part of the area by felling of about 200 more trees, than the permitted one, in his overzealous attempt to develop the area. The Developer wanted to commence the development process as expeditiously as possible. His attempt was to make early profiting business. The Law should not have been arm- twisted by him in doing such development activities, either by himself or through any Agency. He did not give any report about the incident of felling of trees from his property to the police. He did not take any action against the culprits, nor did he make any attempt to arrest further loss of vegetation by taking early action, when felling of the trees was noticed. It cannot be said that he might not have noticed felling of trees immediately. His conduct of keeping silence by itself would amount to connivance or attempt to willful removal of the trees/degradation of environment. Hence, he is liable for

compensatory afforestation.

While concluding the judgment, the court said that they are concerned with the delay in completion of exercise for identification of private forests in the state of Goa. This delay is neither helping the cause of protection of forest and environment nor is it helping the sustainable development of the state and only results in litigation. It also impedes forest protection and development in the area. This Bench has already dealt with this issue elaborately in the Judgment rendered in Application nos. 14 and 16 of 2013, wherein certain directions have been given to State.

The Application was partly allowed and partly dismiss the same as follows:

(I) The Application, as regards main prayers in respect of declaration and restoration of land, is dismissed.

(II) The Respondent No.6, (Developer), is directed to pay an amount of Rs.5,00,000/- (five lakhs) for the purpose of afforestation, which shall be credited to the account of State Forest Department, within period of four (4) weeks. If the Amount is not so credited then it be recovered with interest @ 18% P.A. from today till date of recovery and shall be utilized for afforestation purpose.

(III) The Chief Conservator of Forest, shall give six (6) monthly report about the progress of afforestation work to this Tribunal.

(IV) The above amount shall be deposited by the Respondent No.6, in the office of Chief Conservator of Forests, State of Goa within period of four (4) weeks. In default of payment, all the properties of the Respondent No.6, shall

(J) Application No.37(THC)/2013 be confiscated and sold in auction by the Collector, North Goa, and sale proceeds shall be deposited with the office of Conservator of Forests, as if, it is land revenue arrears.

The Respondent No.6, shall pay Rs. 1,00,000/-

Application disposed of

George Berretta Anr
Vs
The State of Goa Ors.

APPLICATION No. 28(THC)/2013(WZ)

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

Keywords: CRZ clearance, CRZ Notification, Benaulim village, Ministry of Environment and Forests

Application disposed of

Dated: 4thSeptember, 2014

The present Application was originally registered as Writ Petition High Court of Bombay, Bench at Goa, which was transferred to this Tribunal by the order of Division Bench of High Court. The Applicants seek to challenge and stop the construction of a bridge over river Sal connecting Benaulim village and Sinquetim at Navelim village at Salcete undertaken as project of State Government, Goa.

The Applicants case was that there was a tender notice issued for this project on 5-2-2009 with an estimated cost of Rs.8.45 crores. The Applicants claim that the proposed bridge location is covered under CRZ Notification 1991 and as per the provision of the said Notification, this project requires CRZ clearance from Ministry of Environment and Forest (MoEF), Government of India, as the capital cost of the project is more than Rs.5
crores. The Applicants further submitted that the banks of the river Sal, wherein the proposed bridge is being constructed, are ecologically sensitive as they are covered with mangroves and are classified as CRZ-I area as per the said Notification.

The court considered the following issues for disposing the present Application.
1) Whether the Respondent No.2 has started the construction of the bridge prior to the mandatory CRZ clearance as per the CRZ Notification 1991 and/or CRZ Notification 2011 ?
2) Whether the GCZMA has followed the norms and regulations while granting the CRZ clearance dated 24th August, 2011?
3) Whether the construction activities of the bridge have caused environmental impacts/ damages with particular reference to the dumping of debris, obstruction in the river flow, mangrove cutting etc. if yes, whether adequate remedial measures have been adopted by the Respondents?
Re: Issue No.1 :The court held that Respondent No.2 commenced the construction of bridge activity without the necessary CRZ permission. The court took note of the orders of High Court in the CivilAppeal No.218 of 2011 dated 8th October 2011 wherein the request of petitioners for grant of interim relief was rejected, having regard to the fact that the construction of the bridge was needed in the Public Interest and the same was delayed thereby resulting in cost escalation.

The issue No.1 is accordingly answered in Affirmative.

Re : Issue No.II

The court held that in the absence of any information on quantification of the area effected by the dumping of debris, quantity of debris etc. that has not been assessed by the GCZMA., it is necessary to ask MoEF to verify the actual work done regarding removal of debris and compliance of CRZ notification. The Action Plan prepared by GCZMA, in consultation with the experts shall be implemented by the Respondent No.2. Considering the above facts and documents placed on record and also the visit reports of GCZMA, the court also held that the construction practices of the Respondent No.2 while constructing the bridge in question, are not environmental friendly and the debris/soil dumped by them in the CRZ area has caused environmental damages. This answers the issue No.(III).

The Application is partly allowed with following directions:

1) Regional office or any authorized officer of MoEF shall conduct inspection of the site in question and verify the removal of debris, cutting of mangroves, and compliance of CRZ notification, 2011, within four (4) weeks. In case of non-compliance suitable action be taken in next four (4) weeks and a report be filed to this Tribunal on or before 31-12-2014. GCZMA to immediately inform Regional Office, MoEF about this order.

2) The Respondent No.2 i.e. Goa Public Works Department shall prepare the environmental responsibility policy framework as per Ministry of Environmental and Forest (MoEF) Circular dated 19-5-2011 in next six (6) months to avoid such environmental non compliances.

3) The GCZMA shall ensure the implementation of the Action Plan submitted on 16th July 2014 to be implemented by Respondent No.2 by December 2014. Dr. Antonio Mascarenhan, Scientist, NIO, Goa shall supervise such implementation and submit a compliance report to this Tribunal in January 2015. The Respondent No.2 and GCZMA shall facilitate his monthly visits to the site and report preparation by providing all necessary support and infrastructure. He shall be paid honorarium of Rs. 25,000/- (Rs. Twenty five thousand) by Respondent-2 for this assignment.

Accordingly, the Application is disposed of. No costs.

K. Chidamberrum
Vs
M/s. Davis Pharmaceuticals Medak District and others
And
M/s. Dr. Reddys Lab Unit IV Rengareddy District and others

Appeal No. 138/2013(SZ)
Appeal No. 139/2013(SZ)

Judicial and Expert Members: M. Chockalingam, R. Nagendran

Keywords: Pollution, washing units, dyeing industries, Tamil Nadu Pollution Control Board, Effluent treatment plant

Applications dismissed

Dated: 5 September 2014

The Application No. 138 of 2013 (SZ) and Application No. 139 of 2013 (SZ) have been are taken together for adjudication as the averments in both the writ petitions are common. The cases was filed raising the issue of pollution caused by the bleaching and dyeing units to the Noyyal river and many of the units did not have the Effluent Treatment Plant and were discharging the effluent into the river. The High Court gave time to put up ETP as per the recommendations of the Tamil Nadu Pollution Control Board. The CETP and IETP were put up as per the said order and at that point of time it was believed by all the parties that the concerned ETP put up would meet the required environmental standards. Total Dissolved Solids did not meet the standards. The High Court appointed an Expert Committee, which addressed the issue of TDS while recommending the installation of Reverse Osmosis (RO). 17 CETPs were imposed a fine at the rate of 6 paise, 8 paise and 10 paise per litre so as to permit them to run upto 31.07.2006. Challenging the same, the Dyer's Association representing the above 17 CETPs filed S.L.P before the Supreme Court of India in S.L.P. No. 6963 of 2007 and obtained interim order and based on the same all the member units of the 17 CETPs are running as on today. In view of the pendency of the S.L.P, the above said writ petition filed by the applicant was dismissed directing the applicant CETP to approach the Supreme Court. Challenging the same, the applicant CETP filed S.L.P. before the Supreme Court of India and the Court gave directions stating that *unless the units operate, the banks will not sanction loans and only with the loans Zero Liquid Discharge mechanisms can be put in place. It is purely a balancing exercise which will come to an end if the Supreme Court gives directions in the pending matters".*

As per the High Court's order the applicant CETPs is entitled to run both dyeing and bleaching units as that of other CETPs. In the mean time, the time granted by the High Court was over and the applicant was granted extension of time upto 31.03.2011 without closing the member units of the applicant CETPs that were running dyeing and bleaching units so as to enable the petitioner CETP to install RO plants and achieve ZLD as per the Experts Committee report. In

the above said M.P, the High Court passed the following order directing the Tamil Nadu Pollution Control Board to consider the application submitted by the respective in the matter of extension of time to erect the reverse osmosis plant.
Meanwhile, the petitioner CETP filed M.P.No. 1 of 2010 in W.P.No. 9006 of 2008 and M.P.No. 2 of 2009 in W.P.No. 35977 of 2007 respectively, before the High court seeking extension of time upto 30.04.2011 so as to install ZLD without closing down the member units of the petitioner CETP as per the Expert Committee report dated 10.06.2009. Board considered that there is no scope to operate the CETPs.

The Supreme Court directed that The Pollution Control Board to ensure that no pollution is caused giving strict adherence to the statutory provisions.
Supreme Court held that the members of the appellant association should ensure the compliance of all the directions contained in the orders made by the High Court including payment of dues within a period of three months and the units were also directed to ensure that no pollution is caused to the river or dam and the cleaning operation if not completed, shall be completed within a stipulated time. In paragraph 34 of the said order, the Supreme Court observed that there has been unabated pollution to the River Noyyal and the polluting units cannot escape from the responsibility of meeting the expenses of reversing the ecology and they are bound to meet the expenses of removing sludge from the river and also cleaning the dam. The principles of 'polluters-pay' and 'precautionary principle' have to be read with the doctrine of 'sustainable development'. It becomes the responsibility of the members of the appellant association that they have to carry out their industrial activities without polluting the water. In paragraph 35 of the judgment, the Supreme Court has stated that the farmers are eligible to get compensation for the damage caused to their lands and also observing that none of the directions issued by the High Court in its final order dated 22.12.2006 has been interfered with and that the Apex Court had only stayed the orders relating to closure of all the units till 31.07.2007. Finally the Apex Court, in paragraph 36 held that the association has to ensure compliance of the orders passed by the High Court within a period of three months to all the CETPs to operate and to pay the balance amount for cleaning the river and compensation payable to the affected farmers. The Board was also directed to ensure that no pollution is caused giving strict adherence to the statutory provisions.

High Court passed an order dated to ensure compliance of all the directions contained in including payments due and that the petitioners thereto shall also ensure that no pollution is caused to the river or dam and that it is the responsibility of the petitioners thereto to carry out the industrial activities without polluting water. The petitioners thereto filed applications before the High Court praying for extension of time to enable them to install RO plant and to achieve ZLD as per the Expert Committee's report dated 16.02.2009. The High Court in its order dated 05.05.2010, directed the Board to consider the applications submitted by the applicants herein and to take a decision with an opportunity to the 3rd respondent herein to make representation. The Board filed its report to the effect that no extension of time can be granted to both the applicants herein for the reasons set out in the report. Accordingly, the Board issued proceedings on negating the request for grant of extension of time to both the applicants.

The question that arose for consideration before the Tribunal was whether the impugned order is liable to be set-aside on all or any of the grounds put forth by the applicants. A joint compromise memo was recorded by the High Court of Madras on 11.2.1998 and the stated Writ Petition was disposed with a direction to the industries to obtain consent within the stipulated time and to the Board to implement the pollution laws forthwith. As per the directions, the CETPs and IETPs were established. Though the industries made their attempts, they did not satisfy the environmental standards as required by law. Another Writ was filed by Noyyal River Ayacutdars Protection Association for a Writ of Mandamus to implement the orders of the High Court dated 26.2.1998, referred to above. The High Court appointed an Expert Committee by an order dated 5.5.2005. The said Committee addressed the issue of TDS and also recommended the installation of Reverse Osmosis (RO) plant, so that water can be reused and the Units would not discharge effluent at all. The Committee sought for a direction from the High Court that each individual Dyeing unit and CETP should be required to put up RO plant and also to achieve ZLD . Acting on the report, the High Court issued directions.

Since deliberate delay was noticed in installing the ZLD, Units were directed to deposit 50% of the project cost to show their *bona fides*. Both the applicants sought for time for making the deposits. Not satisfied with the assurance and seriousness of the cause of pollution, the High Court issued a direction in W.P.No.29791 of 2003 dated 27.4.2006 for closure of the CETPs of the applicants' Units. Both the applicants filed their respective affidavits seeking revocation of the closure order but no order of revocation of closure was made. At this juncture, it remains to be stated that the said W.P.No.29791 of 2003 is pending before the High Court of Madras.

In January 2007, the applicants herein filed W.P.No.3208 of 2007 and 3218 of 2007, respectively for a Writ of Mandamus for revocation of the closure order dated 27.4.2006. A Review application No.14 of 2007 seeking the review of orders of the High Court dated 22.12.2006 in W.P.No. 29791 of 2003 filed by the Tirupur Dyeing Factories Owners Association was dismissed on 21.2.2007. The two Writ petitions namely W.P No. 3208 of 2007 and 3218 of 2007 filed by the applicants herein seeking revocation of closure order were dismissed declining to grant the relief. It is pertinent to point out that no appeal was filed by both the applicants. The applicant in Application No.138 of 2013 filed a W.P.No. 9006 of 2008 for reopening of its Units on the strength of a sanction letter dated 11.1.2008 issued by its Financial Institution. Equally, the applicant in Application No.139 of 2013 filed a W.P No,35977 of 2007 seeking revocation of closure order and to permit its 19 Units to open on the strength of sanction letter dated 28.9.2007 given by its bankers. Both the Writ Petitions namely W.P. No. 9006 of 2008 and W.P.No. 35977 of 2007 were dismissed on 11.4.2008 and 13.2.2008, respectively. Aggrieved over the said order, both the applicants filed S.L.P (C) Nos. 19883 and 21591 of 2008 which were disposed of by a common order of the Apex Court permitting the applicants to approach the High Court for appropriate directions. In W.P. No. 29791 of 2003, the High Court issued a direction on 8.4.2009 to the Expert Committee to inspect and submit a report to decide whether the Units could be allowed to operate. As seen from the available materials, the Expert Committee made a report stating that the Board might issue consent letters if the Units have completed ZLD system. The

Board made a report before the High Court in January 2009 that both the applicant CETPs did not satisfy the standards and the discharge of effluent would pollute the river. It is quite evident that the consent granted to the members in Application No.139 of 2013 namely Kuppandampalayam CETP, expired on 31.3.2003, for Manickapurampudur CETP in Application No.138 of 2013, no consent was given to operate. While issuing a direction, the Board was also directed to consider the applications for consent to operate as and when filed and pass appropriate orders.

34. The order of the High Court made in W.P No. 35977 of 2007 and W.P. No.9006 of 2008 dated 9.10.2009 reads as follows:

"(i)The petitioners shall ensure the compliance of all the directions issued by this Court by order dated 22.12.2006 and which would include the payment of dues, in case the units operate to the extent applicable to the petitioners CETPs.

(ii) The units shall ensure that no pollution is caused to the river or dam, if cleaning operation has not yet been completed, it will be completed within the said stipulated period. It is the petitioners' responsibility to carry out their industrial activities without polluting the water.

(iii) Three months' time is therefore given to ensure the compliance of the directions to make the CETPs functional. This is subject to the condition that the petitioners pay the amounts for cleaning of the dam and their share of the award to the persons affected. These amounts shall also be paid within a period of three months from today.

(iv) The Pollution Control Board is directed to ensure that no pollution is caused, giving strict adherence to the statutory provisions. The petitioners herein have applied for consent, but no consent has been issued. The Pollution Control Board shall process the applications for consent in the light of the order of the Supreme Court. These orders shall also apply to the individual ETPs. The Pollution Control Board, after inspection, consider the applications for consent filed by the petitioners in W.P.No.28618 of 2008. As regards the petitioner in W.P.No.7932 of 2009, 6772 of 2009 and 14714 to 14717 of 2009, they are permitted to put up IETP and upon their informing the Pollution Control Board that it has been installed, the Pollution Control Board shall inspect the same and process their applications for consent. No costs. Consequently, connected Miscellaneous Petitions are closed. "

The High Court said that *The Pollution Control Board is the appropriate authority to consider the request of the petitioners.* The Board dismissed both the applications. Aggrieved over the said order, the applicants preferred the two Writ Petitions in W.P.Nos. 18835 and 18836 of 2010, which were transferred to this Tribunal pursuant to the order of the Court and were taken on file.

While dismissing W.P. Nos. 3208 of 2007 and 3218 of 2007 seeking revocation of closure order of the applicant CETPs, the High Court not only refused to revoke the closure order but also made it clear that it was not possible to revoke without the installation of RO plants in the respective Units and achieving ZLD status. It is pertinent to note that those orders remained unchallenged and attained finality. But the directions were not complied with. While confirming the directions of the High Court, the Apex Court granted three months time to ensure compliance. Since the conditions were not complied with within the stipulated time, contempt

proceedings were initiated in Contempt Petition Nos. 1013 and 1068 of 2010 by the newly impleaded 3rd respondent herein and detailed orders were passed by the High Court on 28th January, 2011, a copy of which is placed before the Tribunal. Paragraph 53 of the said order reads as follows:

"In the instant case, therefore, we are fully convinced that unless stringent and deterrent action is taken on the CETP/ Units by immediate closure of the units, the water of the Noyyalriver cannot be made free from the poisonous substances discharged from these units and the water shall not be fit for human consumption. Hence, while keeping the contempt petition pending with a view to monitor the entire matter, we issue the following directions:-

(i) All the CETPs/ IETPs Bleaching and Dyeing units in Tirupur area shall be closed down forthwith by the Pollution Control Board and the Electricity supply shall be disconnected.

(ii) Such CETPs/ IETPs/ Units shall not be permitted to operate unless and until they achieve zero liquid discharge as per the directions issued in paragraph No.30 (a) (ii) of the order of the Division Bench dated 22.12.2006".

40. While disposing of W.P.M.P.Nos. 143 to 146 and 163 to 166 of 2011 in W.P.No.29791 of 2003, the First Bench of the High Court of Madras has held as follows:

"We do not appreciate the manner and modality adopted by the petitioner association presumably with a view to dilute the effect of our order dated 28.1.2011. If any one of the prayer sought for in these miscellaneous petitions even if partially accepted would amount of reviewing our order dated 28.1.2011. We may add that mere change of counsel for the petitioner association cannot change the facts of the case. All the points raised by the petitioner in those miscellaneous petitions were substantially canvassed by the same Association in the contempt petitions and have been elaborately dealt with in our order dated 28.1.2011.

As noticed above, condition No. 5 of para 53 of our order stipulates that in respect of CETPs/ IEPTs/ Units who have fulfilled all conditions can approach the Tamil Nadu Pollution Control Board seeking for order of consent to operate and such unit shall be continuously and closely monitored in order to ensure strict compliance of the orders. Therefore, if any of the members of the petitioner association have fulfilled the conditions, it was always open to them to approach the Board for necessary orders. In the light of the clear directions issued by this Court, we are of the firm view that the present miscellaneous petitions have been filed by the petitioner with a view to somehow get over the order in the contempt petition order dated 28.1.2011. The petitioner being an association of factory owners, a registered body cannot be allowed to misuse the jurisdiction of this Court and indirectly attempt to secure relief which if sought for directly is not maintainable".

In so far as the request made by the applicants to grant permission to run the unit as "washing Unit" on the ground that it would not cause any pollution and does not find place either in the red or orange category and the same would not cause any prejudice to any one in any manner does not require any consideration for more reasons than one. It is not supported by pleadings. The contentions put forth by the counsel for the applicants that if the applicants are permitted to carry on washing it would be granting lesser relief, cannot be countenanced. At the time of enquiry, the District Environmental Engineer, Tirupur was summoned and a query was put to

him. According to the District Environmental Engineer, Tirupur in order to carry on the process of washing, the Unit has to file necessary application therefor under Water and Air Acts and such applications have to be necessarily processed in accordance with law. While the washing is considered as an independent and separate process without any connection to dyeing and bleaching, a separate application under Water and Air Acts becomes necessary. The Consent to carry on washing process cannot be granted in the absence of necessary application by the applicants under Water and Air Acts and necessary orders are to be passed by the Board after following necessary procedure in accordance with law. Hence, the said request cannot be considered by the Tribunal.

Both the applications are dismissed. However, it is made clear that this Judgment will not stand in the way of the applicants making necessary applications for the process of washing alone and the Tamil Nadu Pollution Control Board is directed to consider and pass orders in accordance with law if and when made therefore.

Asim Sarode Anr
Vs
MPCB Ors
Original Application No. 43/2013(WZ)

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

Keywords: Air Pollution, toxic gases, tyre disposal, Used Tyre Management, Maharashtra Pollution Control Board, emissions

Application disposed of

Dated: 6 September 2014

The Applicants have filed instant Application raising questions relating to unauthorized and unscientific burning of tyres which emit smoke containing toxic gases and pollutants affecting the environment and human life.

The following issues emerged:

I. Whether the tyre burning cause air pollution and pose a threat to human health?
II. Whether the present Used Tyre Management practices can be termed as environmentally sound and complying the regulations?
III. Whether the Respondents can be directed to enforce environmental regulation in Used Tyre Management under the present Regulatory framework?

Issue No. I:

The MPCB i.e. Respondent No.1 in its Affidavit dated 11th July 2014 has submitted, after sampling and analysis, that tyre burning in open atmosphere generates highly toxic, mutagenic and hazardous emissions. However, the MPCB Affidavit has not dealt with health impact of such tyre burning. The scrap tyres represent both a disposal problem and also, resource opportunity (For example e.g. as a fuel material replacement, and in other Application). The open tyre burning has been reported in the literature to be more toxic and mutagenic. The open tyre burning emissions includes "criteria" pollutants such as particulates, carbon monoxide (CO), sulfur oxides (SO2), oxides of nitrogen (NOx) and volatile organic compounds (VOCs). They also include "non- criteria" hazardous air pollutants (HAPs), such as polynuclear aromatic hydrocarbons (PAHs), dioxins, furans, hydrogen chloride, benzene, polychlorinated biphenyls (PCBs), and metals such as arsenic, cadmium, nickel, zinc, mercury, chromium, and vanadium. Both criteria and HAP emissions from an open tyre fire can represent significant acute (short-term) and chronic (long- term) health hazards to nearby residents. Depending on the length and degree of exposure, these health impacts could include irritation of the skin, eyes, and mucous membranes, respiratory effects, central nervous system depression, and cancer. The piled used tyres can also be a health hazard as they become breeding grounds for diseases causing pests and can even catch fire. Considering all these aspects, the court answered the Issue No.I in the

Affirmative.

Issue No.II:

The court was of the opinion that there is a need to have a systemic approach to deal with the problem of used tyre disposal. This is more evident from the submissions of the MPCB that out of 162 tyre remolding industries, only 55 tyres were registered with MPCB which shows that everything is not well in the used tyre management. Further, there is no data or even approximation account available about total number of used tyres generated and end uses thereof. Simultaneously, the tribunal may also note that the CPCB is encouraging use of tyres as fuel for co-processing in cement/power/steel Industry subject to provisions of necessary Air Pollution Control Systems. Though, the used tyre is an opportunity in term of its contents and calorific value, there is need to systematically deal with the entire issue in a holistic manner based on "Life Cycle Approach", considering the pollution potential, tyre generation data, technology options, techno-economic viability and social implications. We are of the considered opinion that in order to formulate such regulation or notifying certain approach, it is incumbent that the MPCB shall conduct a scientific study about the used tyre generation, technologies, viability and its Life Cycle Assessment in order to form its strategy on a long-term basis. Therefore, while noting that the present system of used tyre management is not environmentally sound, we are of the opinion that there is a need of placing an elaborate and well defined system in place for environmentally sound tyre disposal practices for used/ scrapped tyres. The Issue-II was accordingly answered in the Affirmative.

Issue No.III:

The Environment (Protection) Act, 1986 has given powers to the Central Government to take measures to protect and improve the environment, under Section 3 of the said Act State of Maharashtra has already been declared as Air Pollution area U/s. 19(1) of the Air Act. The Boards have powers to give directions U/s. 31(A). The Environment Protection Act and also the Air (Prevention and Control of Pollution) Act 1981 give sufficient powers to the MoEF, CPCB, State Department of Environment and MPCB to deal with this issue. The end-use of such used tyres can be broadly classified in three categories:

1. Open burning, which is generally incidental, like agitations, warming/heating purpose etc, mostly unorganized use. 2. Use as a fuel in the Industry, and in brick kilns. 3. Use for resource recovery i.e. chemical recovery through distillation or pyrolysis or some other use like used tyre based products i.e. mats, footwear etc.. MPCB has already placed on record the recommendations submitted to the department of Environment U/s. 19(5) of Air Act, to ban burning of tyres in open places and to direct the Law and Order enforcement agencies to deal with the issues vide their letter dated 8-7-2014. No information has been placed on record about the status of this proposal at end of the Environment Department. The court wa s of the opinion that in order to deal with the Used Tyre use in category 1, as mentioned above, such proposal needs to be expeditiously considered and decision needs to be taken in this regard by the State Environment Department. We expect the Secretary, Department of Environment, Maharashtra to take a decision on this proposal expeditiously.

As regards Used Tyre category 2, the MPCB is competent to restrict such use of used tyres as an industrial fuel through its consent management process. However, as far as unorganized Industrial sectors like brick kiln, small and tiny units are concerned, MPCB and the Department

of environment have necessary the powers conferred upon them under Section 19(3) of the Air (Prevention and Control of Pollution) Act 1981 to restrict use of used tyre as fuel by issuing necessary Notification.

Unrestricted use of third category of used tyre can also be controlled by the MPCB through the Consent Management. However, in order to encourage and facilitate the use of used tyres either in category 2 and 3, it is necessary to frame suitable guidelines and/or regulations as described in above paras.

The court held that there is an urgent need to regulate the used tyre disposal to avoid the environmental problems, on the principles of Sustainable development and pre-cautionary principles. Therefore, the MPCB need to undertake a scientific study for Life Cycle Assessment of used tyres in Maharashtra adopting the scientific and analytical tools to deal this issue in a holistic manner. Several innovative approaches like Extended Producers Responsibility (EPR), Advanced Recycling charges (ARC), common facilities, use of bar coding etc can be adopted to ensure effective collection and disposal of used tyres. We, therefore, direct the MPCB to undertake such study in next six (6) months and finding shall be shared with the MoEF/CPCB.

The MoEF and CPCB shall also take a note of this environmental concern and explore the need and possibility of framing separate regulations on the lines of battery rules and e-waste Rules in next six (6) months. In view of the above, the Application is partly allowed in following terms, under the powers conferred upon the Tribunal under Section 19 read with section 20 of NGT Act, 2010.

Department of Environment, State of Maharashtra shall take a decision on recommendations made by the MPCB vide letter dated 1-7-2014 within eight (8) weeks and issue necessary Notification in two (2) weeks thereafter.

There will be prohibition on burning of tyres in open areas and at public places, in the localities surrounded by the residential areas, public places, schools, hospitals, offices etc. in view of the potential air pollution and health hazards. The Police authorities, District Administration and urban local bodies shall ensure the compliance of this prohibition with immediate effect. In case of defiance it be treated as offence U/s. 188 of the I.P. Code. The Department of Environment, State of Maharashtra and MPCB shall conduct a scientific study on the Life Cycle Assessment of used tyres and frame suitable guidelines/ regulations to ensure environmentally sound disposal practices of the used tyres in next eight (8) months.

4) The reuse of used tyres as fuel in industries, including brick-kilns etc. without specific permission of MPCB and also, provision of necessary area Pollution Control Systems is prohibited with immediate effect.

5) These directions and environmental effects of open burning of tyres shall be brought to the notice of all the concerned agencies by MPCB and state environment department and be given wide publicity for public information and awareness, in next two (2) weeks.

Accordingly, the Application is disposed of. No costs.

Umesh Tiwari Anr.
Vs
Union of India Ors.

Original Application No. 141/2013(CZ)

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

Keywords: Afforestation, Compliance, compensation, Budhgaon, Forest Clearance, Limestone

Application Disposed of

Dated: 8 September 2014

The original application was filed before the High Court of Madhya Pradesh at Jabalpur by way of Writ Petition challenging the grant of the Forest Clearance in the Kaimur range, Budhgoan Forest Block in Sidhi District (M.P.) The Tribunal held that the application is barred by limitation, however only on alternative, the Tribunal accepted the plea on behalf of the Counsel for the Applicant as it was contended that there had been specific violations and breach of the conditions of FC and its non-compliance. To the limited extent to ensure compliance of the conditions of the FC, the matter was kept pending.

The State submitted its reply and said that the project proponent in the instant case have been allotted mining lease 66.949 hectares forest land at compartment no. 1119 of the Budhgoan Forest Block for excavation of lime stone. The project proponent have been further allotted 54.825 hectares of land for excavation of lime stone at the compartment No. 1121 of Majhgaon Forest Block, the aforesaid mining lease have been sanctioned with due forest clearance from the Ministry of Environment and Forests, Government of India. The conditions enumerated in the forest clearance give to the Project Proponent put forth the condition regarding afforestation on the area equivalent as sanctioned for mining in the forest area. The aforesaid afforestation was directed to be done at the expense of the project proponent on the land to be acquired by the project proponent and thereafter transferred to the forest department. iii. That, it is most respectfully submitted that the amount which is required to be used for compensatory afforestation is deposited in the Ad-hoc CAMPA fund of the Government of India which in turn is granted to the State Government specifically for afforestation on the land acquired by the project proponent. That the project proponent has acquired 54.825 hectares and 66.949 hectares of non-forest land respectively at District Chhattarpur and has duly handed over the said land to the Forest Department, District Chhattarpur according to the conditions of the forest clearance accorded to the project proponents. That, the funds which were deposited in the Ad-hoc CAMPA fund of the Government of India has not been released in the year 2013-14 and has been released in the financial year 2014-15 by the Government of India, whereby the Forest Department would immediately use the aforesaid fund in compliance of the directions of Ministry of Environment and Forests, Government of India and the afforestation on the aforesaid non-forest land shall be done accordingly this year. That, the compliance report

pertaining to the forest clearance accorded to the project proponents in the instant matter has been submitted by the Divisional Forest Officer (T), Forest Division, Sidhi (M.P.) to the Chief Conservator of Forest, Rewa Circle. It is therefore, evident that the necessary amount towards compensatory afforestation has been collected from the User Agency and the funds have been deposited under Ad-hoc CAMPA. The said amount has also been released to the State Government and the State Government is bound to utilise the same in accordance with the scheme which has already been formulated and areas identified for the said purpose. It has also been stated by the State that the Project Proponent has acquired land measuring 54.825 hectares and 66.949 hectares, which is non-forest land in District Chhatarpur and handed over the same to the Forest Department.

From the response of the State, the tribunal was satisfied that the objections raised by the Applicant based upon the conditions of the FC pertaining to compensatory afforestation, deposition of the amount under the CAMPA fund and the providing the same to the State Government for being utilized, stands complied with. Accordingly we dispose of this application.

The Application stands disposed of.

Pradeep Kumar Sharma
Vs
State of Rajasthan Ors.
Original Application No. 124/2013 (CZ)

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

Keywords: illegal mining, blasting, pollution,

Application disposed of

Dated: 8 September 2014

This matter has been received upon being transferred by the High Court of Rajasthan. The Applicant filed a Writ with the allegation that the illegal mining was being done in and around Village Pachari Kalan Tehsil Buhana, District Jhunjhunu as a result of which not only mineral was being extracted, the lease holders and others carrying out such mining were indulging in illegal blasting as a result of which damage to their houses and religious places and water reservoirs was being caused. It was also submitted that as a result of the aforesaid activity, damage has been caused to the schools, bowdi, and minor dam. Further, air and noise pollution was being caused as such activity is not being monitored or regulated by the Respondents.

The court sought information on the following issues :

i. Whether all mines in the village Pacheri Kalan have been inspected and what were the irregularities noticed on inspection and the action taken on noticing such irregularities and their present status.

ii. The particulars of damage caused to the environment particularly to the water bodies, underground water level and damage to the houses properties due to the blasting operations in mines.

iii. Suggestions for restoration of environment and the remedial measures that will be required to be taken for restoration of environment and compensating the loss incurred by the villagers.

The court held that it is apparent that uncontrolled blasting was carried out by the mining lease holders and that under the orders of the RSPCB and the notices issued by the Director, Mines and Safety, mining operations in the area have been closed since April 2013. As such, as far as preventive actions are concerned, that has already been initiated and at present, no mining activity is going on.

As regards the question of compensation to the owners of the property which have allegedly been damaged, is concerned, the court directed that each of such owners of the property would be entitled to submit their claim for compensation before the Sub Divisional Officer who shall have each of the claim verified by a team consisting of Officer of the PWD, RSPCB and a representative of the Gram Panchayat and shall consider each case on its merit and in case any damage is found, shall compute the amount of compensation to be awarded to each of the owners of the property within four weeks of the filing of such claims. The amount of the five

lease holder shall be clubbed together as it may not be possible to fix the responsibility with regard to causing of damage, to the specific act of the individual Respondents and in that event, the amount of compensation shall be liable to be paid jointly and severally by all the lease holders. For the aforesaid purpose, the said amount shall be ordered to be jointly recovered from them and paid out of the combined amount. Further, in the event, the total amount to be awarded to each of the claimant exceeds the amount lying by way of security, the said amount of security deposit shall be proportionately distributed to the claimants. It is made clear that if mining lease holders failed to discharge their responsibility with regard to payment of compensation if it exceeds the net amount lying by way of security, the excess shall be got deposited by each of the mining lease owners and in case they fail to deposit, they would not be entitled to seek the restoration of the existing mining lease or being considered for award of any afresh mining lease till the amount is deposited. The State Government / District Collector shall be at liberty to recover the outstanding amount by attachment and sale of the property of the mining lease owners.

With the aforesaid direction, the Original Application No. 124/2013 stands disposed of.

The compliance be reported by 5th December, 2014. Let the matter be listed for compliance on 8th December, 2014.

Paryavaran and Manv Sanrakshan Samiti
Vs
Gwalior Development Authority Ors.

Original Application No. 191/2014(CZ)

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

Keywords: Environmental Clearance, Construction, SEIAA, EIA notification, Polluter pays principle

Application disposed of

Dated: 9 September 2014

The original application has been submitted by the Applicant alleging that the Respondent No. 1 has carried out construction of building at Gwalior without obtaining Environmental Clearance from SEIAA. It is submitted that the State Level Environment Impact Assessment Authority (SEIAA) intimated that the said construction was in violation of the EIA Notification, 2006 and as such the Principal Secretary, Housing and Environment, Government of Madhya Pradesh was asked to initiate action under the Environment (Protection) Act, 1986 against the Respondent No.1. It was alleged by the Applicant that despite the aforesaid letter, no action has been initiated against the Respondent No. 1 which in the meanwhile, has proceeded to complete the construction. It was alleged that the construction is in violation of the environmental norms and the EIA Notification, 2006 and as such the Respondent No.1 may be proceeded with in accordance with law including direction for payment of compensation applying the 'Polluter Pay Principle'. Vide our order dated 17.07.2014 notices were issued to the Respondents to put in their appearance before this Tribunal on 02.09.2014. The replies have been filed including the Respondent No.1 and we have heard the case today.

The tribunal disposed of this application with the direction that SEIAA shall consider the application submitted by the Respondent No.1 and as far as possible process the same within six weeks from the communication of this order to it. It shall be the responsibility of the Respondent No.1 to communicate our above order to SEIAA through its Member Secretary. Needles to say that further course of action with regard to the completion and occupation of the building shall depend upon the direction/permission and/or conditions that may be imposed by the SEIAA.

The Original Application No. 191/2014 accordingly stands disposed of. No order as to cost.

Sahtruhan Lal

Vs

Union of India Ors.

Original Application No. 137/2014 (CZ)

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

Keywords: Singrauli, Trees, uprooting, pollution, NTPC, Madhya Pradesh Rajya Van Vikas Nigam Ltd

Application disposed of

Dated: 9 September 2014

The case was transferred to the Central Zone Bench, National Green Tribunal, Bhopal vide order dated 19th March, 2014 Of the High Court of Madhya Pradesh.

The Petitioner in his application claimed that he has filed the petition in the nature of Public Interest Litigation alleging that the Respondent No 6/National Thermal Power Corporation Ltd. (in short, 'NTPC'), while installing the 5th stage of its power plant at village Jaitpur located towards northern side of Vindhyanagar, District Singrauli, has uprooted/removed 4139 number of green trees and in spite of the directions issued by the authorities to plant 16556 number of trees to compensate the loss of the aforesaid number of trees the Company failed to do so leading to increase in pollution levels and consequent damage to the health of the people living in that area. It was also submitted in the petition that permission for cutting the aforesaid 4139 number of trees was granted by the Municipal Corporation, Singrauli with the condition that the No Objection Certificate (in short, 'NOC') would be treated as cancelled if replanting of trees is not done.

Accordingly, the petitioner prayed to direct the Respondent/NTPC to shift 5th Stage of its Power Plant from the Jaitpur village to elsewhere to prevent damage to the health of the local inhabitants and also direct to plant 16556 new trees in place of the trees permitted to be felled.

Having gone through the replies furnished by the Respondent/NTPC dated 19thAugust, 2014 and 9th September, 2014 it is clear that MoEF granted Environmental Clearance (in short, 'EC') dated 2nd May, 2012 for expanding the plant by installing 5th Stage within the existing plant premises which requires cutting of 4139 number of trees and accordingly after examining the request, the Tree Officer, Municipal Corporation, Singrauli accorded permission dated 12th June, 2012 to cut these 4139 trees in lieu of planting 16556 new trees. Thereafter, the Company entered into an agreement with Madhya Pradesh Rajya Van Vikas Nigam Ltd (MPRVVN) during the year 2012 itself and planting has been taken up and 37500 trees were planted and it was further proposed to extend the plantation by planting 10000 more number of trees by the MPRVVN making about 47500.

The photographs filed with the reply by the Company indicate that the planting has been done in the vacant spaces within the factory premises including the office complexes, residential quarters etc. Though, survival appears to be good the maintenance is not satisfactory. There is a heavy weed growth and the young plants are struggling because of high weed competition. Therefore, it is directed that the Company should direct MPRVVN, which has been entrusted with the task of planting, and maintenance of the trees, to carry out the following improvement/maintenance works to make the plantation successful:

1. A detailed plantation journal shall be opened, if not yet opened for all the plantation bits taken up from 2012 and the journal should be posted with up-to-date particulars.

2. Circular weeding of at least 1 mt. radius around the base of each plant shall be taken up to prevent competition from the weeds and grasses.

3. Those young plants which are growing bushy particularly Karanj (Pangamia pinnata) should be pruned and side branches coming from the base should be removed carefully with a sharp instrument to make the plant grow straight with prominent /distinct stem.

4. Wherever possible the space between the planting rows may be taken up with inter cultivation by Tractor cultivator plough to prevent further growth of weed and grass and to conserve soil moisture.

5. Strict protection from cattle and wild animals by creating/strengthening the fence, shall be taken up.

6. Regular watering particularly during summer season, should be taken up.

7. Row wise planting points in each Bit/Location/Sector where the 37500 number of plants were planted from 2012 onwards along with species wise details should be recorded in the Journal.

With the above directions the Original Application No. 137/2014 is disposed of. No order as to cost.

However, the Respondent/NTPC is directed to submit compliance report on all the above particulars with latest photographs and a copy of the plantation journal should be produced before this Tribunal for perusal.

Matter be listed for compliance on 17th November, 2014.

Pradeep Kumar Pandey 5 Ors.

Vs

Mandakini Housing Society through its President 4 Ors.

Original Application No. 48/2014(CZ)

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

Keywords: No Construction Zone, Green Belt, Kaliasote River

Application disposed of

Dated: 9 September 2014

After the Tribunal's dated 08.08.2014, the Applicant has submitted point-wise reply by way of rejoinder to the response of Respondents No. 1, 2, 4 and 5. The issue with regard to observing the requirement of 33 meter 'No Construction Zone' from the boundary of the Kaliasote river and development of green belt which is the mandatory requirement under the Master Plan 2005 as well as the prohibition of any work within the green belt, this Tribunal in Original Application No. 135/2014 in the matter of Dr. Subhash C. Pandey Vs. State of MP & Ors. on APPL. No. 48-2014 (CZ) (Judgment) Pradeep Kumar Pandey, 20.08.2014 has decided the case and elaborately given directions. The matter, as such stands covered by the directions given in the O.A. No. 135/2014.

It was submitted that so far the Respondents have not complied with the directions given in the aforesaid decision. In response to the above submission of the Applicant, Counsel for the State Shri Sachin K.Verma submits that notice to the Respondent No. 1 pursuant to the directions given in the aforesaid judgment, has been issued and it is also admitted before the tribunal that at present no such alleged construction of multi-storeyed building by way of construction of flats, within the 33 meter green belt area, has been taken up by the Respondent No. 1 though it is submitted that Respondent No. 1 has already booked the flats and received payments from the prospective buyers. So far as the aforesaid aspect is concerned, that is something for the prospective buyers/purchasers to consider and be careful. Further, as we have already directed with regard to the provisions of maintenance of 33 meters 'No Construction Zone' and development of green belt, as was given out by the State and the Municipal Council in their affidavit filed in O.A. No. 135/2014, wherein it is admitted that certain constructions have come up and the authorities are issuing notices for taking action against such defaulting parties, the authorities to pursue the matter and comply with the directions issued in O.A. No. 135/2014. Therefore, the Respondent State of MP as well as the Municipal Council, Kolar are required to bear the aforesaid directions in mind. Learned Counsel Shri Ayush Bajpai appearing for the Kolar Municipal Council, has submitted that so far no permission has been granted to Respondent No.1 for carrying out any construction of multi-storeyed building/flats at the disputed site falling within 33 meter green belt area identified by the State.

The Tribunal is of the view that in view of our comprehensive order already issued in case of Dr. Subhash C.Pandey Vs. State of MP & Ors (Supra), no APPL. No. 48-2014 (CZ) (Judgment) Pradeep Kumar Pandey, further directions are required to be issued except that the Kolar Municipal Council, shall not give any permission to the Respondent No. 1 for construction contrary to the Master Plan 2005 which requires observance of the 33 meter green belt area along the course of the river which has to be identified by the State.

The Kolar Municipal Council as well as the State Government particularly the Director, Town & Country Planning should issue a public notice informing the public at large regarding the directions issued for maintenance of the 'No Construction Zone' and observance of 33 meters green belt area and that such prospective buyers should be careful before they enter into any contract/agreement for purchase of the property along the river course. Shri Sachin K.Verma appearing for the State submits that they would issue necessary public notice in this behalf.

With the above directions, the Original Application No. 48 of 2014 stands disposed of.

M.K. Dhandapani, President Nandhivaram

V/S

The Government of Tamil Nadu, Rep by its Secretary Municipal Administration and Water Supply Department

Application No 423 of 2013 (SZ)

Coram – Hon'ble Shri Justice M. Chockalingam, Judicial Member; Hon'ble Prof. Dr. R. Nagendran Expert Member

Keywords – Storm drain, sewage waste, Lake pollution

Application Dismissed

Date – 10th September, 2014

JUDGEMENT

This application is filed by the President of the Nandhivaram Guduvanchery Panchayat Union (for short 'Panchayat Union') for himself and also for the residents of the Panchayat Union and people of the surrounding areas to pass an order against the respondent for constructing a storm water drain in the Union's limit as well in the Meenakshi ward which connects the storm water drain to the Guduvanchery lake. The applicant in this case desires that the 5th respondent that is the SRM University shouldn't let the untreated sewage into the proposed drain. The applicant also desires that respondent's no. 1-5 should stop the flow of storm water along with untreated sewage by the hostels of the SRM University inside the Guduvanchery Lake.

The facts of the case are, Panchayat union is situated in an area which has a population of more than 40,000 people. The Maraimalai Nagar Municipality is constructing a 975 M long storm water drain which passes through SRM University, Potheri Village and certain other areas. The construction of the storm water drain is aimed at SRM University's waste disposal and controlling the water overflow from the University. It is alleged that this will cause pollution in the area. There have been previous applications filed in the Madras High Court by various appellants to make SRM University participate in proper waste disposal mechanisms. The third respondent that is the Maraimalai Nagar Municipality agreed to construct a storm water drain for the said purpose. The University in return submitted 4.42 cores as the cost of construction of the water drain. The storm water drain passes through the area of the Panchayat Union.

After hearing the arguments of both the appellants and the respondents, the tribunal came up with a list of issues – Whether the respondents could be granted a relief of injunction against the respondents to stop

them from constructing the storm drain? Whether SRM University should be instructed not to discharge untreated sewage waste into the drain? Whether the other respondents should be directed to stop the discharge of the waste by the University into the drain? Whether there is supposed to be any other relief?

There was a commissioner, Shrimathi Suvitha A.S. Advocate appointed to make an inspection of the current situation and based on her observations and the arguments advanced, the tribunal ruled that – There was a need of construction of the storm water drain in need of larger public interest as pointed by the Madras High Court. The University paid the sum of 4.42 crores for the storm drain. The tribunal said that if an injecture is granted against the construction of the storm water drain, it will be against the interest of the larger public. The second contention that was put forward by the applicants was that construction of the storm drain was beyond the jurisdiction but it was proved by the respondents that the storm water pipe wasn't intruding in the Panchayati committee. The next contention was that it was alleged that the discharge of sewage waste material in the channel will cause pollution in the locality but there was no evidence produced for the same by the applicants. The tribunal further said that the case of the applicant is imaginary. It was shown that there was no possible inlet of sewage waste by the University inside the storm drain. It was also pointed out that there was unnecessary delay caused by the applicant hence the application was dismissed.

Paryavaran Manav Sanrakshan Samiti

Vs

Union of India Ors

Original Application No. 133/2014(CZ)

Judicial and Expert Members:

Keywords: SEIAA, Environmental Clearance, Review petition

Application disposed of

Dated: 10 September 2014

This application has been filed by the Applicant alleging that the Respondent No. 6 has carried out construction of its development project which consists of hospital, in utter violation of the Environmental Laws and without having obtained the Environmental Clearance (in short, 'EC') in this behalf from the State Level Environment Impact Assessment Authority (in short, 'SEIAA'). Vide our order dated 22nd May, 2014 notices were ordered to be issued to the Respondents including the Respondent No.6. The Respondents have put in their appearance but none has appeared today on behalf of the Applicant.

While hearing the Learned Counsel for the Respondents including the Respondent No. 6 it is found to be an admitted fact which emerges that the Respondent No. 6 did not apply for any permission/grant of EC for their project though it is submitted that subsequently for the expansion of the project they moved an application before the SEIAA. The aforesaid application submitted by the Respondent No. 6, was rejected by SEIAA on various grounds including the fact that the project had been commissioned by the Respondent No. 6, initially without obtaining EC. This order was passed 1st November, 2013. The Counsel for the Respondent No. 6 submitted that against the aforesaid order of SEIAA the Respondent No. 6 has preferred a review petition but the same could not be taken up for consideration on account of the fact that the term of the SEIAA was completed and therefore no review could be taken up and the case was not heard.

Be that as it may, since it is an admitted fact that the application for initial permission had not been submitted and subsequently application only for expansion of the project was submitted by the Respondent No.6 which came to be rejected by the SEIAA, the Respondent No. 6 is not entitled as of now to carry on with their project. It is submitted by the Learned Counsel for the Respondent No. 6 that in view of the order of SEIAA dated 1st November, 2013 they are not going ahead with the project. The Learned Counsel for the Respondent No. 6, however submitted that it may be clarified that any future expansion of the project may be subject to the order passed by the SEIAA on the review application pending before the SEIAA. In view of the aforesaid statement made by the Learned Counsel for the Respondent No. 6 as also due to the fact brought before us that in terms of the order passed by SEIAA prosecution of the

Respondent No. 6 has already been launched for violation of Environmental laws, the tribunal refrains from giving any further directions or make any observations in the matter.

This Original Application accordingly stands disposed of. No order as to cost.

Saiprasad Mangesh Kalyankar

Vs

Regional Transport Office and Ors

Original Application No. 28/2014(WZ)

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

Keywords: Illegal Mining, Corruption, Cutting of trees, land acquisition, minerals

Application dismissed with directions

Dated: 10 September 2014

By this Application, Applicant – Saiprasad Kalyankar, sought following directions:

a. To grant the application.

b. To have a criminal prosecution for all officers who are collusion in this project so that they can make money from illegal mining.

c. May pass an order issuing directions to the R.T.O. Sindhudurg, Oros, Tal. Kudal , Dist.Sindhudurg to not to do any further activity in the said land i.e. cutting of remaining trees, levelling of the land, mining of major or minor mineral in any part of total area H.R. 11-95-50.

d. Pass an order directing the Divisional Forest Officer, Sawantwadi not to give any further permission for cutting of any trees, to make survey of the felling of trees, to have departmental action.

e. Pass an order direction issuing to the Maharashtra Government Irrigation Department not to delete the land from notified irrigated command area.

f. Pass an order directing the Respondents to take immediate remedial and effective measures to replant all the trees as in 7/12extracts in entire land and effective measures for restoration of entire ecology of the said area.

g. Pass an order of directing stringent action to be taken against officers of forest department, Sawantwadi and officers of R.T.O. Sindhudurg and his contractors for dereliction of duty .

h. To pass appropriate orders imposing fine and cost of restoration of the ecology of land under tree plantation.

i. The applicant craves leave to raise additional pleas and or additional grounds at an appropriate stage and also craves leave of this Tribunal to refer to and rely upon and or to file

the relevant and necessary documents at the time of hearing of the instant application if necessary

j. Pending hearing and final disposal of this Application.

I .To cancel all permissions from environment/ forest Dept. for project.

ii. To pass order issuing directions to the Regional Transport

Officer (R.T.O.) Sindhudurg, Kudal, Dist.Sindhudurg to stop any further activity of cutting of trees, levelling of mountain, digging of soil, breaking of land, and mining of major / minor minerals in the land.

iii. To pass an order issuing direction to the Vankshetrapal (RFO), Sawantwadi not to give any permission for tree cutting and to make survey of illegal tree cutting.

iv. To pass any other relief and further reliefs as the circumstances of the case may require.

The Application is purportedly filed under Sections 14, 15 and 18 of the National Green Tribunal Act, 2010. For sake of convenience the Applicant will be referred to hereinafter by his name i.e. "Saiprasad Kalyankar".

Before the Tribunal went on to proceed to go to the pleadings of Saiprasad Kalyankar, it will be appropriate to understand the conspectus of a common project undertaken by Govt. of Maharashtra vide its Resolution dated March 25th, 2008, which provides for modernization and computerization of 30 check posts. This Govt. Resolution (G.R) refers to modernization of 22 border check posts in the State of Maharashtra of the transport department as per classification made according to the traffic flow at each of the check post. Under the said GR, the Maharashtra State Road Development Corporation (MSRDC) was authorized to change location of existing border check posts. A joint survey was conducted by the Experts of MSRDC along with the Transport and State Excise department officers and a proposal for setting of check posts at suitable locations near Goa border, was submitted to the competent authority. Thereafter by Govt. Resolution dated July 9th, 2008, process for acquisition of lands for modernization and setting up of 22 check posts was set in motion. One of such check post existing earlier at the location of village Insuli, was decided to be shifted to village Banda. Certain lands were decided to be acquired for such purpose, including land Survey No.195 (New Survey No.189-C),,Hissa No.5, of village Banda, of which Saiprasad Kalyankar was the owner. He challenged acquisition of that land by filing Writ Petition No.133 of 2011 in the High Court of Judicature at Bombay. He also challenged Govt. decision to shift location of Insuli check post to Banda. The Division Bench by order dated 5th April, 2013, dismissed said Writ Petition No.133 of 2011 along with similar Writ Petition No.4961 of 2012. Thus, acquisition of land Survey No.195 (New Survey No. 189-C), as well as Govt. decision to modernize and establish the check post at Banda, was permitted due to such decision as well as in view of the order passed in PIL No.147 of 2009.

This background is set out in the light of averments made in the Application to the effect that the land bearing Survey No.195 (New Survey No.189-C), Hissa No.5, is wet land, forest land and being used for illegal mining. Saiprasad Kalyankar alleges that he is aggrieved by the illegal acts of the Respondents due to felling of trees, illegal mining and degradation of environment in the area, particularly, on account of modernization project at Banda check post.

According to Saiprasad Kalyankar, the Respondent No.1 Road Transport Officer (RTO), acquired land Survey No.195(New Survey No.189-C), at Satwadi/Banda through which a culvert (Nalla) flows. This land is covered under the irrigation command of Tillari canal of Banda Up-kalava. The land is having tree cover of forest trees, fruit trees etc. comprising of about 4400 trees. The said land has immense stock of iron ore Fe2,O3, which is a major mineral. Any development in the area of said land, including "winning" will amount to 'mining activity' and therefore, the same cannot be undertaken without prior Environmental Clearance (EC) of the MoEF. Inspite of such legal requirement and though the land Survey No.189 that comprises of 11Ha, 95.5R, no EC is obtained by the Respondent No.1 for the project activity. The project work cannot be permitted in view of the fact that such mining activity is of major nature and even for mandatory permission of the Irrigation Department for delineation of the area from the irrigation command area, has not been taken from competent Authority. Modernization of Banda post is being proceeded with by the MSRDC in utter disregard to the legal requirements.

Saiprasad Kalyankar has come out with a case that the MoEF has restricted the mining and construction work in Ecologically Sensitive Area (ESA), and that village Banda is declared by the Govt. of Maharashtra and MoEF as part of such area. Obviously, mining activity, even though, it may be undertaken by the Government Agency in Eco Sensitive area, is impermissible under the Law. He alleges that modernization and installation of Banda check post will cause soil erosion, water logging and immense ecological imbalance in the area. He further alleges that large number of huge trees are already felled/cut down and it is expected that 7400 trees would be sacrificed for completion of the project in question. Thus, according to Saiprasad Kalyankar, the project tantamount to denuding of forest area.

Saiprasad Kalyankar further alleges that modernization and construction of Banda check post involves activity of construction, which in fact, a new project and falls in Schedule-I, of the EIA Notification issued by the MoEF. The construction work area comprises of more than 20000 Sq. mtrs area in HR-11-95-55 and cannot be undertaken without grant of EC by the MoEF. The Respondent No.1, has not followed due procedure of scoping public consultation, environmental impact assessment and appraisal, which are steps to be followed before decision making, prior to grant of EC. Nor any Application is submitted by the Respondent No.1 to the MoEF in the Form –I, to seek EC of the MoEF (competent Authority), though the project is for construction of levelling of 32 acres of land, as well as, within eco-sensitive area. The project is near the National Highway No.17, which requires due permission of the National Highway Authority (NHA). Such permission is also not taken before the commencement of the project. The Respondent No.1 has not taken permission for forest clearance (FC) from the competent Authority. Widening of road at the site comprises of 9 lanes, on both the sides, including construction of Godown, Medical Shops, STD Booth, automobile repairing workshop,

commercial shops etc. and as such the construction will be of more than 20000 sq. mtrs. It is obvious that the structure is construction activity that falls under Entry No.18 1(a) of EIA Notification dated 14th September, 2006 and therefore, without EC issued by the competent Authority, the work cannot be undertaken. The loss of natural tree cover, loss of minerals, loss of available natural resources, would cause an irreparable damage to the environment and ecology of the area, due to implementation of the proposed project activities of the Respondent No.1, namely, road widening, modernization and establishment of check post at Banda (TalukaSawantwadi). Hence the Application.

Considering the nature of dispute raised by SaiprasadKalyankar, the Tribunal deems it proper to frame following issues for determination:

i) Whether the Application is barred by Limitation?

ii) Whether during course of execution of project in question, the forest cover is illegally removed by felling of trees without obtaining legal permission, or that the project is being implemented without obtaining prior Forest Clearance (FC), from the Competent Authority and thus, any illegality has been committed by the Respondent Nos.1,2 and 7?

iii) Whether implementation of the project in question amounts to illegal mining activity and particularly, without obtaining Environmental Clearance (EC), which is absolutely impermissible in the Eco-Sensitive Area (ESA) of 'Western Ghats' because of the Notification dated 13th November, 2013, of the MoEF, declaring ESA, in which Banda village is included?

iv) Whether the project requires prior Environmental Clearance (EC), in accordance with the EIA Notification dated 14th September, 2006, or any other EIA Notification issued by the MoEF and for want of such EC, implementation thereof without following due procedure, is bad in Law?

v) a) Whether part of the project land falls in Command Area of notified Irrigation Project and therefore, proposed work cannot be undertaken without prior permission of the Competent Authority, unless the area is delineated from Command Area?

b) whether otherwise the project suffers from any kind of illegality, and is liable to be struck down?

Re: Issue (i) So far as question of limitation is concerned, it may be stated that the project activity was approved vide Govt. Resolution dated 25th March, 2008. The application is within limitation period.

The R.F.O, Sawantwai, gave Show-cause Notice to one ManojAbrol, site Incharge of Maharashtra Border Check Post Network Ltd. (Executing Agency engaged byMSRDC), calling him to explain why action be not taken for alleged felling/cutting of 5429 scheduled/non scheduled trees. The Show-cause Notice dated 30.1.2014, however, does not describe how many

scheduled trees were felled and how many non-scheduled trees were felledin that area. It also does not indicate description of nature of the trees, age of the trees, girth of those trees and other details. It is explicit from the record that the MSRDC, Maharashtra Border Check Post Network Ltd, the R.F.O and the then Tehasildar of Sawantwadi, attempted to put all the misdeeds, in this context, under the carpet. They were hand in glove, is very clear from the fact that no serious effort was made to immediately intervene while such tree felling activity was going on. Nor serious action was taken further except giving Show-cause Notice to the site In-charge, who could abdicate legal responsibility later on by saying that he was acting under instructions of the master and had done such act bonafide. The Director of the MSRDC and the Sub-Agency as well as the R.T.O. and other Govt. officials have maintained disquieting silence in this behalf. This a glaring fact which speaks volume against them.

Re: Issues(iii) &(iv)

The reply affidavit of the Respondent No.1 categorically shows that the proposed construction area is 14,043 sq.mtrs, which is much below the prescribed limit of 20000 sq.mtrs. The Project activity below 20000 sq. mtrs of construction does not require any EC and as such, the argument of SaiprasadKalyankar, is unacceptable. Considering these aspects, we are of the opinion that both these issues ought to be answered in negative and they are accordingly so answered.

Re: Issue (v)

There is no dispute about the fact that the part of project land was in command area of Tillari Irrigation Project. It is an admitted fact that only small part of the project falls within command area of the irrigation canal area of Tillari. The project may be, therefore, allowed to be completed if such permission isgranted by the competent Authority or is already granted. Thus, formality shall not detain us from deciding the present Application. Moreover, the Hon'ble High Court has already held that the project may be executed by acquiring the lands from the command area after following due procedure. Needless to say, if due permission is accorded by the competent Irrigation Authority, then there would be no illegality in the process of execution of the project in question.

(v):(b)

Saiprasad Kalyankarfurther alleges that entire project activity is erroneous and illegal, inasmuch as Geologist of the Directorate of Geology and Mining, came to the conclusion that the project area may incorporate the substantial quantity of iron ore and therefore, NOC, may not be issued to the RTO. He relied upon communication dated 11.2.2010 (Ex-I-42). We are of the opinion that the question of NOC is the matter of procedure and it is for the RTO, to get procedural difficulties solved at his end. Saiprasad Kalyankar, would submit that the project cannot be allowed, because there is no prior permission granted by the National Highways Authority. This action is procedural requirement, which the Respondent No.1, will have to complete, if so needed, before going ahead with the project in question. At the present, these procedural requirements cannot be regarded as stumbling blocks, which would have enough to set aside the project activity in toto. We, accordingly, hold that the project cannot be held as illegal for

other procedural requirements, though the Respondent No.1, will have to obtain certain permissions from the competent Authorities before going ahead with the project in question. This answers both parts of the issue under consideration.

Cumulative effect of foregoing discussion, is that the Application is without merits and will have to be dismissed. However, we find it necessary to give certain directions before the project is allowed to go ahead and also to deal with highhanded activities of erring officials of the MSRDC, RTO, Tehasildar and RFO, without whose connivance, a large number of tree felling activity could not have been undertaken at the site.

In the result, the Tribunal dismisses the Application with the following directions:

i) Divisional Commissioner, Kokan Division, is directed to conduct preliminary enquiry through Collector for illegal felling of trees, levelling of site in the area of Gut No.195 (189- C), for the project of Border Check Post at Banda by MSRDC. The report should indicate responsibility for inaction on the part of RTO, RFO, Tehsildar and officers of the MSRDC, including the Joint Director of MSRDC, towards intentional omission by any act of negligence, or commission order eviction of duty, or purposeful aiding in felling of trees to facilitate execution of the project.

ii) Heads of such offices be informed to take appropriate departmental actions against such officers. The report shall be forwarded to this Tribunal within period of six (6) months hereafter, with details of the proposal forwarded to the concerned departments for Departmental actions to be taken against the concerned officers/officials.

iii) The concerned departments like Transport Department, Forest Department and MSRDC, shall take suitable departmental action against the officials, who are found to be guilty of misconduct and shall submit a report to this Tribunal, six (6) months thereafter.

iv) The Respondent No.9 (MSRDC) shall carry out compensatory afforestation of 44,000 trees (1:8) in the same area, on the slope in the acquired land orarea near NH No.17, as per the opinion of the Agricultural University, Dapoli. The work shall be supervised by the Head of Horticultural Department of Agricultural University, Dapoli, to whom honorarium of Rs. 25,000/- p.m. be paid by the MSRDC, which shall not be included in cost of the project. The Respondent No.8 (MSRDC), shall deposit an amount of Rs. 10 lakh (Rs. Ten lakhs) as tentative cost for such afforestation programme to be executed through Agricultural University, Dapoli, under the supervision of above Committee, in the Collector's office, Sindhudurg, within two (2) months hereafter.

v) The contractor – Agency of MSRDC, be directed by the MSRDC to pay costs of Rs. 10 lakh, being costs of damages caused to environment in the vicinity of village Banda and if the Executing Agency will not pay the same, it shall be paid by the MSRDC, which shall not be included in the cost of the project, but shall be recovered from the personal account of concerned supervisory officers of MSRDC, if found responsible for felling of the trees, as per the report of the Divisional Commissioner, Kokan Division.

vi) An appropriate departmental action be initiated against Mr. Sanjay BhausahebPatil, RFO, by the Chief Conservator of Forests (CCF) concerned, on account of furnishing wrong information to the Tribunal, that the land in question is a part of forest land and for facilitating felling of large number of trees, which could be avoided if he had prima facie taken timely action to avoid loss to the environment.

vii) The competent Authorities shall report result of such departmental enquiries to this Tribunal within period of eight (8) months hereafter.

viii) Non-compliance of above directions may attract section 26 of the NGT Act, 2010.

Saiprasad Kalyankar, appears to have filed the Application due to his earlier rounds of litigations in respect of acquisition of land or may be at the behest of some external agency. Therefore, we no costs are imposed on him, though his Application is found to be without merits.

x) The Application is accordingly disposed of.

Ram Swaroop Chaturvedi

Vs

Chairman, MP SEIAA

Original Application No. 315/2014(CZ)

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

Keywords: Sand Mining, SEIAA, Memorandum, MoEF

Dated: 11 September 2014

The matter involved and the limited relief which has been claimed by the Applicant in this application is with regard to consideration of his application (Annexure A/9) submitted by the Applicant for the grant of Environmental Clearance (for short, 'EC') for his 4 hectare sand quarry at Village Chukehta, Tehsil Gaurihar, Dist. Chhatarpur, MP. It is submitted that the Applicant was granted lease by the Mining Department of the State of MP and accordingly, be submitted an application for grant of EC before SEIAA. However, the SEIAA, taking cognizance of the Office Memorandum issued by the MoEF dated 24.12.2013, in its 154th meeting held on 26.07.2014, observed as follows:

"2. Regarding Sand Mining from river bed, it was decided that the sand mining cases (49 Nos.) having lease area less than 5 hectares has to be delisted on the basis of the MoEF, Govt. of India O.M NO. j-13012/12/2013-IA-II(I) dated 24.12.2013 para 2-1."

It was submitted that as a result of the aforesaid, the application submitted by the Applicant has not been considered by the Respondent No.1.

It has been brought to the Tribunal's notice that the Principal Bench of the National Green Tribunal, New Delhi in its sitting at the Circuit Bench, Shimla gave the following order:

"We have heard Learned Counsel appearing for the parties. The Ministry of Environment & Forest (MoEF) has not been able to explain as to how the Office Memorandum dated 24th December, 2013 is in conformity with the order of the Hon'ble Supreme Court in Deepak Kumar's case, order of the NGT and the Notification dated 9th September, 2013 issued by the MoEF itself. We do not think that the MoEF could have issued such memorandum.

The Notification issued by the MoEF is an act of subordinate legislation and was issued in exercise of statutory powers. The Office Memorandum is an administrative order and cannot frustrate the legislative act. In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of Office Memorandum dated 24th December, 2013. In so far as it relates to the minor minerals like sand, etc. List these matters on 30th May, 2014 for hearing."

The obvious consequence of the aforesaid order staying the operation of the Office Memorandum dated 24.12.2013 in so far as it relates to minor mineral like sand, amounts to as if

no such order is in existence and therefore, the SEIAA was required to consider the application submitted by the Applicant in accordance with law for the grant of EC without being affected by any such order such as Office Memorandum dated 24.12.2013.

Since the matter was in the narrow compass, we have decided to dispose of this application with the aforesaid direction which would be subject to any final judgement in the matter to be given by the Principal Bench of the NGT in aforesaid cases (Application No. 343 of 2013 and Application No. 279/2013).

It is made clear that the Applicant would be required to submit his application afresh online as per the prescribed procedure of SEIAA, with the specific direction that he shall not be required to pay any additional fee as he has already submitted Banker's Cheque dated 09.10.2013 for Rs. 5,000/- which was revalidated on 23.01.2014 drawn on State Bank of Hyderabad bearing No. 107133. The SEIAA shall take a decision in the matter, preferably within two months from the date of submission of fresh application by the Applicant.

In view of the above, the Original Application No. 315 of 2014 stands disposed of. No order as to cost.

Shivaji Suryabhan Sangle

Vs

Union of India

Application No. 12(Thc)/2013(Wz)

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

Keywords: Great Indian Bustard, Sanctuary, Reliance gas pipeline, Forest Clearance

Application dismissed

Dated: 11 September 2014

The Writ Petition was, thereafter, registered as Application U/s. 14(1) (2) read with sections 15 and 18 of the National Green Tribunal Act, 2010, as a result of transfer of the Writ Petition.

Briefly stated, case of the Petitioner is that in Karjat Taluka, District: Ahmednagar, there is sanctuary of Maldhok i.e. Great Indian Bustard, which is declared as one amongst the protected species of birds and therefore, no project activity can be undertaken in the area of the forest land. Respondent No.7 is an Industry dealing in transportation of Industrial gas through underground pipe line. Respondent No.7 proposed to lay down a metallic pipeline through lands within area of the protected Great Indian Bustard Sanctuary i.e. Maldhoks of Taluka Karjat one (1) mtr, deep below the earth. Respondent No.7 cannot be permitted to lay down such pipelines through forest and sanctuary area of the Great Indian Bustard Sanctuary. The project of laying down such pipeline has caused disturbance in the nearby area, damage to the forest life, endangered the environment as well as life of the protected birds i.e. Great Indian Bustard. The Petitioner alleges that if such kind of activity is not arrested at proper time, it will result in the irreparable loss to the forest life.

Considering rival pleadings of the parties, it is essential to address following issues :

i) Whether laying down of the underground pipeline by Respondent no.7 (Reliance Gas Transportation) passes through forest area and requires Forest Clearance as such?

ii) Whether there is a private forest notified under any Government Notification as birds sanctuary in the area where the project in question is proposed to be implemented or has been already implemented?

iii) Whether the proposed project suffers from any illegality and therefore, is liable to be struck down? Or that if implemented, the pipeline is required to be removed in order to restore the original position?

The National Green Tribunal (NGT) has no jurisdiction to decide any question relating to implementation of the provisions of the Wildlife Protection Act. Obviously, they cannot examine whether any land within the area of Karjat or Shrigonda Talukas of Ahemadnagar District falls within protected or notified Sanctuary of Great Indian Bustard (GIB). Perusal of the record shows that the Respondent No.7 submitted an Application to the Supreme Court as directed in "T.N. Godavarman Thirumalpad Vs. Union of India and Ors" (I.A. No.2116-2117 of 2007). The Supreme Court of India granted permission to the Respondent No.7 to lay down such pipelines as per the Report of the Standing Committee on National Board for Wild Life and no alternative is recommended to the proposal as per minutes of the meeting held on 10th September 2007 subject to compliances of certain conditions. It appears that due compliances were made in this behalf.

As regards Forest Clearance issue is concerned, there is obviously no material to show that any part of the agricultural land was declared as private forest and therefore, permission from any competent authority was required for the purpose of clearance of any part of the area. Felling of non-scheduled trees was found to be illegal and therefore, Respondent No.7 was held responsible by the competent authority. As stated before, penalty was imposed by the competent authority after giving Show Cause Notice to Respondent No.7. In case such penalty is not recovered, the petitioner is at liberty to point it out to the Collector for execution of the said order. Still, however, there is no reason to infer that Forest Clearance permission was necessary for the Respondent No.7. Respondent No.7 is said to have damaged environment due to digging of agricultural lands. It may be mentioned here that land of the Petitioner is not subjected to any kind of digging or damage. He has not placed on record as to how he represents interest of any group of agriculturists. Copy of the letterhead (Exh.B) shows that the petitioner is District head of "Akhil Bhartiya Sena" of which the Chief is Arunbhai Gawali. Thus, it is a Political Organization of which the petitioner is District Representative. In other words, the Petitioner is not environmentalist nor, he represents any organization of agriculturists who suffered loss due to the project in question. The Petitioner, at the relevant time, appears to have filed the petition with a view to gain some political advantage. However, there is hardly any merit in the petition and therefore, it is liable to be dismissed.

In the result, the petition stands dismissed with direction that the Collector, Ahmednagar shall verify whether Respondent No.7 has deposited the amount regarding the penalty imposed and the amount directed to be deposited in CAMPA as per directions of the Supreme Court of India and if such direction is not yet complied with then to recover the said amount as if it is land revenue arrears by attachment of property of Respondent No.7 and conducting sale thereof by public auction within period of four months, hereafter. Application dismissed without costs.

Nirma Ltd

Vs

MoEF and Ors

Misc Application No. 573/2014

Judicial and Expert Members: Mr. Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Dr. G.K. Pandey

Keywords: Transfer of application, Pune

Application dismissed

Dated: 16 September 2014

This is an application filed by the Respondent No. 5 in the appeal praying that the above appeal be transferred to the Western Zonal Bench at Pune of the National Green Tribunal (for short 'NGT').

The contention raised on behalf of the applicant herein is that the applicant was ordered to be impleaded as Respondent No. 5 vide order of the Tribunal dated 1st May, 2012 and he has filed his reply and is contesting the appeal on merits. According to the applicant, the Central Government vide Notification dated 17th August, 2011, in exercise of its powers under Section 4 (3) of the National Green Tribunal Act, 2010 (for short 'the Act') has specified that the Western Zone Bench of the NGT will have territorial jurisdiction over the matters pertaining to Maharashtra, Gujarat, Goa with Union Territories of Daman, Diu and Dadra and Nagar Haveli. Subsequently the Bench at Pune was established on 25 August, 2013. The Chairperson of NGT vide order dated 13th August, 2013 had directed that all the cases under the jurisdiction of Western Zone of the NGT shall be transferred to the NGT Western Zone Bench at Pune. On the above premises, the applicant contends that now the present appeal ought to be transferred to the Pune Bench of the Tribunal.

No reply to this Application has been filed on behalf of the non- applicants. However, the transfer of this appeal is vehemently opposed both on point of law and in the given peculiar facts and circumstances in the present case.

In the facts and circumstances of the present case, the 'doctrine of necessity' is attracted. The Western Zonal Bench presently has only one Bench which is presided over by Hon'ble Justice V.R. Kingaonkar, who, vide order dated 21st November, 2012 has recused himself from hearing this matter. The order dated 21st November, 2012 passed in the present case reads as under:-

"We have heard Learned Counsel for the parties. A short affidavit is being filed by the Respondent No. 4 today itself. A copy thereof is given to the appellant's counsel. The Learned Counsel for the appellant seeks to go through the said affidavit and if necessary to file the reply. One weeks time is granted to file the reply, if any, to the short affidavit so filed by the Respondent No. 4.

The appeal is not to be heard by the Bench to which Justice V.R. Kingaonkar is a party. Therefore the appeal may be placed before the Chairperson for further orders in as much as the counsel for the appellant expresses urgency in the matter and also there is direction of the Apex Court to expedite final hearing. The appeal be placed before the Chairperson within a couple of days. Stand over to 18th December, 2012."

From the above order, it is clear that there will be no Bench at Pune (Western Zone Bench) which can hear the present appeal even if, it is transferred to that Bench. As per necessity, this case would have to be heard by the Principal Bench. Only if the applicant would have taken the care to read the order sheet of the case which contained the above order the occasion for filing such a frivolous application would not have even arisen.

For the reasons afore-stated, the Tribunal finds no merit in this application and the same is dismissed without any order as to costs.

Anurag Hazari

Vs

State of Madhya Pradesh

Original Application No. 26/2014 (THC) (CZ)

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

Keywords: illegal felling of tree, Madhya Pradesh, Patrolling, District Level Task Force

Application disposed of

Dated: 17 September 2014

In the Writ Petition, the Applicant raised issues with regard to illicit felling of trees and destruction of forest in District Damoh in Madhya Pradesh. Since, the Writ Petition was filed long back in 2004 and notices were issued to the Respondents, the Respondents submitted their reply before the High Court on 12.10.2004. In their reply, the respondents have agreed to the fact that illegal felling of trees has been noticed during the course of inspection and cases have been registered against the persons responsible for the same. It has also been stated that calculation of the estimated value of stolen timber was done and recoveries made from the persons responsible.

The Tribunal finds from the reply that steps have already been taken to strengthen the patrolling by deployment of additional number of 12 daily-wage employees to assist the regular staff in Compartment No. 109 and 05 daily-wage employees in Compartment No. 134. However, in Para 3 of the Minutes of the meeting conducted by the Secretary, Forests it was recorded that as many as 62 posts have been found lying vacant in the Damoh District. The same must be filled-in by taking necessary recruitment process immediately and completed by 31.03.2015.

As far as the proposals recorded under item nos. 4 to 9 are concerned, necessary steps in this behalf shall be taken within a fixed time frame including that of appointing a special Public Prosecutor for conducting the cases in the Court, as it was felt that delay in the prosecution of court cases is making the offenders emboldened and institution of offence cases against them is not acting as a deterrent.

Having examined the issues that have been raised by the Applicant in this application, this Tribunal having directed the District Level Task Force Committee to look into the issues, identify the problems and send recommendations to the State Government which it has done and the State Government having already dealt with the matter in its meeting held on 08.09.2014 and having taken necessary decisions in this behalf, the Tribunal would expect that if the proposed measures particularly strengthening the field staff, regular patrolling etc. being carried out and establishment of check posts erection of watchtowers and providing fencing in the vulnerable forest areas, the regular occurrence of incidents of illegal felling of trees which

have been admitted as per the figures submitted before this Tribunal, shall be considerably reduced and eventually completely eradicated.

For compliance of our above directions, the matter shall be listed for reporting the progress made on each of the aspects and the steps taken for compliance before this Tribunal on 19th December, 2014.

With the aforesaid directions, this Original Application No. 26 of 2014 stands disposed of. Let a copy of this order be sent to the Secretary, Forests, GoMP; District Collector, Damoh; Conservator of Forests, Damoh. It shall be the responsibility of the Standing Counsel for the State of MP to convey our order to the concerned Respondents.

Vinod Kumar Pandey

Vs

Union of India

Original Application No. 40/2013(CZ)

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

Keywords: Project Proponent, High Flood Level, Environmental Clearance, CECB

Application disposed of

Dated: 18 September 2014

This Original Application was registered after Writ Petition (PIL) No. 2316/2010 originally filed before the High Court of Chhattisgarh by the Applicant, came to be transferred from the High Court of Chhattisgarh to the Principal Bench of this Tribunal at New Delhi and as such, was registered as Original Application No. 128/2013 at the Principal Bench. After the constitution of the Central Zonal Bench of National Green Tribunal at Bhopal the Original Application No. 128/2013 was transferred to this Bench vide Principal Bench Order dated 31.05.2013 and renumbered as Original Application No. 40/2013. Thereafter, vide order dated 30.07.2013 notices were ordered to be issued to both the sides for hearing the petition at Bhopal, pursuant to which the parties put in their appearance before this Tribunal on 22.08.2013. Replies were filed by the Respondents.

Initially, certain issues were raised during the course of hearing, however subsequently the Applicant confined the challenge to the grant of the permission to the Project Proponent/ Respondent No. 7 on the ground that the proposed ash disposal site at Jhora village will be at a distance of less than 500 mtrs from the High Flood Level (in short, 'HFL') of the river Hasdeo leading to land and water pollution.

The Learned Counsel appearing for the CECB has filed the inspection report along with the affidavit and a copy of the map prepared on the basis of the inspection and measurement carried out. Copy of the same has been furnished to the Learned Counsel for the Applicant. As per the inspection report of the Respondent No. 4, CECB it has been mentioned as follows :

"That, on inspecting the site and the land documents certified by Chattisgarh State Industrial Development Corporation (CSIDC), it was observed that the proposed Ash Dyke is clearly at a distance of 500 mtrs or more from the HFL of the river Hasdeo. The Map showing the Khasra Number of the proposed ash dyke and their distances from the HFL level of river Hasdeo has been enclosed as Annexure R-IV/2. The enclosed map is certified by concerned Executive Engineer, Sub-Divisional Officer and Sub-Engineer of Hasdeo Barage, and also by concerned Patwari."

In the map which has been filed along with the inspection report, distance of the site at three separate points from the HFL has been indicated as 500 mtrs, 530 mtrs. & 501 mtrs.

In view of the above, the Tribunal finds no further reason to interfere in the matter as the controversy which has been raised by the Applicant stands concluded as a result of aforesaid inspection report submitted before them and the map filed at Annexure-IV/2 showing the measurements taken on the ground by the officials of the CECB along with the Engineer and Sub Divisional Officer and Patwari (Revenue) of the area.

While disposing of this petition the tribunal stated condition no. (ix) of the EC which reads as follows:

Ash pond shall be at least 500 mtrs. away from the HFL of river Hasdeo. Ash pond shall be lined with impervious lining. Adequate safety measures shall also be implemented to protect the ash dyke from getting breached. (emphasis supplied)

The reason why this is emphasised is that the aforesaid condition here is that the ash dyke which is proposed to be constructed by the Respondent No. 7 shall be as per the distance as measured and shown on the map maintaining atleast 500 mtrs. from the HFL of the river Hasdeo. Any flooding or breach of the river Hasdeo beyond the HFL limit may cause the water to enter the ash dyke. Therefore, emphasis is laid and the condition 'adequate safety measures shall also be implemented to protect the ash dyke from getting breached' is highlighted and shall be complied with by the Project Proponent/ Respondent No. 7 and all necessary additional measures taken, taking note of any likely excessive flooding beyond the HFL on a reasonable assumption. This task shall be carried out by the Project Proponent in consultation with the concerned Engineers and Scientists of the CECB who shall suggest all possible measures which may be required to be taken by the Respondent No. 7 keeping in view the HFL and contour levels. In the event of any non compliance of the above it would be open for the Applicant or any other person to approach this Tribunal in this matter.

This Original Application stands disposed of. Accordingly, Misc. Applications No. 107/2014 & 400/2014 also stand disposed of.

A Concerned Villager from Nerul Village

Vs

State of Goa

Original Application No. 20/2013(WZ)

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

Keywords: GCZMA, CRZ regulation, Goa, Nerul Village

Application disposed of

Dated : 19 September 2014

A letter was received from the National Green Tribunal (PB), New Delhi, regarding gross violation and rampant filling of the land at Survey No.23/1 of village Nerul (North Goa). This letter was treated as an Application under Section 14(1) (2) read with Sections 15 and 18 of the NGT Act, 2010. This Tribunal issued directions to the GCZMA, to give report as regards action taken into the complaint indicated in the Application. GCZMA was called upon to inquire as to whether violations of CRZ Regulations, in fact, were made, as complained in the Application.

The Tribunal appointed Supriya Dangare, Advocate to represent the Applicant as an Amicus Curie. She willingly accepted the assignment without any monetary expectation.

In pursuance to the directions issued by this Tribunal, the GCZMA now submitted detailed report. GCZMA also submitted a plan, which indicates that the structures, which are found to be nearby the CRZ area. As per the report of GCZMA, two (2) structures indicated as structure A2 and A2, demarcated in the map annexed with the report, were found to be illegal and have been demolished. Other structures, however, were not found to be illegal, during course of the inquiry.

Considering the report of GCZMA, the Judges are satisfied that nothing survives in the Application. Hence, the Application is disposed of. No costs.

Subhash C. Pandey
Vs
Municipal Corporation Bhopal Ors
Original Application No. 34/2013(CZ)

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

Keywords: pollution,

Application disposed off

Dated: 19th September, 2014

The application was filed raising the issue with regard to pollution in the Shahpura Lake of Bhopal. It was submitted that the water body has a catchment area of about 8.29 sq. kms. and most of the area around the lake is surrounded by dense human habitation including high density slums. The aforesaid water body, as per the Application is 'lake' and as per the Respondents, it is only an 'oxidation pond'. Solid waste enters the lake and the water is highly polluted. It was submitted that cultivation of fish and vegetables ring grown using this water is being carried out in the polluted water of the lake and used for human consumption being unmindful of the fact that as a result of the pollution in the water, the fish can be unfit for human consumption. The Applicant submitted that tests have revealed that the water of the Shahpura Lake fell short of the parameters prescribed for drinking purpose over a period of time and it was submitted during the course of hearing that of late, it has become unfit for bathing and even for washing clothes.

Having considered the replies of the Respondents as well as the submissions made during the course of hearing as well as taking notice of the directions issued by the Supreme Court in the Order passed in the case of Mrs. AlmitraH.Patel and Anr. Vs. Union of India and Ors., wherein the State Governments have been directed to take effective measures and make all out efforts for proper management of sewage water and effluents as well as solid waste. The aforesaid directions came to be issued under the order dated 12.09.2013.

The matter was listed on 26.09.2013 and the Municipal Corporation submitted that in response to the directions issued on 12.09.2013 various steps have been taken by the Corporation for cleaning the lake manually. However, this was disputed by the Applicant by means of photographs showing that heaps of solid waste was still lying in the fringes and alongthe banks of the lake though a sewage treatment plant on Panchsheel Nagar nallah has been installed and maintained by the Public Health Engineering Department. However, the capacity of the same not being sufficient, the problem of untreated sewage entering the lake still remains. Accordingly, on 26.09.2013, the Respondents were directed to jointly submit an Action Plan regarding the present status of identifying the problems relating to Shahpura Lake and remedial steps which are required to be taken for improving the condition of water in the lake. It was

further directed that the Municipal authorities shall continue to carry out the manual cleaning of the lake. It was also pointed out that around the lake, lot of eateries, both permanent as well as temporary, are opened every day in the evening which are frequented by a number of visitors to the lake and waste being generated therein is often thrown into the lake itself. With a view to mitigate and deal with the aforesaid problem, Counsel for BMC submitted that more number of dustbins would be installed around the lake. The case was fixed for hearing on 28.10.2013 to enable the parties to submit the Action Plan.

In the meanwhile, regular manual cleaning operations were carried out and by way of short term measure on the suggestion made by the Tribunal on 06.01.2014, the BMC installed wire-mesh/grills at different locations on the nallahs for collection of solid waste and preventing it from entering the lake through the nallahs. On 06.01.2014, it was submitted that the proposals with regard to the manner in which the issue of improving the water quality in the Shahpura lake by taking necessary steps and in preventing the solid waste as well as untreated sewage and hazardous waste from entering into the lake are concerned, a Consultant has been engaged and the Detailed Project Report (DPR) of the Consultant was expected to be received in the month of March, 2014. As a result of the aforesaid, thematter remained pending and only limited measure of manual cleaning as well as prevention of solid waste from entering into the lake through the nallahs by installation of wire-mesh/grills in the nallahs, as indicated above, could be carried out. At one point of time, even suggestions like taking bio-remediation measures were also made. In the meanwhile, it was submitted that as a result of declaration of Model Code of Conduct, on the eve of General Elections, further steps could not be taken in respect of the progress on the measures identified for which the DPR was sought from the Consultant.

It was only on 15th July, 2014 that a copy of the DPR prepared by the Consultant for conservation and development of Shahpura Lake came to be submitted before this Tribunal. The DPR prepared by the Consultant was received by the BMC and thereafter, the BMC submitted it to the Urban Administration and Development Department (UADD) for taking necessary decisions and making financial allocations against each of the items mentioned therein. As has been recorded above, during this intervening period of filing of the application, directions were issued by this Tribunal from time to time with regard to deployment of staff, using of boats for collection and removal of solid waste as well as weeds and other vegetation, manual cleaning on the water front as also for pressing equipment and machinery for the purpose.

As has been mentioned in the affidavit as well as the tabular statements, the first phase consisting of the construction of the sewage treatment plants at Ekant Park as well as at the downstream to treat the garland outfall of the ChunaBhatti area, is to be completed by April 2016. It had further been submitted that the construction of the diversion structure and sumpwell, pumping house to divert dry weather flow of ManishaNallah and ShahpuraChhawnishall be completed by March, 2015. Construction at alternate site for immersion of idols etc. is scheduled to be completed by December, 2014. In para 5 of the affidavit, it has been stated that the procurement of machinery and equipment such as boats,

amphibious excavator, etc. shall be completed by May/July, 2015. Likewise, installation of floating fountain for aeration purpose is to be completed by December, 2014. For all the above noted works, which have been identified under Phase-I as submitted by Shri VivekAgrawal, Learned Counsel appearing for BMC, the required finances amounting to Rs. 12 Crores are made available with the BMC. It was submitted by Shri SachinK.Verma, Learned Counsel for the State that finances will not be a problem and in case any further assistance is required, the State Government will provide necessary funds.

Likewise, as has been mentioned in the tabular statement, Phase-II works to be carried out commencing from October, 2014, are to be completed latest by July, 2016. Shri SachinVerma pointed out from the affidavit of the Principal Secretary, UD&E Department, that BMC will bear the financial burden from their own financial resources for Phase-I works and in respect of Phase-II plan the commencement of works will be subject to the availability of the financial resources to BMC, and the State Government can muster in the Financial Year 2015-16 and all the necessary support for Phase-II works will be provided to the BMC by the State Government to complete the aforesaid task.

15. Learned Counsel for the Applicant submitted that in case the above action plan is implemented and works are executed in a time bound manner as opposed to what has happened in the past, hopefully the situation, particularly the water quality in the Shahpura Lake, would improve so as to bring it within the prescribed norms. However, the Learned Counsel for the Applicant submitted that to regularly monitor the progress of the aforesaid works a Committee consisting responsible and learned senior citizens who are residents of Bhopal city, may be constituted by this Tribunal and +periodically report to this Tribunal based upon the time schedule which has been given in the Action Plan submitted along with the affidavit of the Municipal Commissioner.

16. The Learned Counsel appearing for the BMC as well as the State and the MPPCB agreed that such a Committee may be constituted. Accordingly, as suggested by the Learned Counsel for the parties the names of the following individuals are ordered to be included in the committee:Shri K.S.Sharma, IAS, Chief Secretary (Retired) Shri R.C.Chandel, Retired District Judge Shri H.K. Higorani, Retired Chief Engineer, PHED A scientist from the R.O. of MPPCB, Bhopal

The aforesaid committee shall be assisted by a suitable Scientist nominated from the Regional Office of the MPPCB, Bhopal whose name shall be conveyed to this Tribunal by the Regional Officer, MPPCB, Bhopal through the Counsel for the MPPCB. The Learned Counsel for the State as well as the Learned Counsel for the BMC shall convey the above order and obtain the letter of consent from the aforesaid responsible senior citizens for agreeing to be Members of the Monitoring Committee to oversee the progress of the execution of the aforesaid works in a time bound manner as a gesture on their part for the welfare of residents of the city of Bhopal and in the interest of environment.

The Monitoring Committee shall be informed of the progress at each stagein respect of each of the works given in the tabular statement under Phase-I and Phase-II proposals submitted by the Commissioner, BMC through the Executive Engineer, BMC for undertaking field inspection and monitoring. The Members of the aforesaid Committee shall be at liberty to call for any information pertaining to the aforesaid works and personally verify the progress in respect of each of the tasks and submit their observations by way of report to this Tribunal. They shall be provided with all the required assistance and conveyance facility by the BMC. The Registry is directed that on receipt of the report of the Monitoring Committee, the same shall be brought to the notice of the Tribunal by listing the matter before the Tribunal.

We may add that the works which were initiated as directed by this Tribunal with regard to the fixing wire-mesh/grills including their maintenance/repair manual cleaning, deployment of boats, and other equipment and machinery shall be continued throughout the year and at no point of time there should be any scope given to the Applicant to complain disobedience of the orders of this Tribunal by the Respondents, particularly the BMC.

The MPPCB shall carry out periodical monitoring of the quality of water and reports shall be placed on its website and also submitted before this Tribunal along with the observations of the MPPCB with regard to the baseline data on water quality compared with the water quality at the time of every testing. These reports shall also be taken into account for any additional requirement that may be necessary, if in case substantial improvement is not found in the water quality of the Shahpura Lake inspite of undertaking aforesaid activities, further requirements if any shall be given by way of directions by the MPPCB.

As regards the pollution being caused as a result of the activities of the eateries that have been established along the lake, provision for keeping adequate number of dustbins shall be made. Patrolling by Police / Home Guards shall be intensified. Permanent notice boards duly warning the visitors / walkers not to throw any litter or waste material at any spot other than the designated site or in the dustbins shall be displayed at all theprominent places. It may also be mentioned in the notice board that any person found violating the aforesaid norms shall be required to pay a spot fine of Rs. 500/- and prosecution under section 133 Cr. P.C. Every evening a responsible officer designated for the said purpose by the BMC shall remain present and go round the lake. Adequate publicity in this behalf must be given by the BMC through print and electronic media and the aforesaid directions must be complied in letter and spirit. Breach of the aforesaid directions and the amount of penalty so collected, shall be intimated to this Tribunal through the members of the Monitoring Committee who are also required to make occasional inspection of the lake for the aforesaid purpose.

With the commissioning of the designated point for immersion of idols etc. residents may be suitably informed to carry out the immersions only at the designated site and should not be allowed to directly immerse into the lake. The directions as contained in the guidelines issued by the CPCB in June, 2010 with regard to immersion of idols, collection and removal of the debris and disposal of the same shall be strictly complied by the BMC.

So long as the pollution levels in the water of the Shahpuralake continue to be high, as per the reports of the MPPCB, the fishing activities in the said lake shall remain prohibited. Needles to say, all efforts shall be made to ensure that fish caught from Shahpura Lake with the likelihood of it being unfit for human consumption, does not reach the market. For the aforesaid purpose, awareness programme must be conducted by the BMC to warn people at large. Fish cultivation may be permitted only if the criteria onwater quality standards are fulfilled as per the monitoring reports and advice of MPPCB at periodic intervals. The issue with regard to use of water let out from the Shahpura Lakethrough the nallah / Kaliasote river for the purpose of irrigation and cultivation of vegetables, etc. also needs to be addressed. The MPPCB shall carry out necessary studies and submit their reports to the Agriculture Department and the District Collector, Bhopal informing them whether water let out from the Shahpura lake is fit for cultivation of agricultural crop & vegetables and till such time such reports are not received, the District Collector, Bhopal shall ensure that water flowing out from the Shahpura lake is not allowed to be used for irrigation purpose. The appeal was disposed off.

Dileep B. Nevatia
Vs
Union of India Ors.

Original Application No. 2/2014(WZ)

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

Keywords: noise pollution, noise related standards, automobiles,

Application Disposed off

Dated: 23rdSeptember, 2014

TheApplicant, raised the issue relating to environment by contending that the present regulatory framework is not being effectively implemented by Respondents in terms of standards specified for noise limits for automobiles at the manufacturing stage.

The Applicant submitted that Schedule VI, in part E of the Environment (Protection) Rules, 1986 specify the noise limits relating to noise standards for construction of vehicles at the manufacturing stage with effect from 1st July, 2005, which is to be monitored as per test method IS: 3028-1988,. The Applicant claims that he came to know recently that the Respondents are neither monitoring the noise levels of constructed vehicles at the manufacturing stage, in accordance with IS: 3028-1988 nor they are ensuring compliance of noise limits by these vehicles, as specified in Schedule VI, Part E, of the Environment (Protection) Rules, 1986.
Considering the pleadings and documents available on record and arguments advanced by learned Counsel forthe parties, the following issues emergedadjudication.

1)Whether there is a mechanism for enforcing the noise related standards for automobiles as prescribed under Environmental (Protection) Rules?
2) Whether there is necessity for amending IS: 3028-1998 to comply with the provisions of Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 and the Rules made thereunder?
3) Whether present enforcement of noise related standards for automobiles require specific directions from the Tribunal?

The Supreme Court and various High Courts, have time and again emphasized the need to control noise pollution as importance of maintaining noise levels within urban areas was generally agreed by the learned Counsel appearing in the present Application too. It is also an admitted fact that automobiles, due to its engine (auto mechanism) noise and also, noise generated by blowing of horns contribute significantly to ambient noise levels in urban areas. Needless to say that various reports available in the public domain, record that ambient noise levels in most of theurban areas in the country are exceeding the ambient noise level standards

as set out in the Noise Pollution (Regulation and Control) Rules, 2000.

Noise pollution is a significant environmental problem in many urban areas. This problem has not been adequately addressed and remedied despite the fact that it is growing in developing countries. This widespread non- recognition of noise pollution problem, in a similar fashion as to air and water pollution problems, could be attributed to reasons such as; by the definition and perception of noise as a subjective experience, short decay time, and difficulty to associate cause with effect when it comes to health impacts. Depending on its duration and volume, the effects of noise on human health and comfort are divided into four categories; physical effects, such as hearing defects; physiological effects, such as increased blood pressure, irregularity of heart rhythms and ulcers; psychological effects, such as disorders, sleeplessness and going to sleep late, irritability and stress; and finally effects on work performance, such as reduction of productivity and misunderstanding what is heard.The present Application raises a substantial issue of implementation of noise standards of automobiles as defined under Environment Protection Rules.

It is grievance of the Applicant that though such standards are in place since year 2002, however, the MoEF has not issued any guidelines for enforcing such standards, nor have delegated any powers for enforcement of these standards to the any local authority. The MoEF has countered such arguments by stating that revised noise limits for automobiles at the manufacturing stage, have been identified by the MoEF vide Notification dated 5.5.2005. However, MoEF mentions that these noise limits were notified at Sr.No.46, under Schedule-I of the Environment (Protection) Rules, 1986, are within Part-E of Schedule-VI. The MoEF further contends that these noise limits are implemented under the Central Motor Vehicles Rules, 1989, by the Respondent No.2 i.e. MoRTH. In order to get clarity on the issue, ,the MoEF was directed vide order dated July 2nd, 2014, to clarify as to under what provisions, such implementing agencies, are given powers and authority under the Environment (Protection) Act, 1986, to be exercised by the Respondent No.2, forimplementation of relevant Rules.

The court said that there is absence of well-defined mechanism to implement and enforce the noise standards prescribed for automobiles at manufacturing stage, though they have been prescribed under Environmental (Protection) rules, and have also been incorporated under rule 120(2) of the Motor Vehicle rules, 1989. All the concerned agencies are tossing the responsibility on other agencies, with the result, the prescribed noise standards are not being implemented resulting in unabated noise pollution. And, therefore, the court recorded their finding on Issue-I in NEGATIVE.

The court appreciated the point raised by the Applicant that as these standards deal with the noise standards, it will be prudent to include the Environment Regulatory Authorities like CPCB or SPCB, which are also technical organizations, on such Committee for review and to ensure that environmental regulations are holistically considered while revising such standards. It is also open for MoEF/CPCB/SPCB to prepare their own test procedure for measurement of noise form automobiles, if required. The Issue (2) is accordingly answered in NEGATIVE, with

above suggestion.

In the absence of an effective mechanism to enforce and implement the Noise standards prescribed under the EP Rules and Motor Vehicles Rules, the noise pollution mainly in urban areas cannot be effectively controlled.

It can be observed that there is no effective mechanism for implementation of noise standards for automobiles. Though the Respondents have taken some steps, but they are pointing fingers towards others in the context of duty to perform the Rules. There is lack of synergy and coordination amongst the Respondents. This cannot be allowed to continue, in view of the serious impacts of noise pollution. The Apex court has clearly focused on implementation of existing regulations and also, need of specific regulations while dealing with noise pollution. In para 95 of the above referred Judgment, the Apex court has referred to The Noise Control (Motor Vehicles and Motor Vehicle Accessories) Regulation 1995. This regulation seems to be of New South Wales of Australia which is a comprehensive regulation for noise pollution control from automobile.

Noise pollution is primarily a local (urban area). At the national level too, it is necessary that the MoEF, needs to delegate the powers to the Respondent No.2, if so deemed fit or any other Authority, as may be required to enforce their standards. Similarly, Respondent No.3 i.e. which has an overall responsibility to maintain the ambient air quality under the provisions of section 16 (1) of Air Act, besides the supervisory and co-coordinating role as empowered under section 18 of the said Act, needs to take national level initiative. The Court did not agree with the stand taken by CPCB that SPCBs are solely responsible for setting the standards. The section 16 of Air Act, gives a mandate to CPCB to maintain the desired air quality in the country and empowers it to take all necessary measures for that. Besides this Section 18 gives powers to CPCB to issue specific directions to SPCBs to perform functions as specified in the Act. And therefore, CPCB has an important role to play when national level air quality related issues needs to be addressed. It cannot just shirk the problem, but one which calls for a state-wide solution.

Public awareness, education and information dissemination related to environmental issues have already been identified as important initiatives by various judgments of Apex court. Apex Court in Writ Petition (C) No. 72 of 1998 with Civil Appeal No. 3735 of 2005 [Arising out of SLP (C) No. 2185 (2005) 5 SCC 733 has issued directions as directed in para 179 of the judgment, issued in exercise of power conferred on Apex Court under Articles 141 and 142 of the Constitution of India, which would remain in force until modified by this Court or superseded by an appropriate legislation, which are as under:

*" **1**. There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the text-books which teach civic sense to the children and youth at the initial/early level of education. Special talks and lectures be organised in the schools to highlight the menace of noise pollution and the role of the children and younger generation in preventing it. Police and civic administration should be trained to understand the various methods to curb the problem and also*

the laws on the subject.
2*. The State must play an active role in this process. Residents Welfare Associations, Service Clubs and Societies engaged in preventing noise pollution as a part of their projects need to be encouraged and actively involved by the local administration.*
3*. Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions whereatfirecrackers are likely to be used, need to be carried out."*

The provision of information on sound emissions due to automobile to consumers and public authorities has the potential to influence purchasing decisions and accelerate the transition to a quieter vehicle fleet. It was held that the automobile manufacturers should provide information on sound levels of vehicles at the point of sale and in technical promotional material, providing information to the consumers about the sound emissions of a vehicle and also the horns based on Precautionary Principle. It is also necessary that the certificate of compliance issued under rule 120 (2) or even that of horn/silencer etc. for each type approval shall also be provided to the automobile purchaser and also, the same shall be available on automobile manufacturer's website in public domain, for each prototype of vehicle.

In the result, the Application is partly allowed with following directions, as per section 14 read with section 20 of NGT Act, 2010:
i) The MPCB shall notify the noise emission standards for vehicles at manufacturing and in- use stage within a period of three (3) months in State of Maharashtra, shall thereafter issue necessary directions under Section 20 of the Air (Prevention and Control of Pollution) Act, 1981, tothe concerned Authorities for enforcement of such standards within next four (4) months.
ii) Respondent-3 i.e. CPCB shall co-ordinate with other state Boards under the provisions of Section 16 and 18 of the Air (P&CP) Act for notifying the noise standards for automobiles within next six (6) months.

iii) Respondent-2 and 7 shall ensure that no vehicle is registered, till such standards are finalized by Respondents- 3 and 4, without ensuring the strict compliance of the noise standards as specified in Rule 120(2) of Motor vehicle Rules, 1989. A compliance report on this direction shall be filed by R-2 and R-7 within two (2) months.

iv) Respondent Nos.2 and 7, were directed that certificate of compliance issued by the specified agencies under Rule 120 read with rule 126 of the Central Motor Vehicles Rules, 1989, related to compliance of noise standards for horns, vehicle, etc, as notified, shall be made available along with every vehicles which will be sold in the market henceforth and also, a copy of such certificate for each prototype shall be available on the website of the department. This is very important as a citizen, who is consumer/purchaser of the automobile, is entitled to know the level of pollution caused by the vehicle.

v)These Directions shall be brought to the notice of all concerned transport authorities by Respondent 3 i.e. CPCB and Respondent 4 i.e. MPCB immediately.
The Application is accordingly disposed of.

Raghunath S/o Rakhamji Lokhane
Vs
MPWPB Ors
Original Application No. 11/2013(THC)(WZ)

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

Keywords: polluter pays, ground water, precautionary principle
Application disposed off

Dated: 24thSeptember, 2014

The Applicant has filed this Application raising issues of ground water pollution in the vicinity of Waluj Industrial area and also seeking stringent enforcement of environmental Regulations to Control the water pollution.The Applicant has arrayed Maharashtra Pollution Control Board (MPCB) which is responsible for implementation of Water (Prevention and Control of Pollution) Act 1974 (called 'Water Act') as Respondent Nos.1 and 2. The State of Maharashtra is Respondent No.3 while Environment Department, Government of Maharashtra is Respondent No.4. All other Respondents are individual Industrial Units, located in the said industrial area. The Respondent Nos.3 and 4 have not filed any Affidavit in the proceedings in this Tribunal or even in the High Court, however, as their role in the enforcement of Water Act is limited; their submission of Affidavit is not necessary in adjudication of the matter.

Considering the pleadings and the nature of dispute, the following issues were framed:

1)Whether contamination of ground water in and around village Ranjangaon-Shenpunji can be attributed to the mis-managed and inadequately treated Industrial discharges of any plant from the Industries at Waluj, MIDC area ? If yes, then whether resultantly ground water and also the water in percolation tank have been polluted ?
2)Whether the remedial measures for restoring the ground water quality are necessary to arrest the ground water pollution, if any caused by industrial discharges? If yes, what measures shall be adopted ?
3)Whether the Respondents and Industries in Waluj MIDC area are liable to pay any damages for loss caused to the environment and restitution/restoration of groundwater quality ? If yes, to what extent and to whom ?
4)Whether there is need to issue specific orders to the authorities for regulating the industrial discharges and/or the CETP and operations ?

Court held that the ground water and also the water in percolation tank is not meeting the required quality standard and therefore, the issue No.1 is answered in the "AFFIRMATIVE".
The courtanswered issue No.2 in Affirmative, with further direction that MPCB needs to formulate and execute such ground water quality remedial action plan, based on

recommendations of CGWB.

With regards to Issue No.3, it was held that ground water remedial measures involve significant costs and necessarily such costs need to be paid by concerned industries. This is a fit case where theprinciple of 'Polluter's pay' can be applied besides principle of 'Sustainable development' and Precautionary principle.

After considering multiplejudgments of the Supreme Court, the court**,** the Application was allowed with following directions issued under Section 14, 15 read with 20 of National Green Tribunal Act, 2010:

(I) MPCB shall devise remedial action plan for the ground water quality and soil water quality as identified in NEERI/CGWB report. MPCB may take help of NEERI to formulate such action plan and identify the cost thereof within next four (4) months.
(II) MPCB shall thereafter execute such remedial action plan with the assistance of MIDC, GSDA and other authorities as deem necessary in close co-ordination with the District Collector, within next one (1) year or the time frame as suggested by the Expert Agency like NEERI.
(III) MPCB shall recover the costs of the remedial measures based on equitable distribution and Polluter's Pay principle from the responsible industries in the catchments of such contaminated wells/aquifers as identified by the CGWB/NEERI.
(IV) MPCB shall prepare such report identifying the industries and their proposed contribution, may be in the percentage of overall cost basis for further orders from the Tribunal in next three (3) months.
(V) MPCB shall also utilize the amount of Bank guarantees forfeited from the industries in Waluj Industrial area for the said purpose, for initiating the works referred above.
(VI) The industries listed in NEERI/MPCB report i.e. InnotechPharma Ltd., Paschim Chemicals Pvt. Ltd. and Endurnce System Pvt. Ltd., Aurangabad Electrical shall deposit initial amount of Rs.5 lacs each with MPCB towards such remedial action plan.
(VII) MPCB shall ensure that the industries in MIDC, Waluj area and CETP achieve the desired effluent, quality by issuing suitable directions and the same shall be achieved in a period not more than three (3) months. In case, such compliance is not attained in 3 months by individual industries and in 6 months by CETP, then MPCB shall take stringent legal action against the non-complying industries.
(VIII) MPCB shall pay the costs of Rs.10,000/- (Rs. Ten thousand) to be paid to the National Environmental Relief Fund, in view of non production of their own action plan and also the NEERI Report in the proceedings.
(IX) MIDC shall continue to provide water for domestic purposes in villages/localities, located in the eastern stretch starting from north RanjangaonShenpunji to south Shivrai, where ground water quality deterioration is reported by CGWB, till such remedial action plan is implemented and the ground water quality is fit for drinking, as per norms. Application is disposed of.

P. S. Ravindranath Coimbatore

Vs

The Member Secretary Tamil Nadu Pollution Control Board Chennai and others

Original Application No. 73/2013(SZ)

Judicial and Expert Members: M. Chockalingam, R. Nagendran

Keywords:

Application dismissed

Date: 24th September, 2014

The application is filed by the applicant hereinseeking Tamil Nadu Pollution Control Board (Board) and the District Environmental Engineer (DEE), Coimbatore South shown as 1st and 2nd respondents to revoke the Consent Order granted to the 4th respondent Sri Gokulam Blue Metals and issue closure order to close the 4th respondent's stone crushing unit described in the Application. The said Appeal was filed by Shri Gokulam Blue Metals. The Tribunal closed the appeal and permitted the appellant to run the unit by recording a finding that the unit was entitled to run to its full capacity, of course, in accordance with law and as per the directions of the Board along with a direction to the Board to exercise its regulatory powers on the unit in respect of the direction given in the judgment within a period of 4 months. Aggrieved over the said judgment, both the R.A.Nos. 2 and 3 of 2013 were filed. The 3rd party applicant in R.A. No. 2 of 2013 (SZ) has challenged the Consent Order dated 19.05.1995 granted by the 1st and 2nd respondents to the 4th respondent unit, namely, Shri Gokulam Blue Metals and also sought for closure of the unit along with disconnection of power supply.

Advancing the arguments on behalf of the applicant, it was submitted that he is an agriculturist residing at Palathurai Village and his lands are under cultivation which include coconut grove also. All the neighbouring lands of the applicant are also under cultivation. The lands in the said village and Madukkarai Village were brought under the Coimbatore Local Planning Authority in the Coimbatore City Master Plan 1994. The said unit is within the prohibited distance of 500 m from existing PalathuraiVillage which is having more than 1,000 houses, an ancient AzhaghuNachiamman Temple and an Engineering College. According to the Board norms pursuant to the order dated 30.11.1990 of the High Court, no stone crushing units shall be located within a distance of 500 m from any primary residential area or mixed residential area or place of public and religious importance. TheSupreme Court of India permitted only the crushing units who have valid licenses as on 10.05.1999 to comply with the conditions of National Environmental Engineering Research Institute (NEERI). The 4th respondent unit is within the prohibited area. While it stood so, the 4th respondent drastically increased its production capacity by more than 10 times of the consented capacity as per the order of the Board and established a tar mixture plant and ready mix concrete plant without consent and license, thereby started emanating huge quantities of dust causing pollution and serious health

hazards to the general public of Palathurai Village which is having a population of the village is around 4,000 and also affecting surrounding agriculture lands and livestock.

When the Appeal No. 42 of 2013 (SZ) came up for further hearing before the Tribunal on 12.07.2013, neither the Board nor the 4th respondent brought to the notice of the Tribunal about the pendency of the Application No. 73 of 2013 (SZ) filed by the applicant herein and obtained an order of setting aside the closure order behind the back of the applicant herein. The Tribunal held that the 4th respondent's crushing unit is an existing unit on the basis of the submissions made by the Board, when the fact remains that the 4th respondent's unit is not an existing unit as on 10.05.1999, i.e., the date of order of the Supreme Court of India. The applicant herein came to know about the orders passed in Appeal No. 42 of 2013 (SZ) only when the 4th respondent filed its reply affidavit on 18.07.2013. Immediately, the applicant herein filed a Review Application which is taken on file and numbered as R.A. No. 2 of 2013 (SZ) seeking the Tribunal that the said order made in Appeal No. 42 of 2013 (SZ) has to be reviewed and set aside on the ground that the 4th respondent and the Board have deliberately suppressed the pendency of the applicant's Application No. 73 of 2013 (SZ) for closure of the 4threspondent's unit as the same is functioning within the prohibited distance of 500 m and thus, the 4th respondent and the Board have played fraud on the Tribunal. The 4th respondent's crushing unit came to be established during the year 2000 and is operating within the prohibited distance of 500m which is contrary to the Board's Proceedings. The learned counsel would further add that the contentions put forth by the 4th respondent that it has purchased the land and the crushing unit under sale deeds from the applicant's brother and hence the applicant is estopped from raising objection with regard to the functioning of the crushing unit. What were sold by the applicant's brother P.S. Muthuramalingam in favour of K. Rajkumar under the sale deed dated 30.05.1999 are only agricultural lands and a farm house and there was no reference or recital whatsoever relating to transfer of any industrial building, structures or machinery thereon. Hence, there is no estoppel as against the applicant who is really one amongstthose villagers affected by the enormous emission of air pollutant from the 4th respondent's unit, to approach the Tribunal seeking permanent closure of the unit. The Advocate Commissioner appointed by the Tribunal in his report has categorically stated that the distance between the felling point of 4th respondent's unit and the AzhaguNachiamman Temple is 146.2 m, the distance between the felling point and the main building of Kalaivani College of Technology is 427.4 m and the distance between the felling point of 4th respondent's unit and the village is 477. 4 m. Thus, it would be quite clear that the crushing unit of the 4th respondent is situated within 500 m. The 4th respondent unit was not an existing unit as on 10.05.1999, i.e., the date of order of the Supreme Court. The order of consent to operate obtained by Ponnimaan Blue Metals on 19.05.1995 not only came to an end as early as on 31.03.1996, but also was not renewed thereafter. In the absence of any renewal of Consent between 01.04.1996 and 02.05.2000, the alleged order of renewal of consent dated 02.05.2000 in the name of the 4th respondent can be construed only as a fresh consent. The 4th respondent has not produced any document to establish that it had a valid license as on 10.05.1999. M/s. Ponnimaan Blue Metals and the 4th respondent which obtained the renewal on 02.05.2010 are different entities in law and the 4th respondent has not produced any document to show thetransfer of assets and the licenses of Ponnimaan Blue Metals to 4th respondent, Sri

Gokulam Blue Metals. Moreover, the 4th respondent, Sri Gokulam Blue Metals commenced its business only on 01.06.1999 under a partnership deed dated 01.06.1999 which was registered on 01.07.2000. Shri Rajkumar, after purchasing the vacant land from Muthuramalingam could have purchased crushing machines separately and established the crushing unit after entering into a partnership deed on 01.06.1999. The application for consent dated 27.04.2000 along with the documents would have to be construed only as a fresh application for consent to establish a new crushing unit since there was no crushing unit in existence either on 10.05.1999 or on the date of sale deeds. Thus, the finding recorded by the Tribunal in Appeal No. 42 of 2013 (SZ) that it was an existing unit is not in consonance with the factual position. Both the Board and the 4th respondent have purposefully and deliberately suppressed all the above material facts and hence played fraud on this Tribunal. Any order obtained by playing fraud on the Court is a nullity and *non est*in the eye of law as held by the Hon'ble Supreme Court in *A.V. PapayyaSastry and others v. Government of Andhra Pradesh and others reported in 2007(4) SCC 221.*

8. The 4th respondent, when he preferred the appeal has made fraudulent and misrepresentation of facts and has played fraud on Tribunal. The judgment has got to be reviewed by the Tribunal as held by the Hon'ble Apex Court in *Vice Chairman, KendriyaVidyalayaSangathan and another v. GirdharilalYadav, (2004) 6 SCC 325.*

9. According to the counsel, it is an admitted fact that the Application No. 73 of 2013 (SZ) is pending on the file of the Tribunal in which the Board and the 4th respondent have obtained an order in Appeal No. 42 of 2013 (SZ). Thus, the 4th respondent has failed in his duty and has not come with clean hands. The Tribunal alone can decide whether the Application No. 73 of 2013 (SZ) and Appeal No. 42 of 2013 (SZ) to be heard together or not and it is not for the 4th respondent to decide the same. The 4th respondent did not have a valid consent to operate. While so, the order of the Tribunal amounts to extension of consent to the 4th respondent which cannot be done. The Tribunal, on the strength of the report on the Expert allowed the 4th respondent to function without considering the legality of the functioning of the 4th respondent since the 4th respondent did not have a valid consent. The contention put forth by the 4th respondent that review applicants were relatives and hence they have filed the Review Applications with vested interest which has got to be rejected as irrelevant since the said fact did not affect the merits of the case. The 4th respondent unit was not an existing crusher unit as on 10.05.1999, i.e., the date of order made by the Hon'ble Apex Court. In view of the Board's Proceedings No. 4 of 2004 based on the order of the Hon'ble Supreme Court of India, the unit of 4th respondent unit was not an existing unit. To qualify as an existing unit, the stone crusher unit it must have been in legal existence on the date of Apex Court's order, i.e., with a valid consent from the Board under Water and Air Acts and other necessary permissions. It is well admitted by the 4th respondent that it applied for consent only on 27,04,2000 in its name and renewal was granted only on 03.05.2000. The Consent Order produced by the 4th respondent was valid only until 2003 and beyond that no consent orders have been produced. This would indicate that the 4th respondent is operating the unit in contravention of law. The only evidence relied on by the 4th respondent is a license from the *Panchayat*which document purported to show the office building but it does not show whether any license to run the unit was obtained.

Even assuming for the sake of argument that the 4th respondent's unit is based on a running license, the same is not sufficient to show that the 4th respondent unit is a running unit. Hence, the case of the 4th respondent that he was not amenable to siting criteria as though of a pre-existing unit has to be rejected. The 4th respondent unit is located within 500 m from the residences, a college and temples and other areas of public utility. The Tribunal without considering all the above aspects have allowed the appeal. Hence, the judgment made in Appeal No. 42 of 2013 (SZ) has to be reviewed and set aside.

Neither this respondent/appellant nor the Board suppressed any fact as contended by the applicants. The Tribunal was perfectly correct in holding the unit of the 4th respondent is an existing unit for which Consent to Operate was issued by the Board on 19.05.1995. All the applicants are members of the same family and with an ulterior motive and with a view that the existence of the crushing unit of the 4th respondent stands as an impediment to their plan to plot out their lands which are adjacent to the unit, they have come up with all untenable allegations. Hence, all the applications have to be dismissed.The Tribunal paid its anxious consideration on the submissions made by the counsel on either side and also made a thorough scrutiny of the documentary evidences and it was indicative of the fact that the family members of the applicant who operated Ponnimaan Blue Metals with land and machinery have given no objection to carry on the crushing operation by the 4th respondent and on the strength of the same, the 4th respondent sought for a name transfer which was accordingly done and renewal of consent has also been ordered. Thus, without any hesitation, it can be held that it was an existing unit. Taking advantage of the fact that the unit did not have a renewal for a short period, the applicant cannot be permitted to say that the character of the unit as an existing unit would be lost for two reasons, firstly during the said brief period, there is nothing to show that the crusher was removed or dismantled or the activities were stopped and secondly, after the said brief, the application for renewal by the 4th respondent was considered and granted. Since there is sufficient evidence to show that the crushing unit of the 4th respondent was continuing its operation without any disruption and thus it was an existing unit during the relevant period, the B.P.Ms.No 4 speaking on the siting criteria cannot have any application to the 4th respondent unit.

It is admitted by the Board that the consent fee has all along been paid from the year 2000 onwards continuously after the consent was renewed in favour of the 4th respondent Sri Gokulam Blue Metals. It is notthe case of the Board that any complaint was received from anybody alleging any kind of pollution caused by the 4th respondent's unit. It could be seen from the available materials that when the authorities of the Board made an inspection in February, 2013, they found that the 4th respondent had set up Hot Mix Plant and Ready Mix Concrete Plant without getting prior consent therefor. While the application seeking consent for the Hot Mix Plant and Ready Mix Concrete Plant were pending with the Board, a closure order was served on 25.04.2013 on the 4th respondent following a reply of the 4th respondent to the show cause notice dated 08.02.2013. Aggrieved over the same, the 4th respondent challenged the said order in Appeal No. 42 of 2013 (SZ) which is sought to be set aside.
Tribunal has recorded a finding on evidence and merits that it was an existing unit and hence

the request of the applicants for making a review of the Judgment of the Tribunal made in Appeal No. 42 of 2013 (SZ) does not merit acceptance. Hence, it is rejected.

Accordingly, the applications are dismissed as devoid of merits. Miscellaneous Applications, if any, pending are closed.
No cost.

N Silvans Manalikkarai Post
Vs
The District Collector Kanyakumari District and others

Original Application No. 61/2013(SZ)(THC)

Judicial and Expert Members: M. Chockalingam, R. Nagendran

Keywords: chemicals, rubber, pollution, wastewater

Application disposed of

Date: 25 September 2014

The case of the applicant is that the applicant is one of the residents of 100 families residing in Keezhavilagam, Kumarapuram Town Panchayat. The 5th respondent is carrying on a Rubber Sheet Drying Unit with machines and using chemicals in abundance which has caused high degree of pollution and also degradation of environment due to the discharge of wastewater from the rubber sheet drying machines. He has made a hole in the wall of the Unit where the machines are located and a connection is made to a nearby Odai where the wastewater is discharged. It is pertinent to point out that the Odai water mingles with the Thiruvithancode channel and thus creates a lot of health hazards. Though representations were made to the 4th respondent, Kumarapuram Town Panchayat, they have not taken any steps to stop the same. Thereafter a petition was given to the District Collector on 17.12.2012 but no action was forthcoming. Under such circumstances, there arose a necessity for making the application before the Tribunal.

The District Environmental Engineer concerned was directed to make an inspection and file a report and he brought to the notice of the Tribunal the fact that the 5th respondent Unit has been causing pollution. It was reported then by the 5th respondent that measures have already been taken. Even after that, the applicant not satisfied with the measures taken, continued to pursue his compliant. Under such circumstances, sufficient time was given to the 5th respondent to take necessary preventive measures. A direction was issued to the concerned District Environmental Engineer to make an inspection of the Unit and file a status report. Accordingly, the concerned District Environmental Engineer made an inspection of the Unit of the 5th respondent on 16.7.2014 and has filed a report.

The District Environmental Engineer concerned in his inspection report made observations and could be seen from the inspection report dated 16.7.2014 it is clear that all the necessary preventive measures were not taken. But the second inspection report made on 12.9.2014 when the above observations were recorded it would be quite clear that as contended by the 5th respondent, necessary preventive measures have been taken. Under the circumstances, the Tribunal is of the considered opinion that there cannot be any impediment to record the

observations made by the District Environmental Engineer dated 12.9.2014 as stated above and on the strength of it accepting the same. There cannot any impediment for allowing the 5th respondent to carry on his Unit. It is brought to the notice of the Tribunal that the 5th respondent Unit is kept closed by a seal affixed by the Tamil Nadu Pollution Control Board. In order to carry on the operation of the 5th respondent, the seal has got to be removed which is conceded by the District Environmental Engineer who is present this day. Hence, the District Environmental Engineer concerned is directed to remove the seal and the 5th respondent Unit is also permitted to carry on its activities. However, a direction is issued to the 3rd respondent to monitor the Unit and see that the 5th respondent Unit continues to carry on its operation f r e e from pollution or complaint thereon. Accordingly, the application is disposed of.

Sudiep Shrivastava

Vs

Union of India

Appeal No. 33 of 2013

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

Keywords: Parsa. Coal, Mining, Limitation, Environmental Clearance, MoEF, EIA Notification

Appeal dismissed

Dated: 25 September 2014

1. Whether the judgment is allowed to be published on the net?

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

The Ministry of Environment and Forest (for short 'the MoEF'), Government of India vide their letter dated 21st December, 2011 accorded Environmental Clearance for **Parsa East and Kanta Basan Opencast Coal mine project of 10 MTPA production capacity along with a Pit Head Coal Washery** (10 MTPA ROM) to M/s Rajasthan Rajya Vidyut Utpadan Nigam Limited involving a total project area of 2711.034 hectare under the Environmental Impact Assessment Notification, 2006 (for short 'EIA Notification, 2006') subject to the specific conditions stated in that Order.

The appellant, who claims to be a social activist and an advocate based at Bilaspur and Chhattisgarh and who has been actively involved in raising environmental and social issues, particularly, in relation to the State of Chhattisgarh, has challenged the legality and correctness of the Order dated 21st December, 2011 according Environmental Clearance to Respondent No. 4. The challenge to the said Order inter alia is on the ground that the impugned Order was not available on the website of the MoEF and thus, there is violation of the EIA Notification, 2006. It is alleged that the information about 135MW Thermal Power Plant has been concealed and impact of the same has not been assessed before granting the Clearance. The said concealment is of information regarding elephant movement in the area as well as existence of other flora and fauna in the area being widely affected by the impugned Order. It is also stated that the land use data has been incorrectly stated and is misleading, water source requirement for the project has not been correctly assessed, impacts of supporting and necessary infrastructure relating to transport etc. has not been taken into consideration, Mining Plan which clearly states that drilling and blasting will take place for extraction of coal and its impact has not been assessed and lastly, that the public hearing process as contemplated under law has been vitiated for

various irregularities, including non-provision of Hindi translation of documents. Grounds of challenge raised by the appellant have been specifically refuted by the Learned Counsel appearing for the various Respondents, including the Project Proponent.

it is contended on behalf of the Project Proponent that the appeal is hopelessly barred by time. Not even an application seeking condonation of delay has been filed, which obviously means that there is no reason to show any cause, much less a sufficient cause for condonation of delay. It is contended that once the appeal is not accompanied by an application for condonation of delay, as contemplated under proviso to Section 16 of the NGT Act, the same has to be dismissed on that ground itself. It is also contended that the appellant is an environmental activist and is a lawyer for years and is, therefore, fully aware and conscious of the law and the operation of websites, accessibility to public notices etc. The Project Proponent claims to have complied with all the requirements of law and that there is communication of the order of Environmental Clearance as contemplated in law, as it had been put in the public domain. According to the Project Proponent, the limitation has to be reckoned from February, 2012 when they had completely performed all their obligations under the law and communicated the order granting Environmental Clearance to all concerned by putting it in the public domain by all expected ways under the requirements of the EIA Notification, 2006. According to the Project Proponent, in terms of Section 16 of the NGT Act, the appeal had to be filed positively by 25th of March, 2012 and along with an application for condonation of delay, showing sufficient cause for condonation of further period of 60 days i.e. up till 24th May, 2012. After 24th May, 2012, i.e. after the expiry of total period of 90 days, this Tribunal has no jurisdiction to entertain the appeal and/or condone the delay.

The Tribunal finds merit in the contentions raised on behalf of the Respondents 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 only thereafter the delay can be condoned by the Tribunal when sufficient cause of action is shown for filing the appeal beyond the prescribed period of limitation.

In the case of Sneh Gupta (supra), the Supreme Court clearly observed that the Court had no jurisdiction to condone the delay in terms of Section 3 of Limitation Act, 1963, in absence of an application for condonation of delay.

In view of the above clear position of law, the present appeal is also liable to be rejected on this ground alone.

Resultantly, and for reasons afore-recorded, we accept the contentions raised on the behalf of the Respondents that the present appeal is barred by time and that this Tribunal has no jurisdiction to condone the delay and to entertain the appeal.

Resultantly, the present appeal is dismissed as being barred by time.

Goa Foundation

Vs

Union of India

Original Application No. 26 Of 2012

(M.A. NOs. 868/2013, 47/2014 & 291/2014)

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

Keywords: Western Ghats, WGEEP, Kasturirangan, Gadgil report, ESA

Application disposed of

Dated: 25 September 2014

1. Whether the judgment is allowed to be published on the net?

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

Both the applicants have approached the Tribunal with the following prayers:

"(i). Direct the Respondents not to issue any consent/Environment Clearance/NOC/Permission under the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest (Conservation) Act, 1980 and the Biological Diversity Act, 2002 within the Western Ghats area in respect of areas which have been demarcated as ESZ1 and ESZ2 as mentioned in Para No. 19 above;

(ii). Pass such order/s as this Hon'ble Tribunal may feel fit and proper in the facts and circumstance of the case.

(iii). To direct the Respondents to discharge their obligations by exercise of the powers conferred upon them under the respective enactments mentioned in Schedule I of the NGT Act, 2010 for protection and preservation of Western Ghats in the framework as enunciated by the WGEEP in its report dated 31.08.2011."

As is evident from the prayers made in this application, the Applicants pray that recommendations made in the report submitted by the WGEEP (in formally called Dr. Gadgil's Report) are to be implemented to protect the Western Ghats in furtherance to its constitutional obligations emerging from Article-14 and 21 read with Article-48 and 51-(A), (g) of the Constitution of India.

During the pendency of this application, the MoEF had taken a conscious decision to constitute another High Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan. This Committee (informally termed Dr. K. Kasturirangan Committee) submitted its report to the

MoEF which in turn initially took a decision to accept the said report in principle and proposed a draft notification under section 5 of the Environment(Protection) Act, 1986 (for short, 1986 Act) and invited objections from all stakeholders including the States.

The Applicant continued to persist with the prayer that the areas of Western Ghats, which were not included in the Dr. K. Kasturirangan Committee Report and consequently, not covered by the draft notification should still be protected as eco-sensitive zone in the interest of the environment and ecology.

In furtherance to the Tribunal's order that MoEF give a clear and unambiguous stand about the draft notification, MoEF has filed the affidavit saying:

"(J). That the Ecologically sensitive area as stated in the draftnotification S.O. No. 733(E) dated 10.03.201 forms the basis for demarcation ESA by physical verification by the State Governments of Western Ghats region. The State Governments of Western Ghats region, may after undertaking demarcation of ESA by physical verification, propose the exclusion/inclusion of certain areas from/in the Ecologically Sensitive Area as stated in the draft notification S.O. No. 733(E) dated 10.03.2014. Such proposals of the State Governments received after physical verification, would be examined by the Ministry before taking a view on further appropriate action including inter-alia issuing a fresh draft notification, if required, to seek objections from the public on the proposals received from the State Governments of Western Ghats.

(I). That the Direction issued under Section 5 of the Environment (Protection) Act, 1986, on 13th November, 2013 for providing immediate protection to the Western Ghats and maintain its environmental integrity is in force."

The Tribunal accepted the stand taken by the MoEF in the affidavit filed by the Secretary, MoEF as the clear and unambiguous stand of the Government of India for finally settling this crucial issue which remains pending for years and in fact, pending before this Tribunal since the year 2012.

In view of the affidavit filed by the Secretary, MoEF, we are of the considered view that there is no occasion for the Tribunal to keep this main and other applications pending any longer. MoEF is expected to discharge and perform its statutory obligations expeditiously and in accordance with law. According to the affidavit of the Secretary, MoEF particularly the portion as re-produced above, MoEF is considering exclusion/inclusion of certain areas from/in the ecological sensitive areas, as stated in the draft notification dated 10.03.2014. In other words, MoEF has decided to examine all aspects regarding the ecologically sensitive areas before issuing final notification in terms of section 3 of the Act of 1986.

Most importantly, it has also been stated in the affidavit that the Ministry is going to take further appropriate action inter-alia issuing fresh draft notification in that behalf.

Thus, it is now exclusively for the MoEF to determine and decide the rival contentions, and the period for which the restrictions as issued by the MoEF in its order dated 13.11.2013 should remain operative. It is the duty expected of the MoEF to maintain the environmental tranquillity

and ecology of the areas under consideration, in the condition as they exist today, and not to allow irreversible alteration of the areas in question by granting Environmental Clearance or permitting activities which would have an adverse impact on the eco-sensitive areas.

We may also notice that on behalf of the State of Kerala, it was specifically contended before us that they have already submitted not only their objections but even their physical measurements of the area that could be declared as "eco-sensitive area" and the matter is pending with the MoEF now for a considerable time. All that we can direct is that this matter should also be dealt with by the MoEF with utmost expeditiousness. It will be obviously open to the MoEF to declare the ecologically sensitive areas, State-wise or collectively, for the entire Western Ghats which is relatable to all six the states afore-indicated.

Application is disposed of.

Jal, Jungle, Jameen Sangarsh Samiti

Vs

Dilip Buildcon

Misc. Application No. 557/2014

and

Original Application No. 118/2014 (THC) (CZ)

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

Keywords: Florican, Sailana Wildlife Sanctuary, Kharmour, endangered, Suo Motu, Mining

Application disposed of with directions

Dated: 26 September 2014

This application was filed by the Applicant in the matter of the grant of the mining lease to the Respondent No.1 for executing the construction work of the road from the Jaora-Piplodha-Jalandharkheda & Piploda – Sailana at the instance of the Respondent No. 8/Madhya Pradesh Road Development Corporation Ltd. (MPRDC). For the aforesaid purpose the Respondent No.1 was granted temporary mining lease in July, 2013 for mining of material i.e. stone/boulder and murrum from the land in Khasra no. 308/1/1/a, village Amba, Tahsil Sailana, District Ratlam. The question raised by the Applicant was looking to the close proximity to the site of the aforesaid mining lease granted to the Respondent No.1, to the Sailana Wildlife Sanctuary famous for the Lesser Floricon bird, commonly known as Kharmour which is reported to be on the verge of near extinction and the aforesaid Sanctuary is one of the few habitats left over for the breeding purpose preferred by this bird, would be extensively disturbed as a result of the mining activity in such close proximity of the Sanctuary as also the fact, as was revealed before the Tribunal during the hearing, that the extent of the area of the Sailana Wildlife Sanctuary was limited to just about 13 sq.km. It was also submitted by the Applicant that habitat is conducive to breeding on account of open grass land and the Lesser Floricon birds normally frequent the aforesaid area for breeding purpose during the monsoon season. The Applicant submitted that the aforesaid bird species is critically endangered and listed under Schedule-I of the Wildlife (Protection) Act, 1972.

In the reply filed by the Respondents No. 4 and 6 it was submitted that as the mining site is located 500 mt. away from the boundary of the Sanctuary and therefore in pursuance of the report of the Forest Department and representations of the local residents of the order the District Collector Ratlam cancelled the temporary mining licence granted to the Respondent vide order dtd. 03.10.2013 and the State Government has submitted proposals dated 08.02.2014 to the Ministry of Environment and Forests, Govt. of India, for demarcating and notifying an area upto 2 km. from the boundary of the aforesaid Sanctuary as Eco-Sensitive Zone (ESZ) under the Environment (Protection) Act, 1986.

While we could have allowed the matter to rest on that, this Tribunal proceeded further in the matter and the response of the Principal Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden was sought with regard to the existing situation pertaining to the Lesser Floricon particular in the State of Madhya Pradesh particularly in the Sailana Wildlife Sanctuary and the adjoining Wildlife Sanctuaries of Petlawad in Jhabua and Sardarpur in Dhar Districts and what additional measures and precautions, in the opinion of the PCCF (Wildlife), were required to be taken to improve the conditions in the sanctuary so as to ensure undisturbed and safe habitat to the endangered Lesser Floricon so that more number of birds arrive during the breeding season. During the course of hearing it was also submitted that according to the recent media reports there is a gradual decline in the arrival of Lesser Floricon to Sailana Wildlife Sanctuary and only 8 such birds have been sighted in the said sanctuary during the monsoon of 2014 which only shows and justifies the fact that they are very nearly extinct and their numbers are dwindling rapidly. To substantiate the above, an article appearing in a English Daily newspaper was also brought to our notice wherein as per study conducted, it was submitted that while in 2012 about 20 birds were sighted in the Sailana Wildlife Sanctuary it has come down to 8 in the year 2013.

The Respondent No. 1, have submitted through their Counsel that they would be willing to contribute significantly towards any project that may be required to be carried out for which financial assistance is required apart from what is being provided by the State for the regular management, conservation and protection of the habitat of the Lesser Floricon in the Sailana Wildlife Sanctuary.

The Respondent No.1 Company in accordance with their commitment shall deposit an amount of Rs. 29.55 lakhs with the Forest Department under non-lapsable Head of Account as decided by the PCCF (WL) by way of Demand Draft within a week for utilization of funds for improvement and management of the Sailana Wildlife Sanctuary in addition to the regular budget already provided from the funds allotted to Department.

It is also ordered that to effectively utilize the funds and involve the local villagers, the funds may be spent through Eco Development Committee (EDC) if already constituted and if not yet, necessary action shall be taken to constitute the same as per the rules, regulations and Government orders in force and then execute the works which will not only bring transparency but also motivate the local villagers in contributing their services for the protection and conservation of the critically endangered Lesser Floricon so that it flourishes in the Sanctuary, their population increases and past glory is restored for which the local villagers were proud of, as stated in the Application by the Applicant.

With the aforesaid directions the Applications stands disposed of along with the Misc. Application No. 557/2014.

The Learned Counsel for the Applicant submitted that there are certain other issues and irregularities on the part of Respondent No. 1 and that liberty may be granted to the Applicant to approach the appropriate authority with regard to the same and aforesaid disposal of the Application should not be considered as adjudication or abandonment of the aforesaid other

issues. So far as the submission of the Learned Counsel for the Applicant is concerned, the submission is reasonable and the Tribunal hereby clarifies that that any relief that the Applicant may be seeking against any other authorities, it would be open for the Applicant to approach the appropriate authority having the jurisdiction in the matter and the authority shall take cognizance of the same and deal with it in accordance with law.

The matter shall be listed for compliance before this Tribunal on 17th October, 2014.

National Green Tribunal Bar Association

Vs

Union of India

Original Application No. 309/2013

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

Keywords: Sal forests, Illegal felling, Uttarakhand, Mussoorie, Sale Deed

Application for stay rejected

Dated: 29 September 2014

This application is filed under section 14 of the National Green Tribunal Act 2010, by the National Green Tribunal Bar Association, through its Secretary, alleging that respondent No. 4, an officer of IPS cadre in the State of Uttrakhand, encroached and is felling trees from the reserve forest area, seeking an order/direction to the concerned authorities to take appropriate legal action and also to set aside the sale deed executed and registered in favour of respondent 4. The case of the applicant is that respondent No. 4 got executed a fraudulent sale deed in his favour by one Nathu Ram and thereby purchased land declared as reserve forest vide Notification 6789/54 Kh-20 (382) 69 dated 1.05.1970, falling in Mussoorie Forest Division, and later got mutation of the land in his own name which came to the knowledge of the applicant only in 2012. It is further alleged that 4 saal trees from the said land were illegally felled and while the matter was being investigated, on 18.03.2013, another 21 saal trees were again felled from the same area and the Forest officials had recovered them on the spot. It is contended that respondent No. 4 got executed the sale deed in his favour in violation of the provisions of the Forest Conservation Act, 1980 and the illegal felling of the trees causes adverse impact on the environment and therefore, respondent No. 4 is liable to pay compensation for the damages caused.

In the course of the investigation it came to the knowledge of the Enquiry Officer that the reserve forest area, from which the saal trees were illegally felled, was purchased by respondent No. 4 by sale deed dated 20.11.2012 and mutation of land was done in his name on 13.03.2013. The investigation prima facie showed that respondent No. 4 had illegally felled the said trees. So criminal complaints No. 1480 of 2013 and 1481 of 2013 were filed before the Chief Judicial Magistrate, Dehradun for the offences punishable under section 26 (f) and (h) of the Indian Forest Act, 1927 and they were taken cognizance by the learned Magistrate. Respondent No. 4 in turn lodged FIR No. 79 of 2013 before Rajpur Police station against the Divisional Forest Officer, Mussoorie and two others alleging commission of offences under section 420, 120B, 166, 167, and 504 of Indian Penal Code and section 26 of the Indian Forest Act, 1927.

The point for consideration is whether the further proceeding in this application before us, is to be stayed till the criminal proceeding initiated against respondent No. 4 is finally disposed by the Chief Judicial Magistrate.

When the judgment in this application cannot operate as binding on the criminal court and the criminal proceedings is to be decided solely on the evidence let in before it, we find no merit in the plea that the decision in this application would either cause prejudice or embarrass respondent No. 4 so as to stay the further proceedings in this application. It is more so when the facts reveal that the criminal complaints filed against respondent No.4 stand stayed on the criminal revision petitions filed by respondent No.4 himself, challenging the cognizance taken by the learned Magistrate and the investigation on the FIR lodged by respondent No. 4 against the Divisional Forest Officer also stands stayed by the Hon'ble High Court.

The National Green Tribunal is constituted for effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment. Sub Section 3 of Section 18 mandates that the application filed before Tribunal under the Act shall be dealt with by the Tribunal as expeditiously as possible and endure shall be made to dispose of the application finally within 6 months from the date of filing of the application. Therefore, based on the pending criminal proceedings the application filed before the Tribunal cannot be stayed more so when it is well settled that civil proceedings and criminal proceedings can proceed simultaneously. Therefore, on that ground also, the proceedings before the Tribunal cannot be stayed as prayed for. The prayer of respondent No.4 to stay the further proceedings, till the disposal of the criminal proceedings is unsustainable and therefore rejected.

List the application for arguments.

Ranjeet Singh Rathore

Vs

Chairman, MP SEIAA

Original Application No. 325/2014 (CZ)

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

Keywords: Madhya Pradesh, SEIAA, MoEF

Application disposed

Dated: 30 September 2014

It is submitted by the Learned Counsel for the Applicant that the matter raised in this application has already been covered by the decision of this Tribunal in O.A.No. 315/2014 (CZ) in case of Ram Swaroop Chaturvedi V/s Chairman, MPSEIAA & Ors. decided on 11.09.2014 in the matter of the Office Memorandum dated 24.12.2013, issued by the MoEF, Government of India.

We have considered the application as well as submissions made before us. We would accordingly dispose of this petition in the light of our earlier judgement dated 11.09.2014 in O.A.No. 315/2014 and the directions contained therein shall also apply to the applicant in so far as the applicability of the aforesaid orders of MoEF dated 24.12.2013 is concerned. In case an application is submitted by the Applicant, online or as prescribed under the procedure along with requisite fee, such application shall be entertained by the MPSEIAA in accordance with law within two months without being influenced by the Office Memorandum dated 24.12.2013 issued by the MoEF in so far as its operations have been stayed by the Principal Bench of National Green Tribunal in Application No. 343 of 2013 (M.A.No. 1093/2013) in the case of Ranbir Singh Vs. State of H.P. & Ors and Application No. 279/2013 (M.A.No. 1120 of 2013) in case of Promila Devi Vs. State & Ors. dated 28.03.2014.

We accordingly dispose of the Original Application No. 325/2014.

It is made clear that, as was submitted before us that arguments in case of Ranbir Singh have been concluded by the Principal Bench of NGT and judgement reserved, our above order would be subject to any direction that may be issued by the Principal Bench in the said case.

Laljee Khangar

Vs

Chairman, MP SEIAA

Original Application No. 325/2014 (CZ)

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

Keywords: Madhya Pradesh, Mining, Sand, SEIAA, MoEF

Application disposed

Dated: 30 September 2014

The grievance of the Applicant is that the Applicant is the land holder of Khasra No. 614 measuring 1.113 hectare in Village Barua, Tehsil Gaurihar, Dist. Chhatarpur, MP and as a result of flooding of river Ken huge amount of sand and muram got deposited on his agriculture field. With a view to cultivate the said land, he intended to remove the aforesaid deposit of sand and muram which would amount to mining operation and as such requiring the grant of EC from SEIAA. However, it was brought to his notice on approaching the authorities of MPSEIAA that under the orders issued in Office Memorandum dated 24.12.2013 by the MoEF, Government of India, no such application could be entertained.

Learned Counsel submitted that in view of the order dated 28.03.2014 passed by the Principal Bench, National Green Tribunal in Application No. 343 of 2013 (M.A.No. 1093/2013) in case of Ranbir Singh Vs. State of H.P. & Ors and Application No. 279/2013 (M.A.No. 1120 of 2013) in case of Promila Devi Vs. State & Ors. the operation of the said Office Memorandum dated 24.12.2013 issued by the MoEF has been stayed. It was pointed out that in the case of O.A. No. 315 of 2014 Ram Swaroop Chaturvedi V/s Chairman, MPSEIAA, directions have already been issued to the MP SEIAA to entertain the applications submitted without being influenced by the notification dated 24.12.2013 on account of the order dated 28.03.2014 passed by the Principal Bench staying the operations of the aforesaid Office Memorandum.

Since the matter involved is pertaining to the limited prayer as submitted by the Learned Counsel, Tribunal accordingly disposes of this petition with the direction to MPSEIAA that in case such application is filed online alongwith the prescribed fee following the due procedure, the same would be considered by the MPSEIAA in accordance with law without being influenced by the orders issued in the Office Memorandum dated 24.12.2013 issued by the MoEF.

It has, however, been brought to our notice that the NGT, Principal Bench has concluded its arguments with regard to the matter pending before it in case of Ranbir Singh V/s State of HP & Ors. and the judgement is reserved. Our above order in the present case would be subject to the outcome of the judgement of the Principal Bench in the aforesaid case.

With the above directions, the Original Application No. 324 of 2014 stands disposed of. No order as to cost.

Amit Maru

Vs

Secretary, MoEF

M.A.NO.65/2014 in Application No.13/2014

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

Keywords: Limitation, Maintainability, Locus Standi, CRZ Notification, Cause of Action

Application dismissed. Main Application scheduled for hearing.

Dated: 1 October 2014

This is an Application filed by Project Proponent, raising preliminary objection regarding maintainability of Main Application (Application No.13 of 2014), on the ground that said Application is barred by Limitation as well Applicant has no locus to file it, and hence the same is liable to be dismissed. Secondly, that Original Applicant (Amit Maru) is not an 'aggrieved person' and, therefore, such Application under Section 14(1) (2) read with Sections 15 and 18 of the National Green Tribunal Act, 2010, is not maintainable at his behest.

The Project Proponent (M/s Windosor Reality Pvt Ltd), has come out with a case that the plans for construction of commercial building were issued by the Planning Authority on 7.7.1993. The project work was started long back. The construction work was going on for about a period almost over and above 8/10 years. The Project Proponent alleges that the building having 28 floors, 3 level podium and 2 voids, in total 33 floors, have been constructed and that by itself must be deemed to be a notice to the Applicant. So, it is not open for the Applicant now to raise such a dispute under false and frivolous allegations that 'cause of action' to file the Application has arisen first on 23rd October, 2013.

The term 'cause of action' is a bundle of facts. There cannot be two opinion about legal position that once the 'cause of action' starts running, then it cannot be stopped. In case of violation of Law, particularly, like CRZ Notification, violation continues, when the construction activity goes on without hindrance. As stated before, the competent authority directed the Respondent No.9, to stop construction activity and therefore, the construction work now has come to halt. It appears prima facie that the question regarding alleged violation of CRZ, Notification, is yet to be determined by MCZMA. Under the circumstances, the Application cannot be held as totally barred by limitation, in as much as the 'cause of action' is continuous and still remains unabated. Question of locus as well as question of limitation ought to be decided on case to case basis.

The Tribunal cannot overlook the material fact that 'first cause of action' in respect of present dispute arose when CRZ Notification's violation was noticed by the Applicant and he made complaint to the concerned Authority. It is important to note that though the MCZMA, is the Authority to take action in the matter on its own, yet failure to take such action by itself, would

give rise to 'cause of action', because it is the breach of mandate under the Environment (Protection) Act, 1986, and the order issued there under by the MoEF, that will trigger cause of action. A copy of order dated 6th March, 2012, issued by the MoEF, shows that MCZMA, is the Authority created by MoEF, under Section 3 of the Environment (Protection) Act, 1986, to exercise powers and take certain measures for protecting and improving quality of coastal environment and preventing, abating and controlling environmental pollution in the areas of the State of Maharashtra.

Considered from the standpoint of above view, the judges are of the opinion that "such disputes" in the present Application arose when the MCZMA failed to issue directions under Section 5 of the Environment (Protection) Act, 1986, irrespective of knowledge that the construction activity was in breach of the CRZ Notification. The Tribunal is of the opinion that the Applicant could have knowledge of the nature of initial EC granted in favour of the project Proponent. Secondly, initial construction activity was below 20,000 sq mtrs and, therefore, the Applicant might be under impression that no EC was required. However, project activity increased by leaps and bounds and, therefore, he gathered knowledge that certain illegal activity was going on. It is in the wake of such 'subsequent event' that he raked up the dispute in question. Obviously, the cause of action 'first arose' for such a dispute when knowledge of excessive project activity was gained and that Competent Authority failed to exercise powers under Section 5 of the Environment (Protection) Act,1986, because 'cause of action' triggered for the purpose of filing this Application and hence it is within limitation.

In the final analysis, the Tribunal holds that the present Application, in the given circumstances, is not barred by limitation, nor can be dismissed for want of 'locus standi'. Under the circumstances, Misc Application No.65/204, is dismissed with no order as to costs.

The Main Application scheduled for hearing on next date.

Raghunath S/O Rakhamji Lohkare
Vs
The Maharashtra Prevention of Water Pollution Board & Ors

Misc Application No. 155 /2014 In
Application No.11 (Thc) /2013

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

Dated: 1 October 2014

Keywords: Rectification, application, MPCB, Pollution

The Miscellaneous Application disposed of.

M/S Endurance Technology Pvt. Ltd submitted Application, seeking rectification in paragraph 30 of the Judgment delivered in Application to the extent that the MPCB has already given hearing to the said Industry with regard to the closure order issued by the MPCB, for consideration of re-start based on the report of the local officials. In the said paragraph of the Judgment, Member Secretary of the MPCB, has been directed to ensure that all the pollution control systems are in place and are capable of meeting the standards at all times and any other safeguards which he will like to rely upon, including independent Expert appraisal, before considering such re-start. Considering above, the sentence in paragraph 30, reading "The industry has also filed M.A.No.145/2014 in connection with such closure with a prayer to direct MPCB to give hearing before restart" Should be read as "The industry has also filed MA No. 145/2014, with a prayer to direct the MPCB to take decision on the Application of the Applicant for revocation of closure directions at the earliest, on the basis of merit of the matter".

Shri A.V.A. Kaasaali

Vs

The Union of India

M.A. No.226 & 227 of 2014 (SZ) and Application No.232 of 2014 (SZ)

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

Keywords: Red Sanders, Illegal Trade, withdrawal of application, Godavarman case

Application disposed of

Dated: 1 October 2014

The main Application No.232 of 2014 is made by a social activist with a specific averment that the illegal trade of red sanders is reported to be of very high level across the country, that the 4th respondent made an order on 24.10.2013 inter alia permitting the Government of Andhra Pradesh the 2nd and 3rd respondents to export 8584.1363 MT of red sanders wood in log form, either by itself or through any entity/entities so authorised by them for the purpose. It is further averred that the said Notification of the 4th respondent is contrary to the Notification issued by the 1st respondent, Government of India dated 14.6.2014. It is further pleaded that the 2nd and 3rd respondents pursuant to the said order of the 4th respondent have issued G.O.R.T. Nos.277 and 278 dated 25.7.2014 approving the terms and conditions for conducting sale of red sanders through e-tenders cum e-auction in the international market and appointing Andhra Pradesh Forest Development Corporation as export agent, respectively. The auction was scheduled to be held between 19.9.2014 and 26.9.2014 which is in violation of law and the relief to restrict the same is sought for.

After hearing the counsel, the matter was admitted.

The counsel for the applicant pressed for an interim relief stating that if not interfered by the Tribunal by an interim order, it would be permitting the illegal activities and also the auction sale of red sanders in violation of law and rules thereon and also the judgment of the Apex Court.

This Miscellaneous Application No.226 of 2014 is filed seeking permission to withdraw the main Application No.232 of 2014. A perusal of the affidavit filed in support of the application would indicate that the applicant filed the main application and also got an interim order but he later came to know that only the confiscated property of Red sanders seized from the smugglers was intended to be auctioned by the Government of Andhra Pradesh, that too after obtaining permission from the 1st respondent, Union of India.

After hearing both the sides, the Tribunal is of the opinion that the permission as asked for by the applicant though to be given, it remains to be stated that the application when it was originally filed, contained the specific averments that the red sanders trees which were illegally

felled was the subject matter of the auction sale and the same was quantified at 11000 MTs. Specific allegations were also made against the 2nd and 3rd respondents that they have been calling for tenders for auction sale in violation of law and also even without getting permission from the 1st respondent, the Union of India and in violation of the judgment of the Apex Court in T.N. Godavarman Thirumal Pad versus Union of India reported in 2012 (4) SCC 362. Thus, it is quite clear that the applicant who claims to be a social activist has made reckless, baseless and unfounded allegations and obtained an interim order thereby stopping the auction sale originally scheduled to take place between 19.9.2014 and 26.9.2014. The instant application for advancement and also withdrawal have been filed only after the dates scheduled for the auction sale. All these would be indicative of the thorough abuse of process of law by the applicant. By obtaining an interim order of stay he has made the 2nd and 3rd respondents to suffer by preventing the proposed auction sale.. Thus, he has caused all the hardship he could do.

The contention put forth by the applicant that originally an inadvertent representation was made to him that the live red sander trees were cut down by the Government for exports and they were to be auctioned, is to be ignored for the simple reason that the applicant, who claims to be a social activist should have verified the actual factual position before filing such an application. It casts a doubt whether the application itself is intended only for sheer publicity.

It is true that after hearing the counsel for the respondents 1 to 3, permission for withdrawal of the Application has got to be given. But, allowing the withdrawal of the application without awarding cost would send a wrong signal to the society that anybody can file an application before a Judicial Forum with unfounded allegations and without any care for the administration of justice and obtain order and have easy walk over. Such practice should not only to be deprecated but it has got to be condemned.

Under the aforesaid circumstances, the permission is granted to withdraw the application by awarding a cost of Rs.1,00,000/- (Rupees one lakh) only payable by the Applicant to “Jammu and Kashmir Flood Relief Fund” within a period of one month herefrom. Accordingly, all the applications are disposed of.

Vikas K. Tripathi

Vs

MOEF and ors.

M.A.No.628/2013 Application No.17/2013 Appeal No.80/2013

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

Keywords: Limitation, Condonation of delay, Locus Standi, Environmental Clearance, Sewage plant

Application and Appeal disposed of.

Dated: 1 October 2014

Originally, this Appeal was filed by Appellant before the National Green Tribunal (PB), New Delhi. The issue of limitation loomed at large since day one of filing of the present Appeal. Advocate for the Appellant was made aware about such objection in respect of limitation, particularly, when the court directed Counsel for the Respondent No.7, to file reply affidavit to delay condonation Application, stating relevant information as to the date of communication by way of placing Environmental Clearance (EC) in the public domain on the website, including time of placing it on the website and for how much period it was so on the display. At the relevant time when such direction was given by order dated September 28th, 2013, Counsel for the Respondent No.6, made a categorical statement that there was newspaper publication of revised E.C.

Subsequent development is rather interesting, in as much as Advocate for the Appellant sought amendment of the Appeal Memo, on the ground that he desires to make it comprehensive Application-cum-Appeal under Sections 14,15 and 16 of the NGT Act, 2010. He contended that there are plural remedies available in view of the facts stated in the Appeal Memo. Accordingly, he got the Appeal Memo amended and requested that his further Memo of Appeal filed by him, may be amalgamated with the previous Appeal No.80 of 2013, and that is what he desired to describe as comprehensive amended Application.

It appears that subsequently Counsel for the Appellant desired to file an Application for amendment Vikas Tripathi, seeks to assail the revised EC granted on 2nd May, 2013, to develop the project by SEIAA, in favour of Project Proponent –II. Vikas Tripathi, however, claims that after the amendment he filed so called second Appeal or comprehensive amended Appeal-cum-Application in this Tribunal on April 22nd, 2014, on the ground that he is entitled to seek plural remedies, in view of Rule 16(7) of the National Green Tribunal (Practices & Procedure) Rules, 2011.

According to Vikas Tripathi when Project Proponent- submitted an Application for grant of EC for development of proposal of land situated at Andheri, there were reservations which were challenged by the State Govt. There was stipulation that 30 mtr ground buffer zone, shall be maintained around the land in question. Govt. of Maharashtra accordingly, issued Notification dated 12th July,2005, whereby the land bearing CTS No.866, Survey No.111/A/B/C, of village

Ambiwali, Taluka Andheri, to the extent of 13.8 Ha, was reserved for I-Sewerage Plant, (Site No. 580), II- recreation ground, (Site No.205), III- House for development for dishoused (Site No. 549), IV- Govt. Staff Quarters (Site No.535- Retail Market (Site No.436) and West access road, VII, it was deleted from reservation and reserved for MRTS Car depot/workshop and allied activities and commercial use, as shown on the plan attached. The MMRDA, was appointed as Authority for reservation. The Govt. Notification further shows that buffer zone of 30mtrs width, shall be kept around peripheral site land, so as to avoid noise pollution and tree plantation shall be allowed in this buffer zone.

The case of Vikas Tripathi is that EC letter No. SEAC-2009/127/CR-23/ TC.I, dated 12-5-2009, was issued without mentioning the conditions enumerated as above, including keeping of buffer zone as a condition precedent. He alleges that after such EC was initially granted in 2009, the Project Proponent – I, started construction in the area. According to Vikas Tripathi, during intervening period new concept of tangible FSI was evolved and therefore the Project Proponent claims that he was entitled to get more FSI. Such claim of the Project Proponent was fraudulent, in as much as massive concession in the FSI was already received by him and he had constructed five basements in the building. The Project Proponent was not, therefore, entitled for any additional FSI.

Vikas Tripathi, filed Appeal No.80 of 2013, before the NGT (PB), New Delhi, on for condonation of delay, seeking condonation of delay which according to him, had occurred in filing of the Appeal due to certain unavoidable reasons. It is pertinent to note that the delay condonation Application shows that the delay is only of forty two (42) days, in regard to the revised EC dated 2nd May, 2013. Section 16 of the NGT Act, 2010, provides for prescribed period of thirty (30) day for filing of the Appeal. The proviso appended to Section 16, however, gives discretion to the Tribunal, that if it is satisfied "that the Appellant was prevented by sufficient cause" from filing the Appeal, within the said period, it may allow (the Appeal) to be filed under this Section within a further period not exceeding sixty (60) days. Thus, limitation period can be extended only up to period of sixty (60) days only, if it is demonstrated by the Appellant that there was cause for him, which prevented him from filing of the Appeal, within initial prescribed period of limitation.

The court held that from the averments in the Application, it is difficult to ferret out as to on what ground the Appellant really seeks exemption under the proviso appended to Section 16 of the NGT Act, 2010, in the context of prescribed period of limitation? Both the grounds (2) and (3) in the Application about above two statements, pertain to the explanation he wants to give in regard to delay caused in filing of the Application under Section 14(3) of the NGT Act, 2010. The court said that it shall not overlook mandate of the proviso appended to Section 16 of the NGT Act, 2010, which carve out exception to the general Rule provided under Section 16 of the NGT Act, 2010. It is well stated that 'proviso' is always an exception to the main Rule, which is set out in the provision of the Rules. Needless to say, the 'proviso' will not supersede the main provision. The language of proviso, appended to Section 16, would make it amply clear that the Tribunal "must be satisfied by the Appellant with tangible reasons, which prevented him from filing of the Appeal within prescribed period of limitation, in order to make him eligible to ask for concession for extension of time". True, interpretation of the proviso has to be primarily made and the same cannot be used as cobweb to deprive a genuine litigant from approaching the Tribunal. Still, however, in an appropriate case, where there is absolutely no acceptable explanation given by the Appellant, then extension of period of under the proviso, is unwarranted grant of premium inspite of absence of satisfactory reason being stated in the

delay condonatin Application. Such an Application cannot be granted just for asking by a litigant, who fails to explain reasons for the delay of about one month and twenty two days on his own showing. In the Tribunal's opinion, Vikas Tripathi, has failed to show that as to when first date of 'cause of action' triggered for challenging of the revised EC dated 2nd May, 2013. Court was of the opinion that the Appeal No. 80 of 2013, is barred by limitation. Court found it difficult to condone the delay in the present situation and hence, deem it proper to dismiss Misc Application No.628 of 2013. This takes us to the question of maintainability of the Application in a composite form, which he says is dual- Appeal-cum-Application, filed in view of availability of plural remedies, in accordance with Rule 14 of the National Green Tribunal (Practices and Procedure) Rules, 2011. The court said that it cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two (2) Appeals, one against time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14,15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of the EC conditions/ deterioration of the environment, then he is at liberty to file a separate Application under Section 14 (1) (2) read with Sections 15 and 18 of the NGT Act, 2010, if so advised and if it is permissible under the Law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits or another.

The court after hearing both the sides held that it does not find it proper and desirable to deal with the grounds raised by them, inasmuch as it is likely to prejudice Vikas Tripathi, if he decides later on to file such Application separately. Court refrained from saying anything about merits of the Application as well as Appeal. The court did not express any opinion or merits in respect of any legal grounds stated in the Appeal or Application for the simple reason that the legal point regarding availability of "plurality of remedies" to Vikas Tripathi, under Rule 14 of the National Green Tribunal (Practices & Procedure) Rules 2011, is being decided against him and clubbing of his two (2) Applications and the Appeal, is now found to be improper, illegal and unwarranted. The court recorded the finding that the Appeal No.80 of 2013, is barred by limitation and therefore, it is liable to be dismissed.

In the result, Appeal No.80 of 2013 and M.A.No.628 of 2013, along with Application No.17 of 2013, and other Applications, are dismissed. Other issues are kept open, including the question of *locus standi* of Vikas Tripathi, limitation of his filing of the Application under Sections 14,15 and 18 of the NGT Act, 2010 and his being 'aggrieved person 'or not for such purpose. In view of the findings recoded above, the Application No.17of 2013, is disposed of granting liberty to the Applicant to file fresh Application, as discussed herein above and keeping all the issues open. The M.A. Application, and the Appeal, are accordingly disposed of. No costs.

Shri Praveen Narayan Mule

Vs

MoEF Ors

APPEAL No. 11/2013(WZ)

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

Petition allowed

Keywords: sandghats, Environmental Clearance, Sand Mining, SEAC
DATED : 1 October 2014

Appellant challenges Environmental Clearance (EC) granted by Respondent No.4 for auctioning certain sand-beds *(Sandghats)*. According to the Appellant, the proposed auction of the *Sandghats* at villages Fatiabad, Mubarakpur, Sawanga Mangi Watikhed 1 and 2 and Raut Sawangi, two (2) sand-beds of Babhulgaon Tahsil which are auctioned by Collector, Yavatmal (Respondent No.5) are contrary to Office Memorandum (OM) dated 24th December 2013 issued by the MoEF, Government of India as well as contrary to the directions of the Supreme Court of India in case of "***Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629***" .
There is no dispute about fact that Respondent No.2 formulated a policy. Case of the Appellant is that, Respondent No.5 auctioned various sand-beds of Yavatmal District as per guidelines issued by the Government of Maharashtra in its Policy OM dated March 12th, 2013. He alleges that due to such illegality, extraction of sand by lease holders including Respondent No.6, one of such auction lease holder, being carried out. The Appellant is more concerned with sand-beds at village Babhulgaon. He would submit that before grant of Environmental Clearance, State Environment Appraisal Committee (SEAC) ought to have considered whether the sand-bed is below 5 ha. area and distance between two (2) sand-beds is atleast 1 k.m. The SEAC failed to consider such kind of parameters and recommended the case to the SEIAA (Respondent No.4). The SEIAA thereafter granted the EC without proper assessment and appraisal. Consequently, the Appellant challenges the EC and the auction proceedings.
3. The Respondent No.5 filed reply-affidavit of Shriram Kadoo, District Mining Officer. His reply-affidavit purports to show that the sand-beds are auctioned as per OM dated 24th December 2013. His affidavit further shows that distance between two (2) sand-beds is more than one (1) k.m. His Affidavit shows that the geologist of Ground Water Survey and Development Agency (GWSDA) carried out survey of *sandghats* which were proposed for the sand auction. His affidavit further purports to show that the GSDA issued feasibility survey for each *sandghats* and thereafter twenty one (21) *sandghats* at Babhulgaon Taluka were identified as feasible for the purpose of extraction of sand. According to the reply Affidavit, the Judgment of the Supreme Court is being duly complied with. It is further stated that the duration of the lease period for the
*sandghat*is only till 30th September 2014 and hence, there is no breach of directions laid down by the Supreme Court in "*Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629*" case.

Only significant issue which arises in the present petition is :

"Whether the directions of the Apex Court in ***Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629*** have been duly complied with by the Respondent Nos.1 to 5 while conducting the auction of auctioning process of the relevant sand-beds in Yavatmal District"

Perusal of the directions given by the Apex Court in ***"Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629"*** would clearly show that in case of rivers and mining projects, the Environmental Clearance cannot be granted unless distance between the two stretches of the *sand ghats* are of atleast 1 k.m. Obviously, proviso added in OM is dated 24th December 2013 is in keeping with the directions of the Apex Court. The Affidavit of Respondent Nos. 3 and 4 that the OM dated 24 December 2013 regarding the periphery area of 1 k.m. from the another lease area "*has not been considered during the appraisal project*". Because the OM was published on 24th December 2013 itself, i.e. the date of meeting held by the SEIAA is unacceptable. The reason is not far to seek. The SEIAA could have rectified the mistake immediately when the OM was brought to its notice within a reasonable period. There was no impediment in rectification of such a mistake, if at all that had occurred inadvertently. In the tribunal's opinion, it was probably a stage managed show of so called mistake for some other consideration. All said and done, the lease period is likely to end by September 2014 and the process is found to be illegal. Therefore, the tribunal allowed the petition and *quash* the process of auction and the Environmental Clearance. The lease granted in favour of Respondent No.6 was to be cancelled.

Shri Rajeev s/o. Krishnarao Thakre

Vs

The Union of India

Appeal No. 10/2014(WZ)

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

Keywords: sandghats, Environmental Clearance, Sand Mining, SEAC

Petition disposed of

DATE : 1 October , 2014

Appellant challenges Environmental Clearance (EC) granted by Respondent No.4 (SEIAA) for auction of certain sand-beds *(Sandghats)*. He impugns process of auctioning of *Sandghats* at village Dorla on the ground that it is contrary to the instructions given by the Ministry of Environment and Forest (MoEF) vide Office Memorandum (OM) dated 24th December 2013.

Briefly stated, case of the Appellant is that as per Judgment of Apex Court in "***Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629***" sand beds (*sandghats*) situated below 5 ha. area may be leased out only if distance between the two ghats is of atleast 1 k.m. It is in keeping with such directions of the Apex Court that the MoEF has issued OM dated 24th December 2013. The State has no authority to consider the project activities of granting lease of area over and above 5 ha. Of *sandghats* into the category of 'B-2' as per class 2(I)(iii) of the OM dated 24th December 2013. Such a project will have to be treated as category 'B-1' project for the purpose of appraisal and must be appraised by the MoEF. The SEIAA could not have done the work of assessment/ appraisal nor the SEIAA could have granted the EC. According to the Petitioner, the Respondents purposefully downsized the sand beds without keeping marginal space of 1 k.m. between the two (2) sand beds. It is stated that the auction conducted by both the Collectors is illegal and erroneous. Consequently the Appellant seeks to challenge the same and urges to *quash* the same.

The court held that the only significant issue which arises in the present petition is:
"Whether the directions of the Apex Court in ***Deepak Kumar Vrs. State of Haryana, 2012(4) SCC 629*** are duly complied with by the Respondent Nos.1 to 6 while conducting the auction of this auctioning process of the sand-bed in Wardha and Yavatmal Districts ?"

The court heard Advocates for the parties and D.G.P. The OM issued by the MoEF is clear as regards the guidelines for consideration for proposals for grant of EC. The OM states as follow:
"(iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area >5 ha but < 25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations :
(a) *The mining activity shall be done manually.*
(b) *The depth of mining shall be restricted to 3m/water level, whichever is less.* ***(c)*** *For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out*

on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc, and no mining shall be carried out in the cafety zone so worked out.
(d) *No in stream mining shall be allowed.*
(e) *The mining plan approved by the authorized agency of the State Government shall inter-alia include study to*
show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with taurpoline to minimize dust/sand particle emissions.
(f) *EC will be valid for mine lease period subject to a ceiling of 5 years.*
Provided, in case the mining lease area is likely to result into a cluster situation i.e. the periphery of one lease area is less than 1 km. from the periphery of another lease area and total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster."

It is worthy to be mentioned here that the 64th (sixty fourth) meeting of SEIAA was held on 23rd and 24th December 2013, and OM was also issued on 24th December 2013. Thus, it is stated that at the relevant time, the SEIAA had no information about the OM dated 24th December 2013 to follow the instructions issued under the said OM. Needless to say the non-compliance of the OM dated 24th December 2013 will not be a ground to dislodge the impugned decision of the SEIAA. Coming to the second ground of the objection raised by the Petitioner, it may be observed that the fact situation is verified through District Land Surveyor. The Report of the Senior Geologist dated 27th June 2013 was taken into consideration. The Report shows that the distance between two (2) sandbeds is of more than 1 k.m. A map of the relevant Taluq is produced on record (P-187). The said map and information is in tabular form (P-288) filed with Affidavit of Shri Bagul, Deputy Secretary of Environment Department and minutes of the meeting go to show that distance between the relevant *Retighats* situated in Wardha District is as per the standard enumerated in the Judgment of the Apex Court. Needless to say, there is hardly any serious ground to challenge the decision of the Respondents. The auctioning process cannot be impeded without there being serious environmental issue involved which will indicate damage to the environment and particularly likelihood of damage for the river water or possibility of the illegal extraction of sand from the riverbed.

In view of foregoing discussion, the court did not find any substance in the petition. The petition is accordingly dismissed. However, court directed that when further auctioning process is required to be conducted, ordinarily, the sandbeds falling between the sandbeds which are now already auctioned shall be avoided unless there is special certification issued by the competent authority which would indicate absence of any environmental damage, having regard to precautionary principle which is required to be adopted. This direction would be appropriate, by applying precautionary principle.

Petition is accordingly disposed of. No costs.

Smt. Shobha Phadanvis

Vs

The State of Maharashtra

Misc. Application No. 41/2013 And Misc. Application 42/2014 in (In Application No.135 (Thc)/2013)

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

Keywords: Reserved forest, Environment and Social responsibility, Cutting of trees, Forest Clearance, NPV, Afforestation

Applications disposed of

Date : 1 October 2014

This Tribunal was constrained to continue with directions regarding the specific permission to be obtained from the Tribunal, as per the interim orders issued by the High Court of Bombay, Nagpur Bench, dated 30th April, 2014 in WP No.1277 of 2000. Two (2) Applications have been received seeking permission of this Tribunal for cutting of the trees for the projects, which have been given necessary Forest Clearance (FC) by the Govt. of India. The forest department submits that land of 3.36 Ha of non-forest nature, has been transferred to the forest department and the said land is also notified as 'Reserved Forest'.

The major concern of this Tribunal was to ensure the effective and time bound enforcement of various conditions stipulated in the FCs for its compliance. It is noted that in all these cases, the Project Proponents (PP) have submitted necessary NPV and also, afforestation cost to the forest department and now it is incumbent on the forest department to ensure that necessary afforestation programme is carried out at the selected locations, in order to ensure sustainable development. had sought the undertaking from the Project Proponents to ensure compliance of such conditions and it cannot be the stand of the Project Proponents that once they deposit NPV and afforestation costs to the forest department, their role in the compliance is over. In fact, the Project Proponents, need to develop their own environmental and social responsibility framework as already notified by the MoEF and shall regularly ensure the compliance of all the statutory environmental conditions by closely working with the forest officials to ensure the compliance. Needless to say, six (6) months Compliance Report, as stipulated in the FC, envisages a time bound and effective compliance of the conditions, which need to be pro-actively ensured by the Project Proponents. The Project Proponents have given undertakings to this effect.

The court allowed these two (2) Misc. Applications i.e. Misc. Application No.41/2014, Misc. Application No.42/2014, with the condition that the forest department and the respective Project Proponents shall file quarterly progress reports of the compliance for next two (2) years to the Registrar, NGT (WZ) Bench, Pune. The Applications are allowed and stand disposed of accordingly.

Narmada Khand Swabhiman Sena

Vs

State of Madhya Pradesh and others

Original Application No. 144/2013 (THC) (CZ)

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

Keywords: Mining Leases, Mining Licenses, Biosphere Reserve, Buffer/Transition Zones, River Narmada

Directions issued

Dated : 1 October 2014

This Application was originally filed as Writ Petition in the High Court of Madhya Pradesh at Jabalpur as Public Interest Litigation. In pursuance of the order dated 05.12.2013 of the High Court of Madhya Pradesh in consonance with the judgement of the Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India. In the Writ Petition the Petitioner claimed that theirs is an organization of social activists and they hold the river Narmada in reverence. Having observed that heavy pollution is being caused to the sacred river Narmada they have taken up the cause of protection of the river from pollution. In this connection, the Petitioner's organization, having come to know that Mining Leases as well as Prospective Licenses are being granted for mining Bauxite mineral in Achanakmar-Amarkantak Biosphere Reserve they have filed the Writ Petition. According to them mining activities in this sensitive area will cause irreparable damage to the ecology as well as the flora and fauna besides polluting to the river Narmada which originates in the aforesaid Biosphere Reserve.

After considering various points put forward by both the parties, the following points were determined by the court:

I. Under what provision the BRs are constituted and what is the legal backing for the issues/objections raised by the Petitioner in respect of granting PL and ML in the AABR located outside the Core area.

The court referred to relevant extracts of the MoEF letter dated 30-3-2005, addressed to the Chief Secretaries of the states of Madhya Pradesh and Chhattisgarh on the establishment of AABR. Moreover, after other considerations it was held that here is no legal backing for the objections raised by the Applicant. However, having held so, the court opined that some of the issues raised in the Application and as framed by us need to be examined as they involve substantial question of law of general importance for taking policy decisions in this as well as such like

matters.

II. Whether the Central Government or the State Government is vested with any authority or powers to restrict/prohibit the activities in the BR and if so, what are the activities which can be restricted/prohibited and under what provisions of the law.

The court referred to the relevant extracts of "PROTECTION, DEVELOPMENT, MAINTENANCE AND RESEARCH IN BIOSPHERE RESERVES IN INDIA -GUIDELINES AND PROFORME" issued by the MoEF. The guidelines issued by the MoEF in October, 2007 and the Nomination Form submitted to UNESCO under the MAB programme stress man's ability to manage the natural resources of the BR efficiently. Here there is no bar on utilization of natural resources, provided they do not have any adverse effect on the ecological diversity. However, these economic uses should be characteristic of the region in the Buffer & Transition zones and should be in consonance with the site conditions giving more emphasis on rehabilitation of the area and restoring the ecology in a way that it turns to sustainable productivity and must involve the local communities besides utilizing the natural resources in a rational and responsible manner and for the well being of the local people besides contributing to economic development of the Nation.

III. Whether any provisions have been made under the law for preparation of Landscape Plan and if so who is the competent authority and what aspects have to be taken into account while preparing such Landscape Plan.

As brought out in the guidelines issued by the MoEF, State of Madhya Pradesh has to constitute State Level Steering Committee and Field Level Steering Committee/Local Level Committee for the purpose of critically examining the management action plans and make appropriate recommendations and co-ordinate the activities of various departments and recommend suitable management intervention for incorporation in the management plans, respectively.

IV. Whether permission for undertaking mining activities, in Buffer and Transition zones of a BR, are contrary to the basic objectives of creating and maintaining Biosphere Reserves which are rich in biodiversity.

The basic concept of BR is for the conservation and rational use of the natural resources and for the improvement of relation between the man & environment. Therefore, sustainable mining activity in Buffer/Transition zone does not itself lead to a direct conflict with the objectives of constitution of BRs. There is no bar in undertaking such activities of utilizing natural resources in a responsible manner in areas falling outside and located far away from the Core zone provided the basic conditions prescribed for constitution and maintenance of BR are fulfilled, ecological integrity is maintained, biodiversity is sustained and 100 % foolproof EIA study is done, EC is granted and no deviation is allowed from the conditions prescribed while granting the EC. However before the above exercise is done, detailed Landscape Plan shall be prepared as the AABR is ecologically sensitive and rich in flora and fauna.

V.Whether any scientific evidence has been produced by the Applicant or the Respondents that

the PL and MLs in question, granted in the Buffer and Transition Zones of the AABR will lead to adverse impact on the biodiversity, cause pollution as well as on the livelihood opportunities of the local communities.

A perusal of the study report on the Bauxite mining done by HINDALCO & BALCO gives a clear picture of the effect of Bauxite mining in the Amarkantak region. Opencast Bauxite mining causes inevitable disturbances to land and therefore the landscape of leased area changes drastically from lush green forest to varied coloured pits dominated by brownish red colour, but the importance of land reclamation cannot be denied in this context of increasing mechanization and mounting pressure on land due to other competitive use such as forestry, park, playground, reservoir etc.

The following directions were issued in this case.

As rightly averred by the Secretary, MoEF till detailed Landscape plan is prepared for the mines in question the PL/ML granted to the Respondents No. 5, 6 & 7 shall be kept on hold.

The so called Landscape plan prepared and produced before this Tribunal by the DFO, Anuppur does not take into account the effect of such mining on the local biodiversity and ecology and mere statement of the DFO that the PL granted to Respondent No.7 does not involve Forest land and it is a private land without any vegetation and necessary action will be taken to keep the boundary demarcated, will not satisfy the condition of preparation of Landscape plan in which one has to look into all the aspects and satisfy the principle of sustainable development .

The court direct that the nodal agency for the State of Madhya Pradesh, EPCO shall prepare detailed Landscape plan in coordination with the line departments and arrive at a conclusion whether the PL and ML granted to the Respondents No. 5, 6 & 7 satisfy the principle of sustainable development by looking at various parameters that have been taken into account and observations and recommendations that have been made in the Barkatullah University report on Bio-Physical Environment study on HINDALCO & BALCO.This exercise should be carried out within 3 months from the date of issue of this order. Once the EPCO prepares the Landscape plan after going into the various aspects the plan should be reviewed by the State Level Steering Committee headed by the Chief Secretary/Principal Secretary (Forests) and take a decision within one month thereafter whether to allow such mining activities to be carried out in the Buffer/Transition zone of AABR and the decision of the State Level Steering Committee shall be final. Till then the interim orders passed on 17th July, 2009 by the High Court of Madhya Pradesh shall continue to operate.

M/s. Sri Murugan Dyeing

Vs.

Tamil Nadu Pollution Control Board & Anr.

Appeal Nos. 22 and 23 of 2014 (SZ)

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

Keywords: consent to operate, dyeing unit, shifting of unit, mixed residential zone

Appeals dismissed

Dated: 15th October, 2014

The appellant submitted the application to the 1st respondent on 19.06.1992 seeking consent to operate (CFO) the dyeing unit at S.F. No.143/1 and 143/2 in Nallur village, in Tiruppur Taluk and District at the rate of 20 MT per month and to discharge 105 KLD of trade effluent. The Chairman of the Board issued a communication to the appellant unit on 14.10.1993 stating that the Board had decided to recommend the case of the appellant for relaxing the conditions of G.O. Ms. No. 213, Environment and Forest Department dated 30.03.1989 (G.O. No. 213) and directed the appellant to obtain the relaxation order and communicate the same to the Board. Accordingly, the appellant submitted a revised application for consent on 01.04.1999 to carry on the dyeing of hosiery fabric at the rate of 30 MT/month. The said application was not considered. Hence, the appellant again submitted a revised application on 20.07.2005 to carry on the dyeing of hosiery fabric of 1.15 MT per day and to discharge trade effluent at the rate of 172.5 KLD. The Chairman, Tamil Nadu Pollution Control Board refused to grant consent and hence the appellant unit became a member of the Kasipalyam Common Effluent Treatment Plant (CETP) Ltd., situated at S.F.No.249 (Part), 250 (Part) and 250/1, Agrahara Periyapalayam village, Avinashi Taluk. The trade effluent of the appellant's unit was taken to the said Kasipalayam CETP which was operating under a valid consent. The Kasipalayam CETP was closed by an order of the Madras High Court and again started functioning by an order of the Board dated 16.03.2012. The G.O. No. 213 dated 30.03.1989 prohibits only the establishment of new industries and not the shifting of an existing unit from one place to another. The members of the Kasipalayam CETP do not have individual consent and are all operating based on the consent given to the CETP. The appellant unit had already installed the pipelines to carry the trade effluent to the Kasipalayam CETP and the appellant unit was also to be treated as one of the members of the Kasipalayam CETP to operate the unit based on the consent given to the CETP.

The appellant unit is operating in a rented premise from the year 2007 and as the landlord wanted the land for his own use, the appellant purchased land at S.F. No. 159/1C1 and 1C2 of the same village which is situate right opposite to the rented premises. The application for

consent to shift the dyeing unit to the new premises was made on 28.07.2008 to the 1st respondent and the 1st respondent in his letter dated 08.08.2008 refused to give consent to shift the premises stating that the lands were situated within the prohibited distance of 300 m from Noyyal River and also further observed that even though the appellant unit was a member of the Kasipalayam CETP, the said unit was situated in a mixed residential zone as per letter No. 715/2008 dated 04.07.2008 of the Tiruppur Local Planning Authority. The appellant unit approached the High Court at Madras in W.P.No. 13878/2008 seeking a direction to the respondent to consider the appellant's representation dated 16.04.2008 and the High Court disposed of the writ petition with a direction to the Chairman, TNPCB to consider the appellants representation within a period of one month. The appellant unit's consent application dated 25.04.2008 was placed before the Consent Clearance Committee on 04.12.2008 and the application for consent was dismissed on the same grounds and the same was communicated to the appellant unit in proceedings Lr.No.T8/TNPCB/F.3702/TPR/2008 dated 15.12.2008.

Aggrieved by the order of the Board, the appellant unit preferred a statutory appeal before the Appellate Authority in Appeal Nos. 21 and 22 of 2013 and the appeals were dismissed by the Appellate Authority. The appellant unit preferred a writ petition before the High Court of Madras aggrieved by the order of the Appellate Authority in W.P.No. 7480 of 2010 and the High Court disposed of the writ petition with a direction to the respondent to consider the application of the appellant and pass orders within a period of 4 weeks. The respondent rejected the application dated 25.04.2013 of the appellant in Lr. No. F.TPR 0233/RS/DEE/TPR/2013 dated 25.04.2013 on the same reasons that the unit was located in a mixed residential zone and the unit is located within the prohibited distance from Noyyal River.

Aggrieved by the order of the respondent, the appellant preferred an appeal before the Tribunal in Appeal No. 54 of 2013 as the Appellate Authority was not functioning at that time and the Tribunal by its order dated 12.07.2012, directed the appellant to approach the Appellate Authority as the order of the respondent was appealable under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The Appellate Authority dismissed the appeals filed by the appellant seeking permission to shift the existing dyeing unit. Hence, these appeal were filed by the appellant herein seeking to set aside the order dated 28.02.2014 of the Appellate Authority in Appeal Nos. 37 and 38 of 2013 and to grant permission to shift the appellant's unit

The appellant unit made fresh application on 25.03.2010 seeking consent of the Board for its existing location at S.F. No. 143/1, 143/2 and 141 of Nallur village to carry on dyeing hosiery fabrics at 29.326 MT per month and to generate 200 KLD of trade effluent to discharge into Kasipalayam CETP and when additional particulars were called from the unit, the same were not submitted by the appellant unit.

The Board vide its memo dated 16.07.2010 had returned the application to the office of the DEE of the Board, Tiruppur as requested by the DEE so as to comply with the orders of the High Court of Madras issued in W.P.No.7480/2010. At this juncture, the Noyyal River Ayacutdars

Protection Association filed contempt petitions in No.1013 and 1068 of 2010 for non-compliance of orders of the High Court of Madras made in W.P. No. 29791/2003 dated 22.12.2006 and the orders of the Supreme Court of India. Since the contempt case was under trail in the High Court of Madras, the unit's application was not processed by the DEE of the Board at Tiruppur. Moreover, the unit had not made any representation to the Board to effect the orders of the High Court. Based on the representation dated 05.12.2002 made by appellant, the application seeking consent for the unit was placed before the VI Zonal Level Consent Clearance Committee meeting held on 19.04.2013 and the application was decided to be rejected and these were communicated to the appellant by DEE's letter dated 25.04.2013.

Aggrieved over the above letter dated 25.04.2013, the appellant preferred Appeal No. 54 of 2013 before the Tribunal as the Appellate Authority was not functioning at that time and the Tribunal passed orders directing the appellant to exhaust the appeal remedy available under Water Act and Air Act and disposed of the appeal. The appellant preferred necessary appeals before the Appellate Authority in Appeal Nos. 37 and 38 of 2013 to direct the Board to issue consent to the appellant's unit to shift from the existing location to a new location and the appeals were dismissed as the appellant did not convince the Board with reference to any of the factual issue or on the point of law so as to seek the relief in those appeals.

The question formulated for decision in these appeals based on the above pleadings was that whether the orders of the 2nd respondent/Appellate Authority in Appeal Nos. 37 and 38 of 2014 dated 28.02.2014 upholding the orders of the 1st respondent/Board in Letter No. F. TPR/ 0233/RS/DEE/TPR/2013 dated 25.04.2013 are liable to be set aside as sought for by the appellant and consequently grant permission to the appellant to shift the unit as applied for.

The appellant unit applied for consent on 19.06.1992 to commence its activity in S.F. No. 143/1, 143/2 of Nallur village for dyeing of hosiery fabric at 20 MT per month and to discharge 105 KLD of trade effluent. The appellant was informed by the Board in Lr. No. T.13/1473/W/93 dated 14.10.1993 that a recommendation would be sent to Government for relaxation of the G.O.No.213 dated 30.03.1989 since the appellant's unit was located within 1 km from Noyyal River. Under the circumstances, consent was not issued to the appellant by the Board as applied for by the appellant. It was admitted by the Board as contended by the appellant that revised applications were made on 01.04.1999 and also on 25.07.2005 for the dyeing of hosiery fabric at 30 MT per month and to discharge 150 KLD of trade effluent and at 1.15 MT per day and to discharge 172.5 KLD of the trade effluent, respectively.

The bone of contention of the appellant was that the respondent Board should have granted the consent to the appellant's unit since it was an existing unit which was carrying on its operations in S.F. No. 143/1, 143/2 and 141 of the Nallur village and the appellant was intending to shift the unit to the own land of the appellant purchased and situate at S.F. No. 159/1C1 and 1C2 of Nallur village and made an application on 28.07.2008. Pointing to the application made by the appellant before the Board seeking consent, the counsel contended that it was only the shifting of the unit from the old premises to a new premises and thus it was not a new industry or a new unit and thus the prohibition on the distance criteria that it was situate at a distance of 300 m

from Noyyal River would not apply. Under the said circumstances, the appellant's unit could not be termed as an existing unit. Hence, the Tribunal was afraid whether it could agree with the contention of the appellant that the appellant's unit was an existing unit and hence the distance criteria would not apply. Equally, the contention put forth by the appellant that it was a member of a CETP, which had commenced functioning from February, 2014 was worth to be ignored for the reason that consent granted to a CETP in which the appellant's unit was a member could be taken as a ground to the appellant's unit to carry on the activities. Consent to a CETP is only for treatment, discharge and disposal of the trade effluent generated from different member units which has nothing to do with the grant of consent to the dyeing unit as that of the appellant.

Hence, the case of the appellant that the appellant unit has applied for shifting of the existing unit could not be accepted. Thus, both the appeals were dismissed. No cost.

Krishan Kant Singh & Anr.

Vs.

National Ganga River Basin Authority & Ors.

M.A. NO. 879 OF 2013 AND M.A. NO. 403 OF 2014

IN ORIGINAL APPLICATION NO. 299 OF 2013

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

Keywords: river Ganga, water pollution, air pollution, incinerator, discharge of effluents, compensation

Original Application disposed of with directions, M.As disposed of

Dated: 16th October, 2014

Both the applicants raised a question relating to environment with respect to water pollution in the River Ganga, particularly, between Garh Mukteshwar and Narora. It was alleged that highly toxic and harmful effluents were being discharged by the respondent units into the Sambhaoli drain/Phuldera drain that travels along with the Syana Escape Canal which finally joins River Ganga. These units had constructed underground pipelines for such discharge. According to the applicants, in just outside the premises of Simbhaoli Sugar Mills, untreated effluents were being discharged into the drain which finally joins the River Ganga. The other unit, Gopalji Dairy, also discharged untreated effluents in the same Simbhaoli drain.

The applicants prayed that these industries should be restricted from releasing harmful effluents in Sambhaoli drain leading to River Ganga and they should also be directed to pay the cost of restoration of the environment. According to the UPPCB, Simbhaoli Sugar Mills was having two units. One was a sugar mill and the other is a distillery unit.

The CPCB vide its letter dated 10th August, 2011 issued directions to these units and directed that production of the distillery should be restricted to 60 KL/day. On an application of the distillery unit, consent was granted from 1st January, 2012 to 31st December, 2012 vide order dated 6th March, 2012 wherein it was also directed that the unit should not discharge any effluent outside their premises. The unit was further directed that besides this, it shall install Incineration Boiler and furnish a Bank Guarantee of Rs 5 lakhs for compliance of the consent conditions. On various complaints inspections were conducted and directions were issued reducing the production capacity of the unit to 35 KL/day. However, on subsequent events, the

unit was further directed to operate properly and maintain the performance of the ETP while increasing its production capacity to not more than 60 KL/day.

An inspection of the distillery unit was also done on 28th May, 2013 in respect of the directions given by Sub Divisional Magistrate, Garmukhteshwar vide letter dated 28th May, 2013. At the time of inspection, it was found that no effluent was being discharged in the Phuldera Drain but sludge had been found at several places in the said drain and that colour of the water was brown. The regional office therefore, issued a notice dated 14th June, 2013 to the distillery. It also directed the distillery unit not to discharge spent wash into the drain and also start the cleaning of Phuldera drain at the earliest, failing which action would be taken against it. In reply to the above notice, it was stated that they were not discharging any effluent into the drain. However, records revealed that there were persistent defaults and breach of conditions of the consent granted. On 22nd October, 2013, the UPPCB issued a show cause notice as to why the consent to the unit should not be rejected and its operation closed by disconnecting the electricity and water and the Bank Guarantee furnished by it be forfeited. Reply to this show cause notice was given by the unit on 30th October, 2013. An inspection of the unit was also conducted on 28th October, 2013 after which the Board forfeited the Bank Guarantee of Rs 5 lakhs and vide its letter dated 8th November, 2013, issued certain directions to the unit.

After the inspection report conducted on 13th February, 2014 the UPPCB vide its letter dated 17th February, 2014, refused consent to the distillery unit for discharge of effluent in terms of Section 25/26 of the Water Act. The inspection was also conducted of Gopalji Dairy and consent to that unit was also declined vide order dated 28th February, 2014.

In the affidavit filed by the CPCB on 14th February, 2014, it had taken up the stand that it carried out inspection of the Simbhaoli Sugar Mills Ltd. along with its distillery division as well as of Gopaljee Pvt. Ltd. along with water quality of Simbhaoli drain on 3rd December, 2013. On the basis of the inspection and noticing the pollution cost and shortfall in compliance with the prescribed parameters, the CPCB reinspected the unit on 16th January, 2014. The analysis results showed the unit as non-compliant and it proposed action against the unit. The CPCB team also collected samples up and down stream of the Phuldera drain with reference to the lagoons of these units. They noticed that the water of Phuldera drain was brown coloured, when it should be colourless. However, in relation to Gopaljee Dairy Pvt. Ltd., a detailed inspection was conducted. It was found that the unit was complying with the prescribed effluent norms except that there was no flow measuring devices at the outlet of the ETP.

Respondent No. 7 had filed various affidavits in response to the main application filed by the applicant. In its affidavit filed on 11th December, 2013 it was the case of the Sugar unit that it was because of the low lying area, that the domestic waste water from the habitants of worker's colony and residents of nearby villages as well as rain water, flows into the Phuldera drain through a pipeline constructed upon the Anoopshahar branch of the Ganga canal. In replying to the allegation of brown colour of the drain, it was stated that milky blackish water which was attributable to the flow of rain water along with the domestic water of village situated near that drain. This respondent further stated that they had already disconnected the starting point of

Phuldera drain from the factory side and information was sent long back to the Board. It claimed to have installed the MEE after which it has full facility to control and treat the effluent. It was stated that the allegation of contamination of ground water is baseless and not supported by any evidence. In the affidavit filed on 10th February, 2014, it was stated that the Respondent unit had consent till the year 2013 and for the years 2014-2015, it had deposited the requisite fee and was awaiting formal order.

First affidavit by respondent no. 8 dated 13th January, 2014 stated that the unit claimed to be complying with all environmental laws and that it had installed all devices and machineries which were required under the terms of the consent given by the respective Boards. The unit also states that it had installed ETP and it had full facility to control and treat all its effluent to bring the desired parameters.

On 12th February, 2014, the Tribunal noticed that according to the CPCB there was a pipeline laid down till Phuldera drain which ultimately meets Ganga, by which the effluents are discharged by respondent no.7. In the consent application filed, it had been stated by these units that they were discharging the trade effluents on their own land. Expressing dissatisfaction over the conduct and records of the UPPCB, a query was also put to this Board as to why despite persistent and admitted defaults since the year 2010, consents had been renewed by the said Board. The Tribunal therefore constituted a special inspection team inspect the premises and submit a report in relation to both respondents no.7 and 8. The State of Uttar Pradesh as well as the CPCB pointed out various shortcomings and objections.

In furtherance to the order of the Tribunal dated 24th March, 2013, the Expert Members of the Tribunal visited the units. The Member Secretary of the UPPCB as well as the CPCB had visited the sites of these units and submitted a report over which the industries had expressed certain reservations on the ground that their concerns had not been duly addressed. Thus, considering the submission of the parties and even with their consent, order dated 24th March, 2013 was passed. Three Expert Members of the Tribunal visited the site on 29th March. The Expert Members noticed various defects and shortfalls in the functioning of these units and that they still were a source of serious pollution. It was particularly noticed that the effluents flowing in Phuldera drain was having high level of pollution and that such level of pollution was not possible, except due to discharge of sugar mill effluents. The distillery unit had provided treatment facility but the treatment units were not adequately working. The concept of Zero Liquid Discharge was also not adhered to. The Expert Members, taking advantage of the site inspection even provided a “way ahead”, giving different suggestions and steps that the Unit should undertake to ensure no pollution.

After the visit of the Expert Members and passing of the directions by the Tribunal vide its order dated 31st May, the UPPCB filed an affidavit dated 23rd July, 2014 stating that separate water drain should be constructed and till that is done the unit should not be permitted to operate.

The CPCB also filed a rejoinder affidavit dated 17th September, 2014, dealing with the contentions raised by the unit. Firstly, it was noticed that the unit was not complying with the environmental norms and it was necessary for the unit to install incinerators. As the unit was

found not complying with the environmental standard despite repeated directions, it was directed that it must install incinerator as it was essential for spent wash treatment. Respondent No. 7 made an attempt before the Tribunal to demonstrate that it had made progress towards the compliance of the directions contained in the order of the Tribunal dated 31st May, 2014 by filing an affidavit dated 5th September, 2014. In regard to installation of incinerators, it was the stand of the unit that since it was already using technologies of bio-composting and bio-methanation, it may be permitted to continue with the same and achieve Zero Liquid Discharge through it and if after an assessment of the Pollution Control Boards, the unit was unable to achieve Zero Liquid Discharge then the unit may consider implying alternative suitable technology. It was also stated that the Ministry had permitted use of alternative suitable technology to incinerators.

Incinerators - The Tribunal did not find any merit in the twin reasons advanced on behalf of the unit for not installing incinerators. Firstly that it will be a serious financial burden on the unit to install and operate incinerators was a contention devoid of any substance. The stand of the unit that it was not discharging any untreated effluent, had been found to be factually incorrect and there was definite evidence on record that the unit is discharging its untreated effluents into Phuldera drain and finally polluting river Ganga. The other contention that Board and or MoEF had permitted other sugar/distillery industries to adopt the process of bio-composting and bio-methanation, suggesting that the imposition of condition of installation of incinerators was not necessary and was not uniformly complied was also without merit. Firstly, no person can claim negative discrimination and secondly, imposition of conditions by the respective authorities while granting consent to a unit to operate has to be decided on case to case basis.

Thus the unit was directed to install incinerators to treat its effluents discharge and the spent wash and achieve zero discharge within a period of 6 months from the date of passing of this order. However, if the unit within three months from the date of passing of the order was able to attain zero liquid discharge for the installed/sanctioned capacity, whichever was higher as well as fully complies with the directions issued by the respective Boards and as contained in the order of the Tribunal dated 31st May, 2014, the Tribunal would grant liberty to the unit to move the CPCB as well as UPPCB for grant of permission to operate without installing incinerators.

Continuous Environmental Pollution caused by Respondent No. 7, Breach of Precautionary Principle and its Resulting liability on the Polluter Pays Principle – As per the Water Act it was obligatory on the part of Respondent No. 7 to obtain consent of the Board within three months from the date the Board was constituted. It was brought to the Tribunal's notice on behalf of the UPPCB that the Respondent No. 7 had not obtained consent of the Board till the year 1991. During the period 1992 to 1999, the unit had applied for obtaining the consent of the Board but the consent was not granted. Thereafter additional consent to operate was granted and the unit was operating from 2000 onwards but violation of the conditions imposed in the consent orders, passed from time to time.

The unit was inspected by the officials of the Regional Office of the UPPCB on 8th January, 2010 reiterating the conditions earlier imposed and the unit was called upon to furnish a bank

guarantee of Rs 5 lakhs. The unit was specifically directed to disconnect the pipeline up to Phuldera drain and become zero liquid discharge. Upon inspection on 19th May, 2011 it was found that the unit was operating the RO plant and bio-composting plant and MEE was not operated. A direction was issued on 6th March, 2012 directing the unit to install incinerator boiler and to ensure zero discharge and they were required to restrict their production to 60 KLD and furnish a bank guarantee of Rs 5 lakhs. When the unit was inspected again on 8th October, 2013, it was found that the RO and bio-composting was in operation but MEE was not in operation. The Board even forfeited a bank guarantee of Rs 5 lakh on 8th November, 2013 due to non-compliance of operation of MEE and non-installation of incineration boiler which were required to further reduce the quantity of spent wash for better utilization in bio-composting and the unit was also directed to restrict the production to 30 KLD and not to discharge any effluent outside the premises. The compliance report was submitted on 18th January, 2014.

Also, the application for renewal of consent having been filed, the unit cannot be said to have operated without consent. If any such practise was being adopted by the Boards, it will be contrary to the scheme of law. Therefore, the Tribunal directs the Board to stop such practise if is being followed by them presently and grant consent for a specific period preferably 3 months or 6 months. It will be more appropriate for the Boards to grant consent, minimum annually and preferably 2 to 3 years depending upon the facts and circumstances of the given case.

Gopaljee Dairy Pvt. Ltd. - Complaint had been made on 24th June, 2013 to the Chairman, National Ganga River Basin Authority stating that Respondent No. 8 was discharging effluent in and around the Syana Escape canal and was polluting river Ganga and the groundwater of the surrounding villages. An effluent analysis report dated 25th August, 2013 by Noida Testing Laboratory was produced by the Respondent No. 8 showing trade effluent containing high parameters in comparison to the prescribed parameters. Even the joint inspection team appointed under the orders of the Tribunal had found certain shortfalls. The unit had filed an affidavit rasing some objections to the joint inspection team. The said objections were found to be without substance. Further, the Expert Members of the Tribunal had themselves visited the premises of Respondent No. 8. Largely the unit was found operating satisfactorily.

The Tribunal passed the following directions in relation to this unit:

a. The unit shall take all self-correcting measures as outlined by the unit itself in its affidavit dated 12th March, 2014 within three months from the date of passing of this order.

b. The unit shall install online monitoring system for relevant parameters of treated effluent discharge as agreed by UPPCB with real time data transmission facility to UPPCB within three months.

c. The unit shall obtain either consent from Nagar Palika for discharging treated effluent into Sewer line or shall obtain approval from State Irrigation Department, subject to the satisfaction of UPPCB within three months.

d. In light of the provisions of Section 15 read with Section 20 of the NGT Act, the unit was to pay a sum of Rs. 25 lakhs within one month, for not strictly complying with the conditions of the consent order, directions issued by the CPCB and for discharging its effluents into the Syana Escape Canal despite the fact that it had been directed not to do so.

Reverting to the case of Simbhaoli sugar and distillery unit, this unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. According to the Tribunal the unit was held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, the following order was passed"

i. For restoration and restitution of the degraded and damaged environment and for causing pollution of different water bodies, particularly River Ganga, the Unit was to pay a compensation of rupees Five Crores (Rs.5,00,00,000/-) to UPPCB within one month from the date of passing of this order.

ii. The amount of compensation received by the UPPCB shall be utilised for the cleaning of Syana Escape Canal, preventing and controlling ground water pollution, installation of an appropriate ETP or any other plant at the end point of Phuldera Drain where it joins river Ganga in order to ensure that no pollutants are permitted to enter River Ganga through that drain. The amount should also be utilised for restoring the quality of the groundwater.

iii. The amount shall be spent under and by a special Committee consisting of Member Secretary, CPCB, Member Secretary, UPPCB and a representative of MoEF, only and exclusively for the purposes afore-stated.

iv. The unit shall carry out the removal of sludge and cleaning of Puldhera drain in terms of their order dated 31st May, 2014 as the work in furtherance thereto had already started, as stated by the unit. If the work of cleaning and removal of sludge in and along the Puldhera drain is not completed within three months by the industry, in that event, it shall be liable to pay a further sum of Rs. 1 crore, in addition to the amount afore-ordered to UPPCB. This amount of one crore will be used by the Committee only for cleaning of and removal of sludge in and along Phuldera drain.

v. The unit was to install incinerator within a period of 6 months from the date of passing of this order. However, if within a period of 3 months, the unit applies to the 'special committee' afore-constituted to inspect the premises and to show that it has become a 'no discharge unit' for the installed/sanctioned capacity, whichever is higher and is absolutely a compliant and non-polluting unit, in that event, the said special committee may consider the request of the unit for such inspection. Thereafter, if the Committee is of the opinion that it was possible to dispense with the condition of installation of incinerator, then it may recommend to this Tribunal for waiver of such condition.

vi. The unit shall, within a period of three months, comply with all the directions contained in order dated 31st May, 2014 without fail. The unit would be granted no further time to comply with all the directions and conditions contained in Paragraph 8 of the order of the Tribunal dated 31st May, 2014.

vii. The unit would be permitted to operate for the current crushing season but continuance of grant of consent to the unit in terms of the provisions of the Air Act, 1981 and the Water Act, 1974 would depend upon the inspection report of the special committee constituted under this order. The first of such inspection would be conducted by the committee within one month from the date of passing of this order.

viii. The UPPCB shall consider and primarily rely upon the report of the said special committee, while granting or refusing consent to operate to the unit.

ix. The unit shall dismantle the underground pipeline leading to the Phuldera drain within two weeks from that day, if not already dismantled. All authorities were directed to fully cooperate in the dismantling of such pipeline, to ensure that there is no discharge of effluent through that pipeline into the Phuldera drain.

x. If the special Committee during its inspection finds the unit to be non-compliant, pollutant or a violator of any of the conditions or directions contained in this order including payment of Rs. 5 crores, it shall so inform the UPPCB, which in turn shall withdraw the consent to operate and shall direct closure of the unit forthwith.

With the above directions, Original Application 299 of 2013 was finally disposed of while leaving the parties to bear their own costs. In view of the disposal of the Original Application 299 of 2013, M.A. 403 of 2014 did not survive for consideration and the same was also disposed of

Nirma Ltd.

Vs

Ministry of Environment & Forests Government of India, Prayavaran and others

M.A. No. 691 Of 2014 (Arising Out Of Appeal No. 4 Of 2012)

Judicial and Expert Members: Justice Swatanter Kumar, Mr. Justice U.D. Salvi, Dr. D.K. Agrawal, Dr.G.K. Pandey

Keywords: Natural Justice, Recusal, Judicial Bias

Dated: 17 October 2014

The applicant, Respondent No. 4 has filed this application with the following prayer:

a. The Expert Members of this Tribunal hearing the aforesaid Appeal may kindly recuse themselves from hearing the Appeal; and
b. The Bench for hearing the appeal may kindly be reconstituted; and
c. Pass any such/further order(s) as this Tribunal may deem fit and proper in the interest of justice.

The applicant has filed the present application stating that the said two Expert Members in their report have formed an opinion in favour of the appellant, before the final hearing in the appeal has commenced and therefore, according to the settled principles of natural justice they should recuse themselves from hearing the appeal.

The court after considering various factual aspects in great detail, came to one conclusion; that the observations, points for determination and facts as on site, described in the notes either of 6th-7th June, 2013 or 7th September, 2013 do not, in fact and/or in law, constitute formation of any final opinion. Firstly, these are tentative observations subject to final determination by the complete Bench of the Tribunal after hearing the counsel appearing for the parties. Secondly, there is nothing on record of the Tribunal that could substantiate the plea of pre-judging or pre-determination of the matter in issue before the Tribunal by the Expert Members during inspection. On the contrary, the two Ld. Expert Members very cautiously worded their inspection report including stating of points for determination by the Tribunal. They expressed no determinative opinion in favour or against any party. To the judges' mind, such an application is uncalled for and in any case is ill-founded.

The function of the court in exercising the powers specifically granted under the Code of Civil Procedure is for the purpose of understanding the evidence and for correct and legal

appreciation of the controversies involved in the case. It was in view of the contradictory stands and reports filed by the respective parties that the Tribunal considered it necessary to have the local inspection. It was otherwise not possible to appreciate the evidence in its true sense. Even the Appeal Courts attach due weightage to the observations made by the Court in its inspection, as the purpose of local inspection. The visits of the two Ld. Expert Members was in furtherance to the orders dated 28th May, 2013 and 23rd August, 2013 and was primarily to place on record a factual report that would help the Bench in finally determining the controversial issues raised by the parties. The order directing site inspection has already been upheld by the Supreme Court of India. The inspection note contains mere observations relating to the site status of the water body and the points that required determination. No way can it be termed as a conclusion; much less a final conclusion arrived at by the two Ld. Expert Members.

Alleged bias in pre-disposition or pre-determination of issues. Applicability of *Nemo Debet Esse Judex In Propria Sua Causa* and its Principles

It has been held above that there is no pre-determination or formation of any final opinion by the Ld. Expert Members in their inspection notes. It being so, the question of any bias in law would not even arise. There are cases where allegation of bias or prejudice may be made against Judges or Members of the Tribunal at any stage of proceedings and there may be some substance in it or it may be made to avoid the Bench of the Tribunal or delay the disposal of case. It is a settled law that unless a prior policy statement shows a final and irrevocable decision and foreclosing of the mind of the authority as to the merits of the case before it, it would not operate as a disqualification and there cannot be a case of 'malice' or 'bias'.

'Judicial bias' has to be understood in its correct perspective and connotation. If the plea of judicial bias is permitted to be raised by every party even on unfounded apprehensions and misconceived notions, then there can hardly be any case of proper adjudication
"Bias", whether in fact and in law, has been not only conceptualized by the judgments, but the principle applicable thereto have come to be clearly stated. It is undisputable that 'bias' is the second limb of natural justice and *prima facie* no one should be a Judge in what is to be recorded as *sua causa*. The plea of bias has to be well-founded and must have a direct bearing on determination of the issues before the Court or a Tribunal.

The Court even deprecated the effort on the part of the appellant in that case to seek information as to what transpired within the judicial fortress among the judicial brethren. The test applicable in all cases of apparent bias is, whether, having regard to the relevant circumstances, there is a 'real possibility' of bias on part of the relevant Member of the Tribunal in question, in the sense that he might unfairly record with favour or disfavour the case of a party to an issue in consideration before him. The entire material available has to be examined and only then it can be concluded whether there is a real possibility of bias or not. The concept of 'real bias' is not to be equated with an allegation of bias. It will be so convenient for a litigant to make allegations of bias with an intent to avoid a Bench or seek deferments of cases resulting in prolonged pendency of cases. The ends of justice would demand that either of them ought to

be deprecated by the Court or the Tribunal.

In the instant case, is clear that there is no possibility of a 'real bias'. The two Expert Members have merely made observations or stated the questions that would call for determination by the Regular Bench. The mere fact that the Expert Members have visited the site and made these observations would, in the Tribunal's considered opinion, not disentitle them from hearing the matter, particularly when they themselves recommended a second visit to the site and have made observations which, in fact, are commonly supported by the pleaded case of the parties, including that of the applicant. The apprehension expressed by the applicant is misconceived and ill-founded. It is only a plea raised for the sake of raising a plea. The court said that the argument is a mere technical objection and, thus, cannot be permitted to frustrate substantial justice in the case. It is a well settled law that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

Filing application for recusal has, in the recent times, become more often than not, a practise that certainly is an unhealthy development in the field of administration of justice. It is expected of a litigant to file an application for recusal when it is imperative and is supported by material having an evidentiary value or value in law otherwise. An application for recusal, which is ill-founded, misconceived and is intended to prolong the decision of the case, would squarely fall within the class of cases which the courts should be most reluctant to entertain and least allow.
Having considered the various averments made in the application, it is clear that they are not only insignificant but are *ex facie* irresponsible. The two Ld. Expert Members of the Bench would have no interest in the case. They obviously would decide the case objectively along with other Members of the Bench. Therefore, the grounds taken in the application under consideration are misconceived and untenable.

Court held that the application for recusal motivated, misconceived and fallible on facts and circumstances of the case, as well as in law. The attempt to delay the hearing and final disposal of this appeal has been a concerted effort on the part of the applicant. So far, he has successfully frustrated the order of the Tribunal dated 1st May, 2012, by which he was impleaded as a party and the Bench had directed that the matter is very urgent and should be heard at the earliest.
The court held that the present application is without substance, frivolous and an abuse of the process of law. The application was dismissed with costs of Rs. 25,000/-, payable to the Environmental Relief Fund constituted under The Public Liability Insurance Act, 1991.

Paryavaran Avam Manav Adhikar

Vs

Jabalpur Cantonment Board

Original Application No. 197/2014 (CZ)

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

Keywords: Pollution, Sewage, Cantonment Board, Municipal Solid Waste

Application disposed of

Dated: 20 October 2014

Perused the reply of Respondent No. 3 Madhya Pradesh State Pollution Control Board (MPPCB) particularly Para 6, 7 and 8 thereof, wherein firstly it is stated that there are no arrangements for treatment of sewage in the Cantonment Board area. It has further been stated that the provisions of Municipal Solid Waste (Management and Handling) Rules, 2000 as well as Water (Prevention and Control of Pollution), Act, 1974 are being violated by the Respondent No. 1 Cantonment Board, Jabalpur. Lastly, it has also been stated that letters intimating about non-compliance of the aforesaid provision have been written by the MPPCB to the Respondent No. 1 as back as 17.11.2006 to as recent as 09.09.2014 but no effective steps have been taken by the Cantonment Board, Jabalpur.

4. The matter is extremely serious as the bench finds from the documents and photographs annexed by the Applicant as well as by the MPPCB which clearly indicates that the situation on ground is not at all satisfactory.
5. In case no steps are taken by the Cantonment Board on ground within next three
months, the MPPCB is permitted to launch prosecution against the Chief Executive Officer of the Jabalpur Cantonment Board, and bring the matter to the notice of the Tribunal.
6. Let a copy of this order be sent to the Chief Executive Officer, Jabalpur Cantonment Board for ensuring compliance.
7. While preparing the compliance for dealing with the aforesaid and taking necessary steps, it would be open for the Jabalpur Cantonment Board to take assistance of the MPPCB and MPPCB shall provide necessary assistance to the Jabalpur Cantonment Board in this behalf.
8. With the above directions, the Original Application No. 197/2014 stands disposed of. List the matter for compliance on 20th February, 2015.

Shri Vijay Govindrao Vaidya

Vs.

Union of India and ors.

Application No. 31(Thc)/2013(WZ)

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

Keywords: Air Pollution, Coal Depot, Coal Storage, PIL,

Date: 21 October 2014

The present Application was originally filed as Public Interest Litigation High Court of Bombay. Applicants have raised a substantial question of Environment related to Air Pollution caused due to the Coal Depots which are handling large quantities of coal, and its adverse impact on the children of the school which is located near these Coal Depots. The Applicants claim that the storage and handling (loading/unloading) activities of the coal in these Coal Depots is causing alarming levels of air pollution, which is affecting health of the school children. The applicants have prayed for:

(a) To direct closure of all Coal Depots or Coal Storages, including those of the respondents 7 to 10, in the vicinity of Padoli in Gat Gram Panchyat : Khutala, Gram Panchyat : Kosara, on Chandrapur-Ghugus Road, Dist: Chandrapur and specifically in the vicinity of the respondent No.5.
(b) to issue a suitable writ, order or direction for shifting of all Coal Depots or Coal storages on Chandrapur-Ghugus Road, Dist. Chandrapur and other adjoining areas outside a radius of 10 kilometers from the nearest human habitat, educational institution, hospitals and public amenities.
(c) to issue directions as a preventive measures, to the Respondents to take effective steps to cover all the Coal Depots and Coal Storages with permanent structures and measures to minimize coal dust pollution.

3. The Applicants have arrayed eleven Respondents of which Respondent Nos. 1 and 2 are the Ministry of Government of India, Respondent No.3 is Urban Development Department of State, Respondent No.4 is the MPCB. M/s. NarayanaVidyalayam is the school in question, Respondent No.5 and Gram Panchayat, Kosara is Respondent No.6. Respondents Nos.7 to 10 are individual Coal Depot owners and Respondent No.11 is Collector, Chandrapur.
After considering the various submissions made by the respondents and considering the nature of dispute, the court had directed the MPCB on February 25th, 2014 to submit details of action taken from 2012. Further MPCB was directed on 12th March 2014 to give further details on

source-wise information, if available, as regards pollution level stated in the affidavit with particulars by making it clear as to what kind of contributing factors are causing air pollution and whether proximity of Coal Depots is major factor for the pollution caused, particularly in the premises of school.
MPCB subsequently filed another Affidavit on 17thApril, 2014 and submitted that various air pollution sources like vehicles, construction activities etc. are contributing to the overall Ambient Air Quality with regards to concentration of particulate matter. It is the contention of the Respondent Nos.7 to 10 that though the MPCB has carried out Air Quality monitoring on some occasions, these monitoring and sampling activities are not as per the standard norms and also have stated that the concentration of the dust is found reducing during passage of time. There appears variation in all these Reports.

Considering the documents on record and also arguments of Counsel, the present Application is to be adjudicated on limited issue, such as:

"Whether the Coal Depots of Respondent Nos.7 to 10 are contributing to the Air Pollution at the school premises of Respondent No.5 and if yes, whether Respondent coal depots are responsible for such pollution?" The MPCB has conducted Air Quality monitoring at the school premises and also the premises of some of the Coal Depots of Respondents since 2006. It is a matter of record that the said school was established subsequently after commissioning of such Depots. Further, MPCB has already identified the Coal Depots as one of the potential source of the dust emission. However, the dust contribution of such Coal Depots in the Ambient dust concentration has not been defined by the MPCB. It is the stand of MPCB that the Coal Depots are the trading activities and MPCB is not granting consent to such activity, though this fact has been controverted by the Collector in its Affidavit.

The court considered the heard arguments advanced regarding methodologies adopted by the MPCB, regarding ambient air quality monitoring with particular reference to monitoring frequency and monitoring duration. Having heard the arguments advanced by Advocate for the Respondent Nos.7 to 10, regarding powers available with MPCB under the Air (Prevention and Control Pollution) Act, 1981. Section 2(k), of the said Act, defines 'industrial plant' as any plant used for any industrial or trade purposes and emanating any air pollutant into the atmosphere. This definition clearly indicates that even the trade activities if generating air pollution are covered under the industrial plant's definition under the Act. Advocate for the Respondent Nos. 7 to 10, vehemently argued that the powers conferred upon the MPCB, under Section 31-A, of the Air Act, are quite extra-ordinary and empowers the MPCB to issue directions of closure, prohibition or regulation of any industry, operation or process. He further argued that though the MPCB has such powers, it has chosen not to invoke such powers due to absence of scientific and technical data to establish that the activities of cold-depot are contributing to air pollution at the school premises. However, at this stage, the court said that it is not inclined to deal with these issues, as CPCB has yet not issued specific directions in this regard and this Tribunal has already directed the MPCB to take such decision as referred to

above.

Considering the above facts, particularly in absence of any scientific and conclusive assessment, information and data submitted by MPCB on the contribution of these Coal Depots in the Ambient dust concentration observed in the school premises, court deemed it proper to remand the matter to the Chairperson, MPCB for taking suitable decision in this matter based on scientific data and analysis, as may be required. The Application is accordingly disposed of. The court directed that the Chairperson, MPCB shall take final decision in this matter within twelve (12) weeks hereinafter following due process of law. Liberty was granted to the parties to appeal against such decision within the stipulated time, if so advised and as permissible to the Law. Respondent Nos. 7 to 10 were directed to s take necessary precautionary measures in next four (4) weeks, including spraying of water, creation of buffer wall, may be even of rubber cladding of sufficient height, as may be suggested by the MPCB, so that the dust from the coal handling activities do not reach the school premises. The Respondents 7 to 10 are further directed to keep record of quantity of coal handled every day, for inspection of MPCB officials. The MPCB shall independently ensure such measures and is at liberty to take any action, as per the legal provisions, in case of non compliance of Air Quality norms. The directions are independent and separate from any other legal directions which may be issued by the Competent Authority or Court.

Mr. Amol Shripati Pawar

Vs

The Commissioner, Latur Municipal Corporation, Latur

Application No. 18/2013(Wz)

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

Keywords: Municipal Solid Waste Plant, Dumping, Pollution, Locus Standi, Encroachments

Application disposed of

Dated: 21 October 2015

By filing this Application, Applicants named above, have sought following reliefs:
(a) Considering the illegalities in establishing the said garbage depot site, and its constant nuisance, environmental damage the said MSW site at Varwanti needs to be closed down immediately.
(b) Stay may kindly be granted to the said Garbage Dumping Activities by the Respondent No.1 on the said Varwati Shivar.
(c) That the Respondent no.1 may kindly be directed to shift the said garbage dumping at any other suitable place considering the fact that they are not having any *locus-standi* to use this land for garbage dumping.
(d) Directions may be issued to Respondent No.1, 2 and 3 to submit time-bound plan of action regarding how they will be implementing the closing down of dumping activities and shifting the said MSW plan to other place.
(e) That direction may kindly be given to the Respondent no.1 that while removing the garbage hills from the above mentioned site proper plan shall be made so that people residing nearby shall not get affected by such site.
(f) The Respondent No.2- the Collector of Latur may kindly be directed to remove all encroachment on roads to the surrounding areas of said objectionable dumping area. Directions may be given to the Respondent No.2 so that people in this area shall exercise their right of way in free and fearless manner.
(g) Respondent No.2 may kindly be directed to see whether the land is being used for stretching ground (Kondwada), for the purpose of cemetery as allotted.
(h) That direction may kindly be given to Respondent No.1 that there are many furious dogs in the said MSW site, so these dogs may kindly be kept at appropriate place so that residents will not be hurt by such furious dogs.
Case of the Applicants is that they are affected due to dumping of garbage and untreated Municipal Solid Waste (MSW), in land S.No.30, of village Varwanti, Taluka and District Latur. So many families in the vicinity of village Varvanti, are facing serious health hazards due to garbage dumping in the land S.No.30. Non-compliance of the Rules in schedule-III, of the MSW (Management & Handing) Rules, 2000, (For short, MSW Rules), have resulted into serious degradation of environment in the area of village Varwanti, and surrounding localities. The land S.No.30 is a vacant land of the village and was being used as 'Gairan' (pasture) land.

The High Court of Bombay took cognizance of relevant issues in various Public Interest Litigations, and gave directions. Directions were issued by the High Court vide order dated 2.4.2013, in the context of Writ Petition No.4542 of 2010, along with Civil Application No.9199 of 1998 and similar other Applications (Sadashiv Shivaram Jadhav Vs Ambarnath Municipal Council and Ors, M/s Ramtek Industries vs State of Maharashtra and Ors etc.)

The Applicants allege that inspite of such corrective measures and directions, the Respondent No.1, failed to follow the MSW Rules, 2000. There was an incident of fire at the site of MSW on 19-12-2012, due to generation of methane caused by natural bio-degradation process. Surrounding villagers suffered suffocation on account of such incident. The land S.No.30 was transferred in favour of the Respondent No.1 – Municipal Council, without giving any kind of notice to Grampanchayat, Varwanti and without NOC from village Panchayat. Thus, entire process of selection of landfill site is illegal. The Respondent No.1 has illegally encroached upon the common land of village. The right to live of the Applicants is jeopardized due to illegal activities of the Respondents. The garbage dumping at village Varwanti, is continuous in nature. The MSW plant is non-functional and as such, Air Pollution is unabated. Illegality committed by the Respondents, require not only corrective measures, but serious implementation of time bound programme to ensure implementation of the MSW Rules, 2000. The Collector also shall be directed to remove the encroachment on the roads, surrounding the area of dumping site, because many of the roads are encroached over for the purpose of squatting by the hawkers/ vendors. The incidental relief is also sought to shift the dumping site from S.No./Gut No.30, to some other place, by acquiring such land, as may be so needed.

Considering the rival pleadings of the parties, certain points were framed for determination.
It is important to note that the authorities of the Municipal Council acted in such unabashed manner that they did not pay any heed to various directions given by the MPCB. The Tribunal finds that Latur Municipal Council was working irresponsibly in the context of discharging legal duty to comply with MSW Rules notwithstanding directions given by the High Court in general while deciding Writ petition Bearing No. 1740 of 1998 and bunch of said Petitions and Applications.
At any rate, the question whether the Municipal Authority is complying with the standards regarding ground water, ambient air, leachate quality and the compost quality, as specified in Schedules II, III and IV, has to be monitored by the State Board or the Committee. Although, collection, storage, segregation, transportation, processing and disposal of municipal solid waste is the responsibility of the Municipal Authority. It is not the case of the petitioners that any failure on the part of present Municipal Authority to take steps for improvement of the existing land fill site to bring the same in conformity with the standards prescribed under Schedules II and III has been reported to the competent authority or that the competent authority has neglected to examine the said aspect and issue directions wherever necessary. That apart, the process of improvement of the existing landfill site is an ongoing process and would include not only providing the facilities and adhering to the standards stipulated for that purpose but also setting up of any mechanized system for disposal of the solid waste. This system once placed in position would also take care of the requirement of Para 6 of Schedule II in so far as the same identifies the waste that can be land filled and others that cannot be disposed of by that method. The argument that the existing disposal facility ought to be shut down and shifted elsewhere, therefore, unsupported by the plain language of the Rules and the provisions contained in the Schedules. The same, is, therefore, rejected.

In the tribunal's considered opinion, the erstwhile Latur Municipal Council totally failed to perform its legal duty to comply with directions of the High Court as regards the scheduled programme mentioned in the order dated April 2nd 2013 in the context of PIL and Writ Petition on the subject of MSW Rules 2000. The Tribunal directs the Registrar, National Green Tribunal to bring this fact to notice of Registrar (Judicial), High Court Bench, Aurangabad so that if so required action as needed may be taken by the High Court against the then Municipal Councillors/Collector, as the case may be.

Considering the above, however, Application is partly allowed in the following terms:
The Secretary, Urban Development, Government of Maharashtra, shall review the MSW management status in Latur city within next eight (8) weeks to prepare a specific action plan and shall ensure that the MSW processing plant is fully operational to treat and process of entire quantity of MSW generated in Latur Municipal council within eighteen (18) weeks from today without fail, and waste accumulated at the site is also properly processed and treated in a time bound programme within period of 6 months.

In the meantime, Secretary, Urban Development, Government of Maharashtra shall take steps to identify suitable agency to perform this work if the operator/Corporation fails to achieve the time limit, at the cost and risk of the operator/Corporation.
The MPCB shall continue to monitor the performance of MSW management of Respondent No. 1 and is at liberty to take any suitable action, as permitted under the Law, in case of noncompliance. The Application is disposed of accordingly. No costs.

Bhupendra Gupta

Vs

State of Madhya Pradesh

Misc. Application No. 535/2014, 333/2014 & 341/2014

and

Original Application No. 116/2014 (THC) (CZ)

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

Keywords: Environmental Clearance, SEIAA, Extraction, Minor Minerals

Dated: 21 October 2014

The interveners submitted Misc. Application No. 535/2014 on 12.09.2014 for recalling the order dated 22.09.2014. However, it has been brought to the Tribunal's notice by Counsel appearing for the State that the interveners have already approached the Madhya Pradesh SEIAA for the necessary Environmental Clearance (EC) in this behalf in view of the order dated 14.08.2014 and accordingly even though none has appeared on behalf of the interveners today, the judges are of the view that in view of the subsequent development and the facts as stated Counsel, this Misc. Application deserves to be dismissed.

Misc. Application No. 341/2014 has been filed by the Applicant by way of reply to Misc. Application No. 333/2014 submitted on behalf of the interveners. As has been recorded by disposing of Misc. Application No. 535/2014 since the interveners have already approached the SEIAA for grant of EC the Misc. Application No. 333/2014 for recalling the order dated 22.04.2014 also stands disposed of. Accordingly, Misc. Applications No. 333/2014, 341/2014 & 535/2014 stand disposed of.

None has appeared on behalf of the Applicant today. However, the Tribunal finds that the Principal Bench of National Green Tribunal at New Delhi while dealing with the matter of Ranbir Singh Vs. State of Himachal Pradesh and others in O.A.No. 343/2013 and Promial Devi Vs State of Himachal Pradesh & Ors. in O.A. No. 279/2013 on 28.08.2014 has taken note of the statements made by two Scientists i.e. Dr. V.P. Upadhyay and Shri P.V. Rastogi from MoEF and recorded their statement as below :

"*The Office Memorandum dated 24.12.2013 intends and it is now clarified and reiterated that no Environmental Clearance will be granted for extraction of Minor Minerals (sand mining) from any river bed/water body where the area is less than 5 hectares. In other words the mining activity of minor minerals (river sand mining) area of less than 5 hectares is not permitted. The surface water level as*

referred in the Office Memorandum dated 24.12.2013 would be the normal water level prevalent during the lean season. The minor minerals mining activity in areas other than riverbed (sand mining) would be permitted, provided that Environmental Clearance for the same is taken in accordance with law."

Having recorded the aforesaid statement, it has further been observed by the Principal Bench that: "*To that extent the Office Memorandum dated 24th December, 2013 is explained and clarified and it will bind the MoEF in accordance with law. The above statement made on behalf of MoEF has been taken on record.*"

The Counsel for the parties are therefore directed to confine their submissions with respect to the above order and based upon the submissions made by the scientists of MoEF with respect to the Office Memorandum dated 24.12.2013.

Hence, as the Respondents have already approached the SEIAA for granting the EC, it is directed that the SEIAA would while considering the applications submitted by the Applicants for grant of EC, shall take into account the above four statements made by the Scientist of MoEF duly verifying the position in respect of the Office Memorandum dated 24.12.2013 of the MoEF and take decision according to the same as directed by the Principal Bench in the above order dated 28.08.2014. It is further made clear that in case any directions are ordered or there is variance from the original subsequent order dated 28.08.2014 in the order of the Principal Bench while deciding the case of Ranbir Singh V/s State of Himachal Pradesh & Ors and Promila Devi Vs. State of Himachal Pradesh & Ors., the Tribunal's above order shall be subject to the order of the Principal Bench, NGT, New Delhi.

Accordingly, Original Application No. 116 of 2014 stands disposed of.

Rajesh Ojha

Vs

Union of India

Original Application No. 39/2014 (CZ)

and

M.A.No. 559/2014

Judicial and Expert Members: Mr. Justice Dalip Singh

Keywords: Forest Conservation Act, Environmental Clearance, Compliance

Dated: 28 October 2014

This application was registered after the original Writ Petition No. 239/2011 filed before the High Court of Madhya Pradesh at Jabalpur was transferred to this Tribunal vide order dated 22.01.2014.

The principal contention of the Applicant in the Writ Petition as well as the relief claimed in the Writ Petition pertain to the violation of the provisions of the Forest (Conservation) Act, 1980 by the Respondents No. 3, 4 and 7 Western Coalfields Limited (WCL) destruction of the forest and utilizing the land being Khasra No. 551/2 contrary to the provisions of the Forest (Conservation) Act, 1980.

The Respondent No. 3, 4 and 7, in compliance of tribunal's orders, had submitted the affidavit along with supporting documents indicating that the total area of Khasra No. 551/2 is 6.134 hectares and till date as directed by this Tribunal vide order dated 29.08.2014, in consultation with the officials of the Forest Department, State of Madhya Pradesh, more than 1700 trees have been planted. The supporting documents by way of the letter dated 01.09.2014 written to the Divisional Forest Officer by the General Manager, Western Coal Fields, Pathakheda area as well as the bill showing the purchase of the plants from the nursery of the Forest Department have also been enclosed in support thereof.

Accordingly the tribunal found that the Respondent No. 3, 4 & 7 have undertaken not to do any act contrary to the EC and the permission granted to them i.e. no surface mining or any other non-forest activities etc. shall be carried out and only underground mining as has been permitted under the terms of EC, shall be carried out. Whatever utilisation of the land on the surface was being done by the Respondents has since been stopped and it has been stated before us on affidavit that the area has been restored by way of plantation of 1700 trees. The Tribunal further directs that the Respondents No. 3, 4 & 7 shall also take steps in consultation with the Forest Department to ensure the protection and survival of the trees so planted by

them so as to ensure restoration of vegetation on Khasra No. 551/2.

M.A. No. 559/2014

From the reply filed on behalf of the State today to the M.A. No. 559/2014 submitted by the Respondents No. 3, 4 & 7, it has been mentioned in para no. 3 that 11 illegal structures were sealed by the Respondent State and 8 structures "being important and useful for the legal underground mining activity and health and life of the workers of the Respondent Company" were allowed to be used and this position exists today.

13. It has also been brought to their notice, by the Counsel for the parties that the Respondent No. 3,4 & 7 have applied to the State Government seeking permission for establishment of the structures on the surface on the land in Khasra No. 551/2 as mentioned in para 3 of the reply of the State. Shri Sachin K. Verma, Counsel for the State, submitted that while he is aware that such application has been submitted by the Respondent No. 3, 4 & 7, he is not aware regarding the progress made on the said application or its outcome.

The Tribunal would accordingly direct that the State Government to consider the aforesaid application and in case it is found to be necessary for carrying out the underground mining operations and also for protection of health and life of the workers and for their welfare, to have such structures on the surface, to make a favourable recommendation to the MoEF for permission to establish such structures without damaging the vegetation. The MoEF/ Respondent No.1 is directed that in the event of such recommendation being forwarded by the State Government shall take a decision on the same expeditiously. The State Government is granted one month's time to take a decision on the matter and make its recommendations to the MoEF, which in turn is granted further two months' time to take a decision on the said issue and communicate the same to the State as well as the Respondent No. 3, 4 & 7 i.e. the Project Proponent (WCL).

Since this Original Application has been filed for seeking a direction to "stop all non forest activities on land bearing Khasra No. 551/2 measuring 6.134 hectares in Chhattarpur Village, Block Godha Dongri, District Betul as also the direction to the Respondent No. 2 for registering the cases against the Respondent No. 3 in the event of any offence having been committed under Forest (Conservation) Act, 1980, the tribunal is of the view that what has been discussed hereinabove and in view of the directions issued from time to time in their orders during the course of hearing of this application, no further directions are required to be issued in the matter.

With a view to expedite the compliance of the aforesaid directions it is directed that Respondents No. 3, 4 and 7 shall approach the Principal Secretary (Forests), Govt. of Madhya Pradesh for compliance along with a copy of this order and copy of the application which is reported to have been already submitted by the Respondent No. 3 to the State Government for taking necessary action on the same.

In view of the above, the Original Application No. 39 of 2014 stands disposed of. The Misc. Application No. 559/2014 filed by the Respondent No. 3, 4 & 7 also stands disposed of accordingly.

Ram Saroj Kushwaha and another

Vs

State of Madhya Pradesh and others.

Original Application No. 14/2014 (THC) (CZ) and Original Application No. 45/2014 (THC) (CZ)

Judicial and Expert Members: Mr. Justice Dalip Singh

Keywords: Illegal Mining, Protected Forests, Quantifying Loss

Applications disposed of

Dated: 30 October 2014

The issue which has been raised in the Writ Petitions pertains to alleged illegal mining in the District Satna (M.P.) including mining in the Protected Forest by various mining lease holders to whom mining leases for flag stone mines had been allotted. It was also alleged by the Applicants that on 04.10.2011 an enquiry report was submitted by the Addl. Principal Chief Conservator of Forests wherein irregularities in mining operations in the forest area having been prima facie found, disciplinary action against the erring forest officers was recommended as on the basis of the said report and findings made therein. The points formulated are as under :

'1. Whether all the illegal mining activities which are identified in the report dtd. 04.10.2011 had been ordered to be closed.

2. Whether any action has been initiated against the persons who were identified and found to be carrying out illegal mining activities in the form of penalizing them and recovering for having caused damage to the protected forest in the forest areas.

3. Whether any action had been initiated against the erring officers and if so the progress made in each of the cases against each individual officers mentioned in the report of the Addl. PCCF dtd. 04.10.2011.'

As far as the first issue is concerned, the Counsel for the State Government has submitted a compliance report dated 29.10.2014 wherein it has been stated that there were in all 49 mining leases of flag stone in the two Tehsils i.e. Uchehera and Nagod in District Satna in Madhya Pradesh reference of which finds place in the enquiry report dtd. 04.10.2011 of the Addl. PCCF. As far as the first issue as to what action the State has taken against the illegal mining activities is concerned, it has been clearly stated that the State Government has cancelled all the 49 mining lease in both these Tehsils i.e. Uchehera and Nagod District Satna who were found to be

involved in illegal mining contrary to the terms and conditions of the leases as also found to be carrying out mining operations in the PF beyond the mining leases sanctioned to them.

As regards the second question regarding initiation of proceedings and taking action against the erring officers about whom mention has been made in the report of Addl. PCCF, disciplinary proceedings have been initiated against 46 officers of Forest Department which includes 4 Divisional Forest Officers, 4 Sub-Divisional Forest Officers, 4 Forest Range Officers, 5 Dy. Range Officers, 9 Foresters and 20 Forest Guards. In some cases proceedings have been concluded and in some cases they are still pending. The PCCF, MP Forest Department appeared in person before the Tribunal on 11.09.2014 and explained the measures taken by the Forest Department in preventing illegal mining in the Forest Areas and also the problems faced by the Department in forest protection. However, the PCCF to ensure that the disciplinary proceedings initiated against the officers and staff are expedited and disposed immediately.

As regards the question of quantifying the loss of revenue to the State and damage to the forest as a result of such illegal mining activities and recovering the said loss of revenue and quantify the damage as also the cost for restoration of the forest, court find that before the High Court a statement had been filed in February, 2012 only with regard to loss of revenue. However, the court would direct that the officers of the Forest Department along with a senior officer of the Mines Department of Government of MP shall jointly carry out the aforesaid task of identifying and quantifying the loss as a result of illegal mining as well as the cost in terms of damage that occurred to the PF as also quantifying the cost that is required for restoration of the forest and the mining area from each of the 49 mining lease holders against whom action has been initiated by way of cancellation of their leases on the basis of the aforesaid grounds. The aforesaid task shall be completed within a period of 4 months from today. For carrying out the aforesaid task notice to each of the 49 mining lease holders shall be issued to appear on the appointed time and place and participate in the aforesaid process. It is made clear that if the lease holders do not appear on the appointed time, date and place the officers of the Mining and Forest Department shall be free to proceed exparte in the matter and the amount so quantified shall be liable to be recovered from the each of the mining lease holders. The task of identifying and quantifying and calculating the loss and damage shall be completed within a period of four months from today.

These two Original Application Nos. 14/2014 & 45/2014 accordingly stand disposed of. No order as to costs.

Jacob George

V/s

Union of India, Ministry of Environment and Forests and others

Application No. 263 of 2013 (SZ)

Corom - Hon'ble Shri Justice M. Chockalingam, Judicial Member, Hon'ble Prof. Dr. R. Nagendran Expert Member

Keywords – Highway, paddy fields, illegal acquisition

Application dismissed

Date - 03 November 2014

Judgment

The application was filed by the applicant to seek directions for declaring the execution of the proposed Tiruvalla Bypass along Chengannur –Ettumanur Road Highway project as illegal and arbitrary. The applicant was also seeking direction to return the land so acquired for the project to the land owners. The case that the applicant had made out was that the area where the bypass was to be constructed was a pollution free area full of paddy fields. To construct the highway a number of paddy fields were to be acquired sanction of which was prohibited under the Kerala Conservation of Paddy Land and Wetland Act, 2008. There was no sanction that was given for the conversion of these fields, apart from that the lands of more than 50 people were forcefully acquired. The applicant in his application also claimed that there were better cost effective solutions that were present which haven't been considered by the respondents. The applicant also claimed that the construction of the bypass will lead to water logging and destruction of paddy fields in the area. Further claims included degradation of life in the area. One of the major contentions presented by the applicant was that there was no EC clearance obtained and that EC clearance is necessary for such a project. The tribunal, based on the application, formed 3 basic issues – Whether the project in question that is the Highway is arbitrary and illegal? Whether the land needs to be returned to the landowners by the applicant and whether there were any other reliefs available to the applicant.

The tribunal in this case ruled that there were no valid contentions presented by the applicant and the application was dismissed. The reasons for the dismissal of the application were – that Tiruvulla bypass road can be said to be a major district road and not a part of state highway which will release it from getting effected by the EIA notification, 2006 and the amendments of the said notification. There is no question about the acquisition of land as those applications were dismissed by the division bench of High court as well. The land acquired for the project is duly acquired by the state and now is the property of the State. It was also ruled by the Tribunal that the project didn't require EC approval. For these reasons, the application was dismissed.

Bhausaheb S/o Bhimaji Kulat & Anr.

Vs.

State of Maharashtra & Ors.

Application No. 9(THC)/2013

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

Keywords: Municipal Solid Waste, garbage dumping, mandamus, precautionary principle

Application allowed with certain directions

Dated: 5 November 2014

Case of the Applicants is that due to expansion of limits of the Municipal Corporation and hike in the prices of lands situated at the outskirt of city limits, some of the local politicians, land shafts/builders, Councillors entered in the development of lands adjacent to Burudgaon road. According to the Applicants, they cooked up a plan to grab chunk of adjoining land situated on Ahmednagar-Burudgaon road. Lands touching Burudgaon road, were purchased by builders. Although that land was reserved one, yet the Municipal Council de-reserved it for alleged use of dumping garbage in view of increasing requirements of landfill site.

It is further case of both the Applicants that thereafter the Municipal Corporation started dumping of garbage collected from Ahmednagar city in land Survey No.34. The Municipal Solid Waste (MSW) and garbage are being dumped every day by the Respondent No.3 (Municipal Corporation), irrespective of grievances ventilated by the farmers and nearby residents. The Applicants have suffered loss of agricultural income due to dumping of such garbage, loss of health due to foul smell and there is contamination of water of several wells and tube wells, used for irrigation of agricultural lands in the area, including their lands. The Applicants allege that they made complaints to the Authorities but all that was in vain, because, such complaints were not heeded and no action was taken by the Authorities. They allege that the land SurveyNo.35, and adjoining lands are being affected adversely due to the landfill site in Survey No.34 and absence of Sewage Treatment Plant (STP), therein. They further allege that garbage dumped in the land Survey No.34, is sometimes burnt away, which causes threat to their health and fertility to soil of the land Survey No.34. Consequently, they

have sought mandamus against the Respondent Nos. 1 to 3, from using land Survey No.34, as landfill site. They have also sought mandamus against the Respondent Nos.1 to 3, to select some other suitable site for shifting of landfill site and dump the waste and other material of city area to that site.

Reply affidavit was filed by the Respondent No.3, in the High Court, giving details regarding acquisition of land Survey No. 34. It is contended that enormous development took place in the area towards western side of the Industrial Area on Aurangbad Pune Road and Ahmednagar- Kalyan Highway, which gave rise to increase in generation of garbage and MSW, necessitating dumping ground. There was no ill intention of the Municipal Corporation while securing land which is 3-4 K.m. away from Gaothan of Burudgaon village and the same is declared as No Development Zone (NDZ) by the Town Planning (TP) Department. It is averred that the Municipal Corporation also is examining the proposal to set up and operate waste disposal facility in land Survey No.34. It was alleged that the medical waste is being disposed of through M/s Bio-clean System P. Ltd, Pune. The Municipal Corporation, claimed to have prepared an action plan, which was being forwarded to the Secretary, Urban Development, Mantralaya, Mumbai. The Respondent No.3, categorically denied that the Applicants have suffering any financial loss due to dumping of garbage or MSW material in the land Survey No.34. On these premises, therefore, the Respondent No.3 sought dismissal of the Application.

While the Writ Petition was pending before the High Court, the reply affidavit, in addition to only the Respondent No.3, was filed on behalf of the Respondent No.2. The Respondent No.2 contended that the complaints were received from the Authorities after growth in the population that the landfill site situated at Chaurana (Bk) was insufficient, as per the norms laid down in the MSW (Management & Handling) Rules, 2000, due to excessive garbage and MSW generated in the city area. So also, considering future increase of barge of about next 25 years, Ahmednagar Municipal Corporation, decided to secure a part of land Survey No.34. The possession of that area was taken after private negotiations under the registered sale-deed. The transaction was transparent. The site was selected after consultation with the Senior Geologist of the Groundwater Storage and Development Authority (GSDA).

The questions which needed determination were as follows: i) Whether the landfill site at Survey No.34, is required to be shifted elsewhere? ii) Whether the Respondent Nos.2 and 3, have scientifically maintained and managed the landfill site situated in Survey No.34, so as to avoid pollution in the nearby areas and particularly, the impact thereof on the Applicants, including loss to land Survey No.35? If not, whether the Applicants are entitled to compensation of any kind, in terms of money? iii) Whether the Respondent Nos.1 to 3, are required to follow certain directions, in accordance with the

MSW (Management & Handling) Rules, 2000, and the same may be issued in this regard?

There was no dispute about the fact that the land Survey No.34, was adjoining to land Survey No.35 and that before use of land Survey No.34, as landfill site, no objections were called for from the villagers of Burudgaon or adjacent land owners. Municipal Corporation, Ahmednagar acquired a part of land Survey No.34, from a private party and started using the same as dumping ground. It also appeared that previously the land Survey No.35, was well irrigated and there were standing crops in the same, but, now, it has become practically barren after dumping of garbage. The Tribunal could not overlook the fact that the Municipal Corporation appeared to be aware of the problem of excessive MSW. The Writ Petition was filed in 2003.

The Municipal Solid Wastes (Management & Handling) Rules, 2000, came into force w.e.f. on 25 September 2000. Section 5 of the Enactment mandates that the State, District Magistrate, all the Deputy Commissioners of concerned district, shall have responsibility for enforcement of provisions of the Rules within territorial limits of its jurisdiction.

Rule 22, of the Enactment specifically provides that care to be taken in order to avoid prevention of pollution due to landfill site. Rule 22 of the Municipal Solid Wastes (Management & Handling) Rules, 2000, must be read in consonance with Section 20 of the NGT Act, 2010. Section 20 of the NGT Act, categorically indicates "the 'Precautionary Principle' shall be one of the important and basic principles which shall be followed while deciding environmental issues.

The Tribunal was of the opinion that it was not its to prepare any action plan for the Municipal Corporation, except to give appropriate directions that it shall be prepared in accordance with the Municipal Solid Wastes (Management & Handling) Rules, 2000 and execute the same within a time frame. In case of failure to do so, however, it put the Respondent Nos.2 and 3 on guard to abide themselves by certain conditions, in order to avoid pollution in the city of Ahmednagar. Applicant No.2 was entitled to compensation of Rs.10 lakhs and Rs.5 lakhs as costs of litigation i.e. Rs.15 lakhs in toto and the Applicant No.1 was entitled to costs of litigation, which is determined as Rs.5 lakhs.

The application was allowed by giving the following directions:

- The Respondent Nos.1 to 3, were directed to upgrade installation, if needed, the MSW plan in the land Survey No.34, in accordance with the Municipal Solid Wastes (Management & Handling) Rules, 2000 within period of 6 months.

- They shall draw a time bound programme within period of 3 months and shall execute the same within above time frame.
- The Respondent Nos.1 to 3 shall pay costs of Rs.5 Lakhs to the Applicant No.1 being litigation costs and Rs.15 Lakhs to the Applicant No.2 being litigation and compensatory costs for loss of his agricultural income.
- The amount deposited in the office of the Collector, was to be immediately released in favour of the Respondent Nos.1 and 2, equally for such purpose and remaining amount be released in their favour within two 2 weeks thereafter.
- The Respondents were to bear their own costs.

Ashish Gautam

Vs.

State of Rajasthan & Ors.

Original Application No. 132 of 2013 (CZ)

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

Keywords: Jaipur, Reserved forest area, non-forest activities, social functions, Department of Archaeology and Museums, Jaipur

Original Application disposed of

Dated: 5 November 2014

This Original Application was originally filed as DB Civil Writ Petition (PIL) 855/2013 before the Rajasthan High Court, Bench at Jaipur and came to be transferred to the Tribunal vide order dated 23.09.2013 passed by the Rajasthan High Court.

The petitioner (Applicant herein) in the Writ Petition alleged that the Sisodiya Rani Garden situated in Jhalana, falls within the Reserved Forest Area and accordingly, all non forest activities which are impermissible in Forest Areas are impermissible in forest areas and as such need to be stopped with immediate effect. The relief claimed inter alia was that direction be issued to the Respondents to take proper steps for the safety and security of the wildlife in the forest area and further direction to the Respondents not to allow such functions involving use of laser lighting, loud music, fireworks in the Sisodiya Rani Garden.

During the course of hearing the petition, the Tribunal framed the following questions seeking the response of the Respondents: 1. Whether Sisodiya Rani Garden in Jaipur is situated within the notified Reserved Forest of Jhalana or any other Reserved Forest. 2. In view of the fact that it is a protected monument and located within the Reserved Forest whether any permission for entry or use of the premises as alleged by the Applicant, on conditions to be imposed by the Forest Department, are being sought by persons who hire the place from the Department of Archaeology & Museums, Rajasthan, Jaipur.

Since, the reply of the Respondent State of Rajasthan and Department of Forests, Government of Rajasthan was clear that the Sisodiya Rani Garden is located within the Forest Area adjacent to the Forest Block 'Band Ki Gadi Amagarh 92' and as per the stand

of the Government, since the area in question i.e. Sisodiya Rani Garden is a part of the Forest Land and no separate land had been allotted in the name Sisodiya Rani Garden. *'This implies that the Garden is a forest land'*.

The State in its reply had very categorically stated as follows: "*That in the interest of wildlife, the Forest Department has requested the Department of Archeology, State of Rajasthan not to give permissions to organise social functions, etc. at the Rani Sisodia Garden.*"

In view of the above stand of the State of Rajasthan and the Forest Department, Government of Rajasthan, the Tribunal was of the opinion that the Application could be disposed of as the relief which is being sought by the State had categorically stated in its reply that it would direct the Department of Archaeology and Museums, Rajasthan not to grant any permission for holding functions, parties, fireworks, etc. as well as other activities which are impermissible in the forest area.

Respondent No. 5 Circle Supdt., Department of Archaeology and Museums as well as Respondent No. 6 Director, Department of Archaeology and Museums, Jaipur, Rajasthan who were in possession of the Sisodiya Rani Garden and Archaeological Monuments and under whose management the aforesaid monument was protected and maintained, were directed to not grant any permission for organizing social functions such as marriages, parties, etc. use of fireworks, loud music, fireworks and such other activities which may not be conducive and are impermissible in Forest Areas.

In view of the above directions, the Original Application No. 132 of 2013 stood disposed. No order as to costs.

T. Muruganandam & Ors.

Vs.

Union of India & Ors.

Appeal No. 50/2012

Judicial and Expert Members: Mr. Swatanter Kumar, Mr. U.D. Salvi, Dr. D.K. Agrawal, Mr. Ranjan Chatterjee

Keywords: Cumulative Environment Impact Assessment (CEIA), Rapid Cumulative Environment Impact Assessment Study, Environmental Clearance, Expert Appraisal Committee (EAC)

Corrigendum quashed; but fresh CEIA to be conducted

Date: 10 November 2014

A trio challenged the Order dated 14th August, 2012 being a Corrigendum (meaning thing to be corrected) to the Environmental Clearance granted to Respondent No. 3- M/s IL&FS Tamil Nadu Power Company Ltd. by the Respondent No. 1- Ministry of Environment and Forests for setting up of 2x600 MW and 3x800 MW imported Coal Based Thermal Power Plant at villages Kottatai, Ariyagoshti, Villianallur and Silambimangalam in Chidambaram Taluk, Cuddalore District, Tamil Nadu and prayed for directions to the Respondent No. 3 to re-conduct the cumulative impact assessment study as per universally accepted scientific parameters and for further directions to the Respondent No. 1 to re-appraise the grant of environmental clearance granted in light of such cumulative impact assessment study. The Respondent No. 3 filed the Review Application No. 25 of 2012 and prayed for abeyance of the order of suspension on the ground that complete stoppage of work at the project site before the onset of monsoon season would cause environmental damage at the site.

The Appellants contented that the crucial cumulative impact assessment studies were hurriedly carried out by the Respondent No. 3 within two weeks without adhering to the universally accepted scientific parameters; and the EAC without any application of mind to the objections raised by the Appellants to the Cumulative Impact Assessment Report prepared by the Respondent No. 3 proceeded to recommend the project for Environmental Clearance with some cosmetic additional conditions, and the Respondent No. 1 acted upon such professedly additional recommendations to order corrigendum to the Environmental Clearance to the said project on 14th August, 2012. It is this corrigendum which was challenged.

In reply the MoEF submitted that the Tribunal instead of quashing the EC dated 31st May, 2010 ordered its review based on Cumulative Impact Assessment Study and granted liberty to stipulate additional environmental conditions, if required, and pending this review suspended operation of EC. The MoEF further contended that it is after hearing and deliberating upon the submission made by the rival parties the appellant and Project Proponent the EAC observed that the various studies made for the project appeared to be adequate and had recommended the continuation of the project, subject to additional conditions; and the MoEF had accepted the recommendations of the EAC and issued the corrigendum to the EC in question.

According to the Respondent No.2 the Rapid Cumulative Environment Impact Assessment Study carried out by the Respondent No. 3 Project Proponent covered the industrial activities within a radius of 25 kms. from the project sites and the same was placed before the Expert Appraisal Committee in its meeting held on 25th June, 2012 and 16th July, 2012; and after the review of the RCEIA Study, submissions made by the Appellants and the project Proponents and detailed deliberations during the said meetings the Expert Appraisal Committee had recommended stipulation of additional conditions to the Environmental Clearance granted to the project on 31st October, 2010. The Respondent No. 3 objected to the Appeal contending that the Tribunal had not felt the need of quashing the EC granted by the MoEF, it being by and large in consonance with the EIA process. The Respondent No.3 questioned the competence of the Tribunal to review or Appeal over its own Judgment dated May 23, 2012. According to the Respondent No. 3 there are no stipulated methodology/technologies/parameters under Indian Environment Legislation Scenario and there are no known "universally accepted scientific parameters" for (CEIA) study. The Respondent No. 3 submitted that under section 22 of the NGT Act, 2010 the appeals from the Judgments would lie to the Supreme Court of India and this Tribunal could not sit in Judgment over its previous Judgment.

The Respondent No. 3 further contended that there were no universally accepted norms of cumulative impact assessment study, and the foreign cases cited by the Appellant are piecemeal reproduction of concept of cumulative impact assessment without any linkage to the Indian context.

Controversy thus raised warrants answers to the following pertinent questions: 1. Whether the Appeal is maintainable in law? 2. Whether the review of the EC done by the MoEF on the basis of Cumulative Impact Assessment Study conducted by the Respondent No. 3-the Project Proponent and the recommendations of EAC is proper?

Point Number I: Maintainability of the Appeal - Legal exceptions to the maintainability of the present Appeal was raised on two counts: 1. The Appeal lies to the Supreme

Court of India against the impugned order and the Tribunal cannot rewrite its own Judgment. 2. The Appeal is not maintainable under section 16 as well as under Section 14 of the NGT Act, 2010. The project Proponent submitted that the Appeal attempts to persuade the Tribunal to re-write its own Judgment dated 23rd May, 2012 disposing of the Appeal 17 of 2011. The appellants are seeking: a. The quashing of the Order dated 14-08-2012 being a "corrigendum" to the Environmental Clearance granted to the Project Proponent b. Directions to the Project Proponent to re-conduct the Cumulative Assessment study as per universally accepted scientific norms. c. Directions to the MoEF to reappraise the grant of EC granted in light of the EIA Study in question. Certainly, the Appeal against the Judgment dated 23rd May, 2012 passed in Appeal 17 of 2012 was required to be preferred to the Supreme Court as per Section 22 of the NGT Act, 2010.However, it needs to be noted that what is assailed in the present Appeal is the corrigendum dated 14-08-2012 which is issued upon the RCEIA study in question and not the Judgment dated 23rd may, 2012 passed in Appeal 17 of 2012. Submissions made on behalf of the project Proponent questioning the proprietary of RCEIA

The project Proponent- the Respondent therein contended that there is no mandatory legal requirement under EIA Notification 2006 or other applicable Indian Law for carrying out "cumulative impact assessment" of the projects. The Project Proponent reiterated the stand of EAC and submitted that the MoEF had taken into account the concerns expressed in public hearing and applied its mind before granting impugned EC to the Project. After hearing the parties the Tribunal had made its observations and partially allowed the Appeal No. 17 of 2011 with certain directions.

The Tribunal directed the review of the Environmental Clearance on the basis of cumulative impact assessment study in order to arrive at adequate mitigative measures and environmental safeguards for the purposes of avoiding adverse impacts on ecologically fragile eco-system at the place of project. The Tribunal suspended the EC. This is recognition of the fact that the Tribunal could see the need for correction in light of proper cumulative Impact Assessment Study of the ecologically fragile eco-system where the project in question was to come before the project was given green signal upon the EC in question. This did not prompt re-writing of its own Judgment.

Point Number II: Broadly exceptions to the cumulative impact assessment study and its review can be categorized as under: 1. The cumulative impact assessment study carried out by the Project Proponent is inadequate and erroneous for the reason of faulty methodology adopted, and unreliable and inadequate data collected therefore. 2. There is no application of mind by the EAC in as much as there is failure to give any reasons as are required under para 7(IV) of the EC Regulations 2006.

One of the arguments to contend that the EAC had applied its mind was the time consumed in the hearing before the EAC. It appeared from the further reading of the minutes of the 53rd meeting of the EAC held on 16th July, 2012 that the matter was heard at length and the EAC recorded the submissions of the rival parties. This would only mean that the opportunity of being heard was not denied by the EAC to any of the parties. It did not necessarily mean that there was application of mind to the merits and demerits of the case as expounded by the rival parties in course of hearing. This could only be understood from the EACs approach to the rival submissions and the reasons adduced by it in arriving at its conclusions.

The Tribunal was of the considered opinion that the EAC failed to apply its mind to the material placed before it by the rival parties and proceeded to recommend the conditions purportedly for safeguarding the environment. Reading of the conditions stipulated in the corrigendum showed that the MoEF did nothing more than merely reiterating the conditions previously stipulated in the corrigendum dated 14th August, 2012 in different language. The point number II was therefore, answered accordingly.

Hence the order:

1. Corrigendum dated 14-08-2012 to the EC as issued by the MoEF was quashed.

2. Keeping in mind the observations, the Respondent No. 3- the project Proponent was to carry out fresh Cumulative Impact Assessment Study of the project in question within a reasonable period. The Respondent No. 3 should place report of such study before the EAC and the EAC shall consider such report and assess whether comprehensive CEIA study is necessary or not and advice the Respondent No. 3 accordingly and thereafter shall carry out the appraisal of the said study or the comprehensive CEIA Study as the case may be as per EC Regulations 2006 and may either recommend the grant of EC on certain specific conditions or decline to recommend the grant of EC by passing a speaking/reasoned order i.e. either recommend or refuse to recommend on reasons adduced therefor.

4. MoEF shall duly consider the recommendations made by the EAC and shall pass an order in accordance with law.

5. Parties shall cooperate with each other in carrying out such Study.

6. Parties to bear their respective costs.

Sanjay Kumar

Vs.

Union of India & Ors.

Original Application no. 306 of 2013

Judicial and Expert members: Mr. Swatanter Kumar, Mr. M.S. Nambiar, Dr. G.K. Pandey, Dr. R.C.Trivedi

Keywords: Reserved forest, non-forest activity, illegal construction

Application disposed of with certain directions

Dated: 10 November 2014

The applicant has approached this Tribunal by filing the present application under section 14 and 15(b) & 15(c) r/w section 18(1) and 18 (2) of the National Green Tribunal Act, 2010 ('NGT Act') for protection of the forest area and environment, particularly, in relation to the central ridge area of New Delhi, falling under the jurisdiction of New Delhi Municipal Corporation ('NDMC'), respondent no.4.

According to the applicant, on 24th May, 1994, the Lt. Governor of NCT of Delhi issued a notification whereby the "Ridge", rocky outcrop of Aravali Hills in Delhi, was declared as "Reserved Forest" in terms of the provisions of Section 4 of the Indian Forest Act, 1927. Respondents no. 5 to 7, are local governing bodies amongst whose jurisdiction the notified ridge areas (the declared Reserved Forest Area), i.e. the northern ridge area, the central ridge area, the south central ridge area and the southern ridge area, falls. Vide the above notification a total area of 7777 hectares was demarcated as the Reserved Forest Area. Being forest area, non-forest activity is impermissible in such ridge area.

It is the case of the applicant that respondent no. 10, Sant Sh. Asha Ramji Bapu Trust (Ashram) has illegally constructed an ashram and other pucca and semi pucca constructions in the central ridge area, Karol Bagh, New Delhi. The construction raised by respondent no. 10 in the Central Ridge Area is unauthorized construction and the activity being carried on there is non-forest activity. Respondent no. 9, it is apprehended by the applicant, has allowed the development against the procedure established by law.

Respondent no. 10 had itself acknowledged much earlier that it had raised illegal encroachment on a large portion of land situated in the central ridge area near Shankar Road, Karol Bagh, New Delhi. Accordingly, respondent no. 2 issued a notice to respondent no. 10 for eviction, but neither was respondent no. 10 evicted nor was the illegal construction demolished.

It is, thus, the applicant's case that Delhi Ridge Area, being a protected area in light of the above circumstances, is required to be protected by the respondents under the provisions afore-stated, as well as under Article 51A(g) of the Constitution of India.

In light of the above averred facts, the applicant prays for demolition of the illegal and unauthorized construction made by respondent no. 10, for initiation of criminal proceedings against respondent no. 10, for submission of a detailed list of the illegal encroachments present in the Ridge Area, for constitution of a team for removal and eviction of all the illegal encroachment present in the Ridge Area and also to all stop non-forest activities in these areas.

In response to the above case of the applicant, Respondent no. 1 filed a very short affidavit confirming that the Notification dated 24th May, 1994 has been issued, declaring the Ridge Forest Land as notified area. However, the land has not been so far transferred to the Delhi Forest Department. The land is owned by Land and Development Officer, Ministry of Urban Development and Poverty Alleviation. Respondent Nos. 4, 5 and 6 have filed affidavits stating that the area in question is under the jurisdiction of the Forest Department of Government of 7 NCT of Delhi and these respondents are not directly concerned with the area which has been encroached upon by respondent no. 10. A common short affidavit has been filed on behalf of respondent no. 3 and 9.

Respondent no. 10 filed a reply affidavit dated 25 November 2013 as well as an additional affidavit dated 15 January 2014 in response to the case of the applicant and the affidavits filed by other respondents. According to this respondent, the present application was barred by the Principle of res judicata as the matter stands concluded by the orders passed by the Supreme Court in the case of *M.C. Mehta v. Union of India, Writ Petition (C) No. 4677 of 1985* and the present application is not maintainable. It was stated that the present respondent was carrying on its activity for the past few decades and the occupation of this land is in pursuance to its rights.

Certain reliefs had been granted in favor of respondent no. 10 in claim No. 34 of 1994 vide order dated 11 August 1995. The report of the Committee constituted by the Supreme Court finally led to the passing of order dated 8 November 1996 by the Supreme Court. Thus, a plea in regard to the construction and the area occupied by respondent no. 10 which was protected by the order of the Supreme Court dated 8th

November, 1996 could not be raised as an issue before the Tribunal even if the non-forest activity was being carried out in Reserved Forest Area. But the contention of respondent no. 10 that the present application would be hit by the principle of res judicata in relation to the entire subject matter of the application has no merit. The areas that have been occupied, and permanent and temporary structures that have been raised in the forest area, subsequent to the inspection by the Committee constituted by the Supreme Court and which is causing pollution and are non-forest activities in the forest area would certainly be issues that would fall within the domain of the Tribunal's Jurisdiction.

Vide order dated 6th May, 2014, the Tribunal had directed constitution of a Committee consisting of Additional Principal Chief Conservator of Forest, a representative of the Ministry of Environment and Forest and a representative of the Ridge Management Board to inspect the premises in question and submit inspection report while particularly answering the following two questions:

1. Whether there is any excess area than what was permitted by Supreme Court of India vide its order dated 8th November, 1996 occupied by the respondent no. 10.

2. The total area is indicated as 4312 sq. yard along with the approach path of 350 ft approximately in all. Whether any construction made recently or in excess of the one that existed at the time of passing of the order by the Apex Court.

"Observations: TOR 1: Whether there is any excess area what was permitted by Supreme Court of India vide its order dated 8.11.1996 - To determine the area under usage by the Ashram, the Committee commissioned a physical survey done through total station method (TSM). It was accepted that the perimeter and the area covered by the Ashram was the same as was permitted by the Supreme Court vide its order dated 8.11.1996. However, the committee, during its inspection observed that the Asaram Ashram's footprint exceeds the area that has been demarcated for its usage. This indicated that the area was in continuous use. The committee also observed during its inspection that garbage was dumped in the ridge area. All this was in clear contravention of the Court orders.

TOR 2: Whether any construction made recently or in excess of the one that existed at the time of passing of the order by the Apex Court. During the inspection the Committee observed that there were a large number of structures in the Ashram area. To verify if these were made recently or in excess of what existed at the time of passing of the order by the Supreme Court, the Committee commissioned a detailed survey of the proceedings of the Supreme Court. It was shown that there was a substantial change from the map of 1996."

From the above inspection report submitted by the inspection committee in furtherance to the orders of the Tribunal, it was clear that there has been a substantial change in the structure existing on the site in question, whether permanent or temporary.

As such the Tribunal was primarily concerned with issues relating to environment, protection of forests and ensuring that no non-forest activity is permitted to be carried on in the Reserved Forest Area. If the authorities responsible for carrying such duties have failed, then they would be liable to be directed by the Tribunal to perform their statutory duties particularly in relation to the acts stated under Schedule I & II of the NGT Act.

The Original Application 306 of 2013 was disposed of while passing certain directions for strict and expeditious compliance by all, including respondent no. 10 and leaving the parties to bear their own costs.

Shri Sant Dasganu Maharaj Shetkari

Vs.

The Indian Oil Corporation Ltd. & Ors.

Application No. 42/2014(WZ)

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

Keywords: Groundwater pollution, petroleum storage tanks, compensation, MPCB, GSDA

Application party allowed on certain terms

Dated: 10 November 2014

The present Application was filed by the Applicant alleging Groundwater Pollution caused by leakages of petroleum storage tanks and pipelines installed by the Respondents.

The Applicant states that Respondent Nos. 1 and 2 had installed the petroleum storage tanks at village Akolner, Taluka and District Ahmednagar for storage of petroleum products. Applicant submitted that since the year 2008, the Applicant began to get repugnant smell of petrol, diesel and kerosene. In the year 2009, one of the Members found that his well was contaminated with petrol, diesel and oil mixed in it, due to seepage from the storage tank facilities of Respondent Nos. 1 and 2. The situation got more aggravated in 2012 when the water in his well was mixed with about 50 per cent of petroleum products and hence, the Applicant submitted that they were not able to use this well for drinking as well as agricultural purpose and on inquiry, they came to know that most of the wells in surrounding area are also contaminated with petroleum seepages. The Applicant submitted that subsequently, its members made complaints to the Respondents and to the Government authorities for immediate action. However, the Government (Respondents) had enforced no effective and corrective measures nor any corrective steps were taken by the Respondent Nos.1 and 2. The Applicant further submits that the local Talathi made panchnama on 27-3-2012 confirming the Groundwater contamination by seepage of petroleum products and subsequently, the Sub Division Magistrate, Ahmednagar issued orders under Section 133 of Code of Criminal Procedure to Respondent Nos. 1 and 2 to stop leakage of petroleum products within three days.

Respondent Nos. 1 and 2 filed separate reply Affidavits and claimed compliance of all statutory regulations related with the installation and operation of petroleum storage tanks. Respondent Nos.1 and 2 also categorically refute the charge of any leakage, seepage or any other mode by which the petroleum products are released into environment from their petroleum storage and handling facilities, causing Groundwater Pollution. Respondent No.1 submitted that there were three wells within their premises and they had tested the water samples of the said wells through Government approved laboratory and the water from these wells was found to be safe for drinking. Respondent No.1 further submitted that they had complied with the suggestions of the Expert Committee which were communicated to them and a compliance report is already submitted.

Respondent No.2 submitted that the well of the Applicant is located on the higher elevation and at a distance of about 400 mtrs. The Respondents submitted that during the investigation by MPCB in March 2012, only one well out of twelve wells surveyed in the village, was found to be contaminated with oil. The Respondents denied that there was any leakage/ seepage from depot of the present Respondent and further denied any ground water contamination due to their operations. Respondent Nos.1 and 2, therefore, opposed the Application.

The Maharashtra Pollution Control Board (MPCB) submitted that the Respondent No.1 had obtained consent to operate which was valid up to 31st March 2014. Similarly, Respondent No.2 had consent to operate up to 31-7-2014. The MPCB further submitted that the Sub Regional Office, MPCB, Ahmednagar had collected samples of wells and bore well located in and around village Akolner on 29-3-2012 and that the result of samples collected at twelve different location showed that only one sample is heavily contaminated with oil and grease.

The following issues were framed for adjudication: 1. Whether the Ground water in the wells of Applicants is polluted by the presence of petroleum products? 2. If yes, what are the likely contribution factors and cause for such Ground Water Pollution of the well water? 3. Whether there is any material available to indicate any co-relation of activities of Respondent Nos.1 and 2 with the ground water contamination, if any? 4. Whether the Applicants are entitled for any damages compensation towards loss of agricultural yield, drinking water sources and health effects? 5. Whether any directions are required to be given by the Tribunal by restitution and restoration of ground water quality in the disputed wells?

As to Issue No.1 : When the matter was listed on 24th April 2014, an Inspection Committee of Regional officer of MPCB, Sr. Officer of Oil Industries safety Directorate (OISD) and Dy. Collector, Ahmadnagar had been appointed to survey relevant sites of

oil depots and also examination of pipe lines underneath the sites. The Applicant placed on record letter from MPCB, to the District Magistrate, dated 4-4-2012 wherein it was recorded that during the visit the well water contained oil/petrol. The letter goes on recommending Collector to issue instructions to Respondent No.1 and 2 to avoid seepage resembling with petroleum products and water samples are not fit for human consumption. Considering the submissions made by both MPCB and GSDA there was no hesitation to conclude that there was ground water contamination due to seepage of petroleum products in some of the wells in village Akolner District Ahmednagar. Therefore, findings on issue No. 1 were recorded as "AFFIRMATIVE".

As to Issue No.2 and 3: There was hardly any substantial ground water quality data, which could be statistically relied upon, from both these agencies and hence it became necessary for the Tribunal to use the available data for inferring and taking the things to its logical end. In the absence of factual information available, the Tribunal had to decide on guess work based on the entire calculation of the quantity of hazardous waste which got drifted away from the proximate area. And therefore, the issue No.2 and 3 were answered in the AFFIRMATIVE.

As to issue No.4: The water quality observed by MPCB and GSDA in 2012 and 2014 clearly indicated that the well water could not be used for any purpose. Further, the GSDA report of 2014 also clearly indicated that out of 28 samples, fourteen samples have odour resembling with petroleum products and are not fit for human consumption. The Respondent Nos.1 and 2 argued that they got tested samples of wells in their premises and the water was found to be fit for human concentration. These samples were collected by Respondent Nos. 1 and 2 and got it tested at the public health laboratory, which duly made endorsement on the analysis reports that the samples were not collected by the laboratory; therefore, the Tribunal was not inclined to give much credence to these analytical reports. It was of the opinion that the Applicants are entitled for damages to the well as this well water could not be used for any purpose. Therefore, the issue No.4 was also decided in the AFFIRMATIVE.

As to issue No.5 : Both MPCB and GSDA submitted their report to the Collector informing that there was an oil contamination of the well waters and proposed to the Collector that necessary instructions be given to Respondent Nos.1 and 2 to ensure that there is no seepage or leakage from their activities. Even afterwards, the MPCB had chosen not to collect samples from the wells to verify the present water quality status. The consent validity of both these Respondents 1 and 2 had expired already. Both these agencies had not identified the quantum of pollution, the possible sources of pollution besides for not taking any action for controlling the pollution and remediation the polluted wells. The Tribunal was also concerned with the action or rather inaction by the district administration in the entire matter. Both MPCB and GSDA submitted

technical reports to Collector in 2012, however, no action is was taken by Collector in pursuance to these reports.

Accordingly, the Application was partly allowed in accordance with the following terms:

- Collector, Ahmednagar shall ensure that the water from the well is pruned for the necessary treatment and disposal.
- The Central Ground water Board shall conduct the assessment of groundwater quality and status of pollution at the disputed wells and also, suggest the restoration and remediation measures, in next 2 months to the Collector, Ahmednagar.
- Regional Officer, MPCB shall take immediate steps for restitution and restoration of the groundwater quality of the disputed wells in the next 4 months.
- The entire costs of all above activities shall be borne by Respondent Nos.1 and 2 who shall deposit tentative amount of Rs.5,00,000/- each with Collector.
- Respondent Nos. 1 and 2 shall pay compensation of Rs.5,00,000/- to Bappa Tabaji Gaikwad, whose well is found to be contaminated with oil, within next 6 weeks.
- In case, the Respondent Nos. 1 and 2 do not comply with the directions, Collector, Ahmednagar shall recover the costs as if it is a land revenue arrears under Maharashtra Land Revenue Code, 1966 by attachment and sale of Industrial units, stock and barrel.
- The Collector, Ahmednagar shall ensure supply of adequate quality of water for the drinking and cattle feeding for village Akolner and pay the costs where needed.
- The MPCB and GSDA shall regularly monitor ground water quality in this area till the compliances are made.
- The Chairman, MPCB and Chief Executive Officer, GSDA shall cause to enquire why such serious incident of ground water pollution was not adequately investigated since 2012, in spite of abnormal oil concentrations in well water and no regular data and information is available about the contamination of the disputed wells, even after institution of this Application, and take suitable action in next three 3 months.

Ms. Geeta Bhadrasen Vadhai

Vs.

Ministry of Environment and Forest & Ors.

Misc. Application No. 118/2014

In Application No. 63 of 2014

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

Keywords: Res judicata, Environmental Clearance, limitation

Misc. Application allowed; Main Application dismissed

Dated: 13 November 2014

By filing this Miscellaneous Application, Original Respondent No.7, raised objection to maintainability of Main Application No.63 of 2014, on the ground that it was barred by the principle of 'Res-judicata' as well as on account of bar of limitation. Thus, two objections raised by the Original Respondent No.7, were: i) the Main Application is barred by principle of constructive Res-judicata in view of two Judgments rendered by High Court of Bombay in the earlier Public Interest Litigation (PIL), and the Writ Petitions, in which similar issues are decided, ii) Challenge to Environmental Clearances (EC) dated 30th September, 2005, as well as subsequent communications as prayed in the Original Application, cannot be challenged being barred by limitation prescribed under the Law.

The Project Proponent came out with a case that the Main Application is filed almost after nine years from the date of Environmental Clearance (EC) and therefore, it is barred by limitation. The EC cannot be challenged either under Section 14 or Section 15 of the NGT Act, 2010. The EC was granted on 30th September, 2005, by the MoEF, in favour of the Proponent and thereafter, it was examined by the High Court in Public Interest Litigation (PIL) No.42 of 2009 (*'Dighi Koli Samaj Mumbai Rahivasi Sangh (Regd) through its Secretary Vs. Union of India').* The PIL was disposed of by High Court of Bombay with certain directions.

The concept of 'continuous cause of action' is ill founded and wrongly interpreted by the Applicant. The interpretation put forth by the Applicant, will make the words – 'first cause of action' meaningless and therefore should not be accepted.

According to Proponent, the Judgment in PIL NO.42 of 2009, is the 'judgment in rem' and as such, it operates as 'Res-judicata'. It is contended that judicial decision of the High Court declares, determines and dealt with all the relevant issues, which were brought up through the present Application by Geeta Vadhai. The principles of constructive Res-judicata were, therefore, applicable to the present proceedings and hence, the Main Application was barred in view of applicability of principle of 'constructive Res-judicata'. It is for such reason that the Proponent (Respondent No.7), sought dismissal of the Main Application. By filing reply to the Misc. Application of Proponent it was averred by the Applicant that EC conditions are still being violated by the Proponent

It was further contended that Dighi Port is still going ahead with the project in violation of various Environmental norms. The complaints made about them were not being addressed by the Authorities, under the influence of Proponent It was contended that mining activities are being carried out by the Proponent without NOC from the concerned Authorities. It was further contended that wrong committed by the Proponent is being continuously done, day in and day out and as such, the Application cannot be said to be barred by limitation. It was further contended that 'cause of action' arose on March 1st, 2014, and therefore, the Application is within limitation. It was denied that the Application is barred by the principle of 'Res-judicata'. According to the Applicant, NGT is not required to follow the Civil Procedure Code and therefore, the principle of 'Resjudicata' need not be followed.

According to the Applicant, the port activities had been undertaken without permission of CRZ. The Applicant had filed certain photographs, in order to show that reclamation was being undertaken at Agardanda. It was contended that those were new developments, which give 'cause of action' for the purpose of present Application.

So far as challenge to the EC is concerned, in the Tribunal's opinion, it was a bygone issue, inasmuch as EC was issued on 30th September, 2005, whereas the Application was filed on 27th May, 2014. At any rate, whether it is treated as an Appeal or Application under Section 14, read with Section 18 of the NGT Act, the Application was hopelessly barred by limitation.

Perusal of the Judgment in PIL No.42 of 2009, reveals that the Proponent was allowed to commission the project at Port Dighi by complying certain conditions. It appears that the Authorities, including MPCB, were directed to ensure that the conditions were duly complied with before commissioning of the Port. The order was further modified by subsequent order dated 21st January, 2011, in PIL No.42 of 2009, in Civil Application No.1 of 2011. Thus, Dighi Port was allowed to commence activities by the High Court. The issues raised in the PIL, including validity of the EC, were considered by the High

Court of Judicature at Bombay and were decided by its Judgment in the said PIL No.42 of 2009. Therefore, the Judgment is to be considered as 'Judgment in rem'. Thus, it was not only filed by the persons, who are the parties to the Petition/Application, but all concerned/connected persons concerned with the issues or having rights

It appeared that the Applicant herself had not filed any complaint as such to the Authorities. However, she claimed that her friend by name Mr. Nevrum Modi, on behalf of Bombay Environment Action Group, had filed communication dated 23 March, 2011. She alleges that she made a complaint to MCZMA on 13th March, 2014 about the same issue. The question is whether the EC dated 30 September 2005, was impugned by the Appellant, in any manner. There appeared something amiss about date of complaint. In any case, the complaints were not made within six months period before commencement of 'cause of action'. These complaints may be investigated by the Authorities for examining violations of the terms of EC/CRZ orders, or cancellation of EC/CRZ or taking suitable action against the Project Proponent (PP), as may be required under the Law, in view of Section 5 of the Environment (Protection) Act, 1986.

The Tribunal was of the opinion that the legal issues raised by the Project Proponent were valid and will have to be accepted. Needless to say, that the Miscellaneous Application must be allowed. It followed, therefore, that the Main Application will have to be dismissed. For, it is fate-accompli of the Misc Application. However, it was found that the Application was barred by the principles of 'constructive Res-Judicata' and that the same was barred by limitation, yet, the Tribunal had noticed that there are various violations, which the Project Proponent, had done so far. The Tribunal was also of the opinion that violations of the EC conditions, if were found by the Authorities, then strict action would be warranted, whosoever the Project Proponent, may be. Consequently, the Authorities were directed to take action in case such violations, if brought to their notice or observed by them, then they shall issue appropriate order/s under the Environment (Protection) Act, 1986, or under the CRZ Regulations, as the case may be. The Applicant was at liberty to bring such facts to the notice of the concerned Regulatory Authority against such activities, in case of particular violation of the provisions of concerned enactments, apart from seeking directions in respect of discharge of obligations and duties by exercise of powers vested in the authorities under the said enactment.

With these observations, Miscellaneous Application was allowed and the Main Application was dismissed.

Smt. Poonkodi

Vs

The President

Application No.123 of 2013 (SZ)(THC)

(W.P. (MD) No.14980 of 2011, Madras High Court)

Judicial and Expert Members: HON'BLE SHRI JUSTICE M. CHOCKALINGAM, HON'BLE PROF. Dr. R. NAGENDRAN

Keywords: Injunction, Rice Mill, Haryana, Tamil Nadu Pollution Control Board,

Application Dismissed.

Dated: 13th November, 2014

The applicant brought forth this application seeking an order of injunction restraining the 4th respondent from operating a rice mill at Servaikaranpatti alleging that it is unlicensed and without NOC from the Tamil Nadu Pollution Control Board (2nd respondent) and thus it is an illegal construction and if allowed to continue, it would cause pollution of all kinds resulting in great hardship and health hazards. Another rice mill and a Government Middle School are also situated nearby. Thus, the 4th respondent should be injuncted from carrying on the operations.

It is brought to the notice of the Tribunal by the counsel for the 4th respondent that the father-in-law of the applicant is carrying on his rice mill for a long time in the past and the same is situate within 10 metres from the Government Middle School in the Servaikaranpatti and this fact is not disputed by the applicant. The counsel for the Board, added that the applicant's grievance is countenanced as the applicant claims if the proposed rice mill of the 4th respondent is allowed to operate, pollution of all kinds is likely to be caused while in the same area, the applicant's father-in-law is carrying on one rice mill already. Thus it negates the purpose of the application. At the same time, the application is also premature. Under such circumstances, the Tribunal finds that there is no merit in the application and hence it is got to be dismissed. Accordingly the application is dismissed with a cost of Rs.5,000/-(Rupees five thousand only).

Muhavanathoo Village Agriculturists

Vs

The Chairman-cum-Managing Director Tamil Nadu Pollution Control Board Chennai.

Application No. 317of 2013 (SZ)

Judicial and Expert Members: HON'BLE SHRI JUSTICE M. CHOCKALINGAM, HON'BLE PROF. Dr. R. NAGENDRAN

Keywords: Metal crushing Unit, Tamil Nadu Pollution Control Board,

Application Disposed of.

Dated: 13th November, 2014

In the present case, the 4th respondent has been carrying on the predecessor's interest of the 3rd respondent, a blue metal crushing Unit at Nilakkottai Dindigul District from 2008 onwards. Subsequently, the same has been purchased by the 3rd respondent herein and he is continuing the operation without the Consent to Establish or Consent to Operate, causing enormous pollution. The Unit has caused severe degradation to environment. Thus, the applicant placed a complaint before the Tamil Nadu Pollution Control Board (Board) on 19.6.2013 calling for necessary action. But due to inaction, the application was filed before the Tribunal.

The counsel for the Board submitted that the previous owner of the Unit had commenced the operation of the Unit in the year 2008 without Consent to Establish or to Operate. While the matter stood so, the 3rd respondent purchased the Unit and carried the work forward. At that juncture, an opinion was canvassed by the concerned District Environmental Engineer of the Board as to whether the 3rd respondent could be allowed to carry on its operation and the District Environmental Engineer concerned was advised that the 3rd respondent operating without Consent to Establish or to Operate should not be permitted to carry on. Hence, on 19.2.2014 the Unit was closed and thus from that time onwards it is not in operation.

At this juncture, the counsel for the 3rd respondent submitted that after the closure, pursuant to the direction of the Board on 20th May 2014 an application for Consent to Establish and to operate was made before the Board which was pending consideration. He further added that till the consent to establish or to operate is granted, the 3rd respondent shall not carry on its operation. Hence the grievance of the applicant that an

action has got to be taken on his compliant dated 19.6.2013 does not survive for the purpose prescribed further. Accordingly, the 2nd respondent is also directed to monitor that the 3rd respondent shall not carry on its activity till the Consent to Establish and to Operate are given in accordance with law to the 3rd respondent. With the above observation, the application is disposed of.

Sustainability and Human Resources

Vs.

State of Madhya Pradesh & Ors.

Original Application No. 264/2014 (THC) (CZ)

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

Keywords: Bhopal, Madhya Pradesh State Pollution Control Board (MPPCB), State Medical & Health Department (Bhopal), bio-medical waste, Bio-Medical Waste (Management and Handling) Rules, 1998

Original Application disposed of

Dated: 17 November 2014

This Original Application was registered after the Writ Petition filed as PIL before the High Court of MP registered as Writ Petition No. 33/2008 was transferred to this Bench. After receipt of the same notices were ordered to be issued to the Applicant as well as to the Respondents. Despite service of notice, none appeared before the Tribunal on behalf of the Applicant. The State and the Madhya Pradesh State Pollution Control Board (MPPCB) put in their appearance before the Tribunal. The Applicant raised the issue of noncompliance by the State Medical & Health Department and hospitals pathological laboratories etc. in the city of Bhopal with regard to the implementation of Bio-Medical Waste (Management and Handling) Rules, 1998 ('BMW Rules, 1998'), improper disposal and discarding of such material into the open areas, streets and the lakes of Bhopal resulting pollution and endangering the health of the citizens.

This Tribunal being already seized of the matter pertaining to the pollution in the Upper Lake and other water bodies in the city of Bhopal in O.A.No. 21/2013 in the matter of Dr. Alankrita Mehra V/s Union of India & Ors., ordered for clubbing of this application with the same. The Learned Counsel for the Bhopal Municipal Corporation (for short 'BMC') as well as the MPPCB were directed to initiate proceedings against the erring hospitals and owners of the medical facilities and submit their report before the Tribunal. While considering the same in O.A.No. 21/2013 on 12.02.2014, information about the implementation of BMW Rules, 1998 was placed before the Tribunal.

On 20.02.2014, the Learned Counsel for the State apprised the Tribunal that the State Government through Director, Medical & Health on 19.02.2014 had directed all the Chief Medical & Health Officers and Civil Surgeons in all Districts in the State to constitute teams for carrying out inspection of the hospitals and submit report within 15 days. The Chairman of the MPPCB and Principal Secretary, Medical & Health were directed to appear before the Tribunal and apprise regarding the steps taken so far on the implementation of the BMW Rules, 1998.

On 06.03.2014, when the matter was heard in O.A. No. 21/2013, the Tribunal was apprised that a joint meeting of the officials of the MPPCB as well as the Health Department had taken place regarding the steps taken so far and for deciding the future course of action to be taken. Three months' time had been sought for the implementation and carrying out the aforesaid task. When the matter came up for consideration in O.A.No. 21/2013, the MPPCB was directed to submit report regarding action taken against the defaulting hospitals etc. including issuing of notice for closure. At the same time, the MPPCB was directed to submit a factual report with regard to the situation prevailing in other parts of the state on observance of the BMW Rules 1998.

When the matter came up before the Tribunal, the MPPCB submitted the required report. The Director, Medical & Health as well as the Principal Secretary, Health were directed to examine the entire position and submit an affidavit with regard to the steps taken by the State for complying with the Rules of 1998.

When the matter came up for consideration on 27.10.2014, it was submitted that the managements of medical facilities and hospitals had started submitting their applications to the MPPCB for the issuance of authorisation with a view to comply with the BMW Rules, 1998. However, the MPPCB submitted that since the State had failed to submit the requisite fee, the inspection of the State run hospitals and medical facilities had not been carried out.

Post the order dtd. 11.11.2014 in O.A. No.21/2013 the Learned Counsel for the State placed a letter dtd. 25.09.2014 whereby the State had deposited requisite authorisation fee amounting to Rs. 28,35,400 for the inspection and granting authorisation to the government in the State by the MPPCB in accordance with the BMW Rules, 1998.

From the above, it was found that the applications having been submitted by the hospitals, medical centres, pathological labs etc. and inspections were being carried out by the MPPCB, the remaining task of granting permission if found complying with the rules, was going on. If any medical facilities and hospitals were found not complying with the rules, they would be dealt with strictly by the MPPCB in accordance with the BMW Rules, 1998 and wherever necessary such hospitals and facilities shall be ordered to be closed till compliance is made.

The MPPCB would submit a report before the Tribunal with regard to non-compliant health institutions, hospitals, medical facilities etc. indicating therein the volume of such material/waste being generated in such hospitals and medical facilities and the manner in which the same is being disposed contrary to the Rules of 1998. To each of them, separate notices were issued by the Tribunal for compensating the loss and damage to the environment. Three months' time was granted to the MPPCB. The MPPCB would accordingly, convey the operative portion of this order to each of the hospitals, medical facilities etc. which applied for authorisation / permission in accordance with the rules so also to all the erring hospitals etc. which have failed to comply and have not applied for any permission and have been operating without any valid permission.

For looking into the compliance, the matter was listed on 24th March, 2015. With the aforesaid directions, the Original Application No. 264/2014 stood disposed of

Nirma Ltd.

Vs.

Ministry of Environment & Forests and Ors.

M.A. No. 691 of 2014

(ARISING OUT OF APPEAL NO. 4 OF 2012)

Judicial and Expert Members: Mr. Swatanter Kumar, Mr. U.D. Salvi, Dr. D.K. Agrawal, Dr.G.K. Pandey

Keywords: recusal of judges, bias, reconstitution of bench

Application dismissed with costs.

Dated: 17 November 2014

The applicant, Respondent No. 4 filed this application with the following prayer:

"a. The Expert Members of this Tribunal (Dr. Gopal Krishna Pandey & Dr. Devendra Kumar Agrawal) hearing the aforesaid Appeal may kindly recuse themselves from hearing the Appeal; and

b. The Bench for hearing the appeal may kindly be reconstituted; and

c. Pass any such/further order(s) as this Tribunal may deem fit and proper in the interest of justice."

In furtherance to the orders of the Tribunal dated 28th May, 2013 and 23rd August, 2013, the two Ld. Expert Members of the Tribunal visited the site in dispute during 7th to 9th June, 2013 & 7th September, 2013 and have given their report. Having received the report, the applicant filed the present application stating that the said two Ld. Expert Members have formed an opinion in favour of the appellant, before the final hearing in the appeal has commenced and therefore, according to the settled principles of natural justice they should recuse themselves from hearing the appeal. The applicant further stated that the two Ld. Expert Members have pre-judged the issue and the applicant has reasonable basis for apprehension of bias. Hence, the two Ld. Expert Members would not be in a position to apply their minds to the facts of the present case objectively. Applicant prayed that the case should be decided by an unbiased mind and therefore,

both the Ld. Expert Members should recuse themselves from hearing of the case and the Bench should be re-constituted.

This application had been opposed by all the non-applicant parties, including the Ministry of Environment and Forests ('MoEF') and the appellant in the main Appeal No. 4 of 2012. According to the appellant in the main case, the present application is an abuse of the process of law and that of this Tribunal. The applicant is a mere intervener and had been delaying the proceedings before the Tribunal on one pretext or the other. The appellant contended that the present application, in fact, makes averments which are misconceived and ill-founded and the two Expert Members of the Tribunal have not expressed any final opinion but have merely recorded facts as they exist on the site, along with submitting the points or questions that would require determination by the Tribunal. In fact, the inspecting team has only noticed what steps are required to be taken to ensure that there is no resultant pollution caused by the appellant.

In its application, the applicant had raised certain doubts in regard to the first inspection and wanted certain aspects to be further clarified and/or confirmed by conducting a second inspection.

The Counsel appearing for respondents no. 1, 2 & 3 respectively, submitted that the present application is an abuse of the process of the Tribunal, is mala fide and is intended to delay the proceedings before the Tribunal. They commonly contended that the same bench including the two Ld. Expert Members who conducted the inspection of the site and prepared the inspection note, should continue to hear the matter and also for the reason that the case has already been substantially heard by that Bench. Thus, there was no occasion for filing of such an application. Therefore, they submitted that the application should be dismissed with exemplary costs since it lacks bona fide.

The matter was listed for final hearing on 13th – 14th August, 2013. Before the matter could be heard by the Tribunal on the dates afore-stated, the present applicant again filed two applications, being M.A. No.572/2014 and 573/2014; the first being an application for supply of the Inspection Report conducted by the two Ld. Experts Members and the second for transfer of the main appeal to the Western Zone Bench of the Tribunal at Pune. M.A. No. 573/2014 was disposed of by order of the Tribunal dated 9th September, 2014 directing the Registry of NGT to allow inspection of the reports submitted by the two Ld. Expert Members. Notice on M.A. No. 573/2014 was issued to the non-applicants. The non-applicants, including the appellant in the main appeal vehemently opposed the prayer for transfer of the case from the Principal Bench to the Western Zonal Bench at Pune. Arguments were heard on the application and by a detailed order dated 16 September 2014, the said application was dismissed.

The applicant preferred a Civil Appeal before the Supreme Court not only against the order dated 16 September 2014, but also against the order dated 9th September, 2014 permitting inspection of the reports. When the matter came up before the Tribunal for final hearing, the Counsel for the applicant informed the Tribunal about the filing of the appeal before the Supreme Court and prayed for adjournment, which was granted. When the matter came up for hearing on 10th October, 2014, the Tribunal was informed that the Supreme Court vide its order dated 26th September, 2014 had disposed off the appeal finally, while only issuing directions that copies of the reports may be furnished to the applicant. However, the Supreme Court did not grant any relief to the applicant in relation to the transfer of the case from the Principal Bench of the NGT to the Western Zonal Bench at Pune. 15. On 10th October, 2014, the Tribunal directed that the complete reports which are part of the judicial records of the Tribunal, be furnished to the counsel of the applicant immediately.

Before the matter could be taken up for remaining arguments on 18th October, 2014 by the Tribunal, the applicant again filed another application, being M.A. No. 691/2014, praying that the two Ld. Expert Members on the Bench hearing the matter should recuse themselves from hearing the appeal on merits, for the reasons which we have already noticed above.

From the above facts and despite a specific order of the Tribunal that the matter be heard urgently, the conduct of the applicant clearly demonstrated that he had been filing application after application, which lack bona fide, as and when the matter was listed for final hearing. In fact, the applicant has made every possible attempt to delay the hearing of the appeal on one pretext or the other.

It was also pointed out that this was not the first round of litigation between the parties. The present applicant had filed a Writ Petition before the Gujarat High Court being SCA No. 3477 of 2009, wherein the High Court had issued certain directions to the project Proponent for compliance. It was during the pendency of the appeal before the Supreme Court that, vide its order dated 1st December, 2011, MoEF cancelled the order of Environmental Clearance ('EC') that had been granted to the project Proponent The Supreme Court granted liberty to the project Proponent to challenge the said order before this Tribunal.

As regards the question "whether the two inspection reports submitted by the Expert Committee, constitute forming of a final opinion in fact and in law?", it had been already noticed, the two Ld. Expert Members of the Tribunal, had visited the site in question first on 7th-9th June, 2013 in furtherance to the order dated 28th May, 2013 and again on 7th September, 2013 when the application of the applicant was allowed by the Tribunal vide its order dated 23rd August, 2013. The Ld. Expert Members recorded

"Points for Consideration". They had only suggested the questions that require determination by the Tribunal and stated them comprehensively in their report. The contention that these observations amount to predetermination or pre-judging the issue in hand is misconceived and is found on misreading of the inspection note. Firstly, these are tentative observations subject to final determination by the complete Bench of the Tribunal after hearing the learned counsel appearing for the parties. Secondly, there is nothing on record of the Tribunal that could substantiate the plea of pre-judging or pre-determination of the matter in issue before the Tribunal by the Expert Members during inspection. They obviously would decide the case objectively along with other Members of the Bench. Therefore, the grounds taken in the application under consideration are misconceived and untenable.

It was found that the attempt to delay the hearing and final disposal of this appeal had been a concerted effort on the part of the applicant. The application was dismissed with costs of Rs. 25,000/-, payable to the Environmental Relief Fund constituted under The Public Liability Insurance Act, 1991.

M/s Vadivel Knit Process

Vs.

Appellate Authority, Tamil Nadu Pollution Control & Ors.

Review Application No.1 of 2013 (SZ)

in

Appeal No. 58 of 2012 (SZ)

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

Keywords: shifting of unit, consent fee, review of judgment

Review Application dismissed

Dated: 17 November 2014

The learned counsel for the applicant submitted that the appeal was dismissed on the ground that applicant/appellant did not seek for shifting of his unit, whereas it sought for consent to establish his unit at S.F. No. 3/ 4, 5, 6 and 7of Nallur village of Tirupur Taluk and District without looking into the counter filed by the Tamil Nadu Pollution Control Board (TNPCB) in and by which it was admitted that the applicant/appellant sought for shifting his existing unit from the location at S.F. No. 56, Mudalipalayam village, Tirupur Taluk and District to S.F. No. 3, 4, 5, 6 and 7 of Nallur village in Tirupur Taluk and District. The other ground on which the appeal was dismissed was that the Review Applicant was having a valid consent up to 31.03.1999 of the TNPCB and thereafter, there were no documents indicating whether the Review Applicant applied for renewal of consent. But, the Tribunal had not looked into the document filed by the appellant which divulged that the appellant was an existing unit and was paying consent fee every year until the application for shifting the unit was made in the year 2009. If the unit of the appellant was not an existing unit, the same would have been rejected. Thus, there was a manifest error in the order passed on 16.05.2013 in Appeal No. 58 of 2012 (SZ) and that the appellant sought for permission to shift his unit from the earlier location to a new location was not taken into consideration and hence the judgment had to be to reviewed.

The counsel appearing for the 2nd and 3rd respondents/TNPCB replied that there was a valid consent up to 31.03.1999 and thereafter, no consent was granted though the consent fee was paid till the application was made in the year 2009.

The learned counsel for the 4th respondent submitted that the review application was not maintainable since no ground was shown by the applicant/appellant. The grounds set out in the application were nothing more than the repetition of the old and overruled arguments dealt with in specific detail in the final orders passed in the appeal by the Tribunal. The applicant/appellant could not seek to rehear the appeal. If really aggrieved, he should have appealed against the judgment. The applicant/appellant did not refer to any material error or manifest illegality on the face of the error resulting in miscarriage of justice and hence, the application had got to be dismissed.

The Tribunal was of the considered opinion that the review application had got to be dismissed since the applicant/appellant had not made out any case for review. The grounds on which the judgment made in Appeal No. 58 of 2012 (SZ) were sought to be reviewed by the applicant/appellant was that the applicant/appellant sought for only permission for shifting to his unit in the new place from the old one which was evident from the counter filed by the TNPCB and also the unit of the applicant/appellant was an existing unit since it has a valid consent upto 31.03.1999 and had been paying the consent fee till the application was made in the year 2009.

The Tribunal referred to the decision given in *(1997) 8 SCC 715 in the matter of Parsion Devi and others v. Sumtri Devi and others*. It was said that the applicant/appellant could not maintain the review application since he had sought for the review on the same grounds in respect of which arguments were advanced in full, considered in detail in paragraphs 14 to 17 and answered to arrive at the decision. Thus, the applicant/ appellant had not made out any ground warranting review of the judgment made in Appeal No. 58 of 2012 (SZ) dated 16th May, 2013. Hence, the review application was dismissed. No cost.

Ummed Singh

Vs.

State of Rajasthan & Ors.

Original Application No. 120/2013 (THC) (CZ)

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

Keywords: illegal activities, illegal electricity connection, forest land, Forest Department

Original Application disposed of

Dated: 18 November 2014

The Applicant initially made Respondents No. 1 to 7 as parties and subsequently, as permitted by the High Court, impleaded private Respondents No. 8 to 15. The contention of the Applicant is that illegal mining activities including stone crushing as well as illegal drawing of ground water by obtaining electricity connection to the tube-wells illegally dug up in the forest land, have been going on in the Village Nangal Sultanpur, Tehsil Todabhim, Dist. Karauli.

The Respondents had taken electricity connection illegally from the transformer which has been installed by the Jaipur Vidyut Vitaran Nigam Ltd. (JVVNL) for irrigation purpose in the agricultural land bearing Khasra No. 80 and by using such electricity connection illegally, they are resorting to illegal mining and illegally drawing water by digging bore wells in Khasra No. 5 belonging to the Forest Department. He further contended that the encroachers were also resorting to blasting of the hill-slopes further damaging the eco-system near the village.

It was the case of the Applicant that inspite of the fact that he had brought the aforesaid illegal activities to the notice of the concerned authorities particularly the Forest Department and the JVVNL, no action had been taken.

The private Respondents No. 8 to 15 have filed a combined reply before the Tribunal on contending that people in the village used to draw water from their wells for drinking and irrigation purposes from time immemorial. But since 2008, all the tube wells in the area got dried up which lead to heavy scarcity of water in the whole village which in turn lead to critical position of water for drinking and irrigation purpose. The water table had gone down because of which they applied for electricity connection to draw

water from the tube wells. They further stated that they obtained permission from the concerned department for having electricity connection to the bore wells for drawing the water. No illegal activities had been resorted to and the allegations made by the Applicant were vague and not specific. The Respondent No. 8 to 15 prayed for dismissal of the application.

The Respondents No. 6 and 7 in their reply denied the allegations made by the Applicant. No electricity connection was granted for any mining or stone crushing operations in the vicinity of village Nangal Sultanpur, Tehsil Todabhim, Dist. Karauli. Further, it was replied that the alleged land belonged to the Forest Department and the JVVNL is not concerned with the illegal activities, if any, going on in the forestland. Further, it was stated that whenever any illegal use of electricity was noticed, VCRs had been filed against the concerned persons found to be drawing water from the bore-wells dug up in the forest land.

During the course hearing on 25.02.2014, the Respondents were directed to submit the details of the electricity bills and payments made by them to verify whether the consumers were drawing the electricity legally and as such whether any irregularities had been noticed.

Respondent No. 4 filed a status report indicating the status of forestland in question. He stated that the land in question falls under Khasra No. 5, which is recorded as 'Gair Mumkin Pahar' in the Jamabandi records of the Revenue Department and is a part of Kareri Khanpur Reserved Forest (RF) Block No. 16 Village Nangal Sultanpur, Tehsil Todabhim, Dist. Karauli. The DCF furnished the details of tube-wells/bore-wells located in the agriculture land abutting the forest boundary as well as some illegally dug up bore-wells found in the forest land as per the inspection and as per the forest survey carried out by the officials of Forest and Revenue Departments. It was the contention of the DCF that only after conducting the survey and after correctly locating the forest boundary it was concluded that two bore wells were found illegally dug up inside the forestland. However, both these tube-wells were found in damaged condition which were no longer under use. However, those who dug up these tube-wells had legal electricity connections for the tube-wells situated in their agricultural land but they were illegally using electricity in the past to draw water from the tube-wells located. 4 more tube-wells were found outside the forest and located in the siwai chak land and electricity was drawn to operate the pump sets installed at these tube wells though officially connection was obtained for the bore-wells dug up in their agriculture lands. The DCF further stated in his report that as some of the forest boundary pillars were found damaged by the local villagers clearly shows that the villagers were drawing the water from the tube-wells in the adjacent forest as well as the siwai chak land though presently, as reiterated by the DCF, these tube-wells are in damaged

condition and no longer under operation. The DCF stated that since the water table had steeply gone down the farmers were not able to draw water from the tube wells located their agricultural land and hence, they encroached upon the adjacent forest by defacing the forest boundary over a period of time and siwai chak land where water was available at higher level.

It was further contended by the DCF that the allegations made by the Applicant that illegal mining as well as illegal stone crushing operations were going on in the forest land, are false and unfounded except collection of loose rough stones by the local villagers for their domestic use as well as drawing water from the forest land and 'siwai chak' land for irrigating their fields as the farmers were desperate to draw water since the tube-wells dug up in their agriculture fields had yielded little or no water.

The Counsel for the Applicant was supplied with the copies of the reply/affidavit of the Respondent No.4 who is Officer-In-charge and who filed on behalf of the State i.e. Respondents No. 1 to 5 as well as the reply filed by the Executive Engineer (O&M), JVVNL, Jaipur on behalf of Respondents No. 6 and 7and he was permitted to file rejoinders, if any. However, no such rejoinders have been field by the Applicant. During the last hearing on 16.10.2014 and even on that present day, none had appeared on behalf of the Applicant.

As the Respondent State through the affidavit filed by the DCF, Karauli had clearly stated that there is an encroachment in the forest land as the forest boundary had not been clearly demarcated and due to the fact that the forest boundary pillars got damaged, the State was directed to submit a detailed report as to what action they are taking to protect and restore the forest and prevent further damage. Accordingly, the DCF, Karauli submitted compliance report.

Considering the aforesaid facts and the circumstances, that no commercial mining or stone crushing activity had taken place in the forest land as alleged, by the Applicant and the bore wells dug up in the forest and 'siwai chak' lands were already damaged and no more under use and since the Forest Department had taken up protection and restoration works and also stated that disciplinary action against the negligent & erring subordinate staff was being initiated and all the efforts were being made to enhance tree cover over forest land and to check the illegal mining activities in the forest area and also due to the fact that the Counsel for the Applicant had not contested the averments made by the Respondents though he was given an opportunity, the application was disposed of. However, the Respondent No. 4 DCF, Karauli had to submit compliance report on the progress and completion of works under taken during 2014-2015 financial year before the Tribunal.

Ram Krishna Gaonkar

Vs.

M/s V.M. Salgaonkar & Bros. Pvt. Ltd.

Application No. 79 (THC)/2014

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

Keywords: Monetary compensation, mining activity, Agricultural loss

Application dismissed

Dated: 18th November, 2014

The Applicants originally filed a suit for permanent and mandatory injunction and compensation, in the Court of Civil Judge, Junior Division at Collem-Goa, bearing Regular Civil Suit No.28 of 2014. The suit was transferred to the Court of Civil Judge, Senior Division and was registered as Special Civil Suit No.13 of 2006. The suit was subsequently transferred to the Tribunal by Civil Court Senior Division at Sanguem, for trial. Consequent upon transfer of the civil suit, it was registered as Application No.79 (THC) of 2014, in the Tribunal, under Sections 14, 15 and 18 of the National Green Tribunal Act, 2010.

Case of the Applicant is that the Applicants claim to be co-owners of the property called "MOISSALENTIL XETA" situated at Shigao, talukaSanguem, registered in the land registration office of Quepem under No.2556. The suit property and other properties are divided amongst five brothers by virtue of a partition-deed dated 28th March, 1987. The Respondents have illegally, without their consent and permission have dug a part of the land to the extent of 20/30 meters, deep portion. They started mining activities towards north and east of the Survey No.29/1. In fact, the mine was abandoned ten years ago. Because of illegal activities of the Respondents, loss of agricultural crops and environmental loss has occurred. The Respondents did not remove mining reject dumped around illegal pit, which has been dug at the place. The Respondent Nos. 1 and 2 filed an affidavit in reply. According to them, similar prayer was made before the High Court by the Applicant in the Civil Application No.23 of 2007, which was rejected on 20th December, 2006, confirming the order of Civil Court. It was stated that no environmental issue is involved in the present Application. It was further contended that the Respondents were carrying on mining operation on the basis of a valid lease, but now, validity of lease period is over and all the leases had become defunct. Hence, the Respondents sought dismissal of the Application.

The material question was whether the Application is maintainable in absence of any "substantial environmental dispute" raised by the Applicants. Perusal of the pleadings of Applicants, clearly showed that they sought compensation of Rs.72,000/- per year, being net income from Paddy at the rate of Rs.1800/- per quintal, till mining rejection is removed and the said land was made suitable for Paddy cultivation. That is the main relief for which the suit was filed. Respondent No.1, filed proceedings in the Court of Additional Collector, South Goa, under Section 24(a) of the Minor Miners (Development and Regulations) Act, 1957, read with Section 72 of the Mineral Compensation Rules, 1960. In the said proceedings, the Respondent No.1, was directed to deposit an amount of Rs.13,80,492/- as compensation given to various persons, who were the owners of properties in which mining area was found located. The Civil Court found that the Application of Applicants for injunction was unmerit worthy. It was noticed that the Respondent No.1, was carrying mining activities since year 1987, with consent of occupants of the land. It appeared that Appeal against the order of refusal of temporary injunction, was carried to the High Court of Bombay at Goa. In the said Appeal No.23 of 2007, learned Single Judge held that "there was no merit in the Appeal" and as such it was dismissed.

The case of "*Goa Foundation v. Union of India*", Writ Petition (Civil) 435 of 2012, decided on April 21st, 2014 was also referred to. It was well settled that the issues raised in the present Application were foreclosed due to the said Judgment. Because, mines are closed and the Committee by the Supreme Court, was yet to give report about loss caused to environment. Having regard to all these aspects, the Tribunal was of the opinion that the present Application was not maintainable, inasmuch as the Applicants have only sought recovery of monetary compensation and furthermore, same has already been awarded to them by order of the Collector, in case No.1 of 2006/Mining/ COMP/AC-I dated 26th January, 2006, which was placed on record. The Applicants suppressed these facts and therefore, it was one of the ground to reject the Application. In this view, the Application was dismissed with no costs.

Shri A.R.B. Ram Santhosh

Vs.

The Tamil Nadu Pollution Control Board & Ors.

Application No. 211 of 2014 (SZ)(THC)

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

Keywords: sago/starch production, Red Industry, water contamination, Consent to Operate

Application disposed of

Dated: 18 November 2014

The case of the applicant was that the 3rd respondent Sago Factory which is categorised as Red Industry was situate on the embankment of Thirumanimuthar River at Shevapet, Salem, manufacturing Sago/Starch in large quantities. It had been carrying on the same without consent from the 1st respondent Tamil Nadu Pollution Control Board (Board) all along in the past. As per G.O.Ms. No.213, Environment & Forest Department dated 30.3.1989, the industry should not be allowed since it is a banned one in view of the fact that it is located within 1 km from the embankment of the water body. Though representations were made, the 1st respondent Board had not taken any action whatsoever. The Consent was applied for and obtained for a short period covering 1999-2000. Thereafter, there was neither any Consent to Operate nor its renewal whatsoever till date. But the 3rd respondent had been carrying on its operation which was illegal. Under such circumstances, it became necessary to issue a direction to the 1st and 2nd respondents to initiate action against the 3rd respondent or in the alternative to issue a direction to shift the factory from the place where it was carried on to any other unobjectionable place.

The case of the 3rd respondent was that the industry had been in operation from the year 1967, the necessary applications were made and all along the period the industry had enjoyed the permission from the concerned authorities, the G.O. Ms. No.213 dated 30.3.1989 cannot be applied to the present factual situation since the industry of the 3rd respondent is an existing Unit. Pursuant to the Show Cause Notice, the 3rd respondent had given an undertaking to stop its operation till obtaining consent from the Board. Accordingly, the application for Consent to Operate was made before the Board and the same was pending consideration. Under such circumstances, the application was premature and devoid of merits. It was also the case of the 3rd respondent that the

applicant and the present owner of the 3rd respondent Unit were cousins. The applicant had already filed a Civil Suit for partition which was pending on the file of the Subordinate Judge, Salem and in that suit an interlocutory application was filed seeking an order of injunction to restrain the proprietor of the 3rd respondent from carrying on any constructional activities. Though an order of status quo was made, the same was subsequently vacated and thus, the applicant who failed in his attempt to get an interim order had filed this application as if there existed a case from the angle of environment. Thus, the entire application was devoid of any merits and hence it had to be dismissed.

The 1st and 2nd respondents filed their reply stating that the 3rd respondent applied for the Consent to Establish in the year 1985 and the same was granted in the year 1987. Since it was an existing Unit, the G.O. Ms. No.213 dated 30.3.1989 had no application to the 3rd respondent. When an inspection was made it was found that the effluent was not properly taken outside and it was noticed that the effluent contaminated the nearby water source. Under the circumstances, a Show Cause Notice was issued which brought forth a reply by the 3rd respondent industry on 4.2.2014 along with an undertaking to stop its operation till the safeguard measures were taken and also proper Consent thereon obtained from the Board to operate the Unit on and from that time onwards the 3rd respondent industry was not in operation.

The Tribunal heard the deliberations made by the Counsel to putforth their respective cases. The contention put forth by the 3rd respondent that the application for Consent to Operate was made before the Board on 21.5.2014 which is pending consideration was admitted by the 1st respondent Board. It was quite evident from the submissions made by the Board that as on today the 3rd respondent is not carrying on its operational activities. In so far as the question as to the application of G.O. Ms No.213 dated 30.3.1989 to the present location of the of the 3rd respondent industry, it was kept open and could be agitated by the parties since it was not a juncture where the Pollution Control Board could not be directed not to entertain the application but it would be suffice to issue a direction to the Board to consider the application of the 3rd respondent industry and pass appropriate orders in accordance with law.

Under such circumstances, it was suffice to dispose of the application with the liberty to the applicant to approach the Tribunal if so advised after the decision was taken by the Board on the application seeking for Consent to operate by the 3rd respondent Unit. Insofar as the proceedings pending before the Subordinate Court, Salem and the orders made thereon, they did not arise for consideration and had no reflection on the disposal of this application. There was no impediment to issue a direction to the 1st respondent Board to monitor that the 3rd respondent industry does not carry on any operational activities till the Consent to Operate was given in accordance with law. With the above direction and observation, the application was disposed of. No cost

M/s. Vadamugam Kangayempalayam

Vs.

The Tamil Nadu Pollution Control Board & Ors.

Application No.149 of 2013 (SZ)

And

M.A.No.199 of 2013 (SZ)

M.A.No.221 of 2013 (SZ)

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

Keywords: Impleadment, Construction Activity, SEIAA, Thermal Power Plant

M.A. No. 199 allowed, M.A. No. 221 allowed, Application No. 149 disposed of

Dated: 19 November 2014

M.A. No.199 of 2013 (SZ)

This Miscellaneous Application filed for impleadment of the Secretary, Ministry of Environment and Forests, New Delhi as 5th respondent in the main Application No.149 of 2013. The averments were looked into. The counsel for respondents did not raise any serious objections for impleadment. In view of the reasons adduced, the Miscellaneous Application was allowed. The impleaded respondent was added as 5th respondent in the main Application No.149 of 2013. The Registry was directed to make necessary amendment in the main Application No.149 of 2013.

M.A. No.221 of 2013

This Miscellaneous Application was filed for impleadment of the Chairman, State Environment Impact Assessment Authority, Chennai-600 015 as the 6th respondent in the main Application No.149 of 2013. The averments were looked into. The counsel for the respondents did not raise any serious objections for impleadment. In view of the reasons adduced, the Miscellaneous Application was allowed. The impleaded respondent was added as 6th respondent in the main Application No.149 of 2013. The Registry was directed to make necessary amendment in the main Application No.149 of 2013.

Application No. 149 of 2013

This application was put forth by the applicant seeking an order to restrain the 3rd and 4th respondents from carrying out any construction in Survey No. S.F. No.149, 150, Vadamugam Kangayempalayam Village, Chengapalli, Tirupur District unless or until they complied with all the pollution laws and for other consequential reliefs thereon. On admission, the counsel for the respondents entered appearance and filed their reply. A specific stand taken by the respondents 3 and 4 in the reply was that it was true they proposed to have a Thermal Power Plant in the survey fields and the construction process was yet to commence and thus the application was premature. Pending the application, the respondents 3 and 4 filed an undertaking affidavit to the effect that they would not carry out any construction activities in the said Thermal Power Plant until they get necessary permission from the Tamil Nadu Pollution Control Board. The said undertaking was recorded. Accordingly the application was disposed of. No cost.

M/s. Sri Vari Food Products

Vs

The Chief Engineer Public Works Department State Ground and Surface Water Data Research Centre Tharamani

Appeal No.63 of 2014 (SZ) and M.A.No.271 and 272 of 2014 (SZ)

Judicial and Expert Members: *HON'BLE SHRI JUSTICE M. CHOCKALINGAM, HON'BLE PROF. Dr. R. NAGENDRAN*

Keywords: Metal crushing Unit, Tamil Nadu Pollution Control Board,

Application Disposed of.

Dated: 21st November, 2014

The counsel for the applicant submitted that the applicant's Unit which fell under over exploitation category of water extraction remained closed from the 1st week of July, 2014. In view of the fact that all the machinery and in particular the membranes have got to be preserved and if not done it would cause great prejudice and financial loss to the applicant, a direction was issued to the 2nd respondent, TNEB was directed to reconnect the Electricity 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 was directed to monitor the same. Accordingly, the appeal was disposed of. No cost.

People for Transparency Through Kamal Anand

Vs.

State of Punjab &Ors.

Original Application No. 40(THC) of 2013

And Original Application No. 34(THC) of 2013

And Original Application No. 38(THC) of 2013

And Original Application No. 36(THC) of 2013

And M.A. No. 1082 of 2013

In Original Application No. 106 of 2013

And M.A. No. 232 of 2012 & M.A. No. 233 of 2012

In Appeal No. 70 of 2012

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

Keywords: Bhatinda, Municipal Solid Waste Management, site selection, Environmental Impact Assessment, Environmental Clearances, SEIAA

Application disposed of.

Dated: 25 November 2014

Appeal No. 70 of 2014

This Appeal is directed against the Order dated 30th August, 2012 passed by the State Level Environment Impact Assessment Authority (SEIAA) Punjab, whereby it has accorded Environmental Clearance for establishment of Integrated Municipal Solid Waste Management facility in an area of 20 acre at Mansa road, Bhatinda and establishment of Engineered Sanitary Land Fill facility in an area of 36.8 acres in the Revenue Estate of Village Mandi Khurd, District Bhatinda to Municipal Corporation, Bhatinda Respondent No. 3 in appeal. The Appellants who are residents of Bhatinda are aggrieved from this Order. According to them, the establishment of the above Project will be causing public nuisance and even degrade the environment of the said area. The challenge to the impugned order is primarily on the following grounds :- (a) Site

selection of the project is improper and not in accordance with the rules. (b) There is no green belt provided to protect the interest of public at large. (c) The Project is very close to the inhabitation and thus is violative of the Municipal Solid Waste (Management & Handling) Rules, 2000. (d) There is a distributary canal adjacent to the site of the project and thus is bound to pollute the water. (e) Order suffers from the infirmity of non-application of mind. For these reasons, it is stated that the order dated 30 August 2012 granting environment clearance to the project is unjustifiable, unsustainable and is liable to be set aside.

The Municipal Corporation of Bhatinda - Respondent No. 3 had applied for obtaining Environmental Clearance for the establishment of the project afore stated. It had been asserted by the Applicants that the site, which was for the consideration of the committee is being used as an open dumping, ground for Municipal Solid Waste since 1995, though, unscientific in manner. It is alleged that soil of the said land has become acidic and its pH level has decreased upto 5.48, which is not only permissible but is intolerable.

The Application of Respondent No. 3 was considered by SEIAA. The terms of reference for EIA study were finalised and the Respondent No. 3 was asked to submit draft Environmental Impact Assessment Study after which a public hearing was conducted for both the sites in question. The residents had raised objections, which were duly considered by the committee. Final Environmental Impact Assessment Report was submitted in the month of July 2012 along with the minutes of public hearing as required. According to the Appellant, the objections raised by the residents were overlooked. SEIAA in its 40th meeting held on 17th August 2012 decided to grant Environmental Clearance to the project. Certain queries were raised by Respondent No. 1 which were duly replied by the 6 Respondent No. 3 vide their letter dated 16th February 2012 and thereafter final clearance was communicated to the Respondent No. 3 on 30th August 2012 in relation to both the sites aforestated. Aggrieved from the order dated 30th August 2012, the Appellants invoked the jurisdiction under Section 16(h) of the National Green Tribunal Act, 2010. According to the Respondents, the site selection is in accordance with the conditions of the Notification of 2006. This was being used as a dumping site, now for more than 30 years and it was in the larger public interest and keeping in view the fact that nearly 100 tonnes of Municipal Solid Waste is being generated by the city of Bhatinda. It was necessary to provide project, which will completely eliminate the pollution, resulting from segregation and dumping of Municipal Solid Waste.

Furthermore, when the site was being used for dumping of municipal solid waste, it was certainly not surrounded by residential areas. Subsequently, the 7 constructions

have been raised around the site and the dumping of municipal solid waste also increased everyday with the increase in population

The Tribunal had directed during the pendency of this Appeal that there should be scientific dumping at the site. Pits should be properly covered and disinfectant should be sprayed at regular intervals.

Another significant development that occurred during the pendency of this Appeal is that the Secretary, Local Bodies, Government of Punjab had appeared before the Tribunal and placed on record a 9 model scheme for establishment of such MSW plants in the entire State of Punjab. This project report comprehensively provided for collection and disposal of municipal solid waste in all the cities of State of Punjab which was divided into 8 clusters. Bhatinda was one of such clusters and State Government as a Pilot project has taken it. This report while being considered by the Tribunal, was subjected to the critical examination even by the experts including the persons to whom the project in question was being awarded to. In the Orders that were passed from time to time, various directions were issued. In the Order dated 20th January, 2014, it was noticed that the model Municipal Solid Waste Management Plan 2014 has been filed before the Tribunal by the State. Each step stated in the model plan, supported by the State, was subjected to the critical examination by the Tribunal. Finally the State was directed to file the plan that they proposed to execute within a time bound programe that would ensure that there is no pollution, public nuisance and environmental degradation resulting from the operation of the plant. The State then filed the model action plan of municipal solid waste management.

In response to the objections raised by the Appellants, firstly the site selection was not a mere matter of choice for a project. Admittedly, the entire process had been undertaken and the residents raised their objections, which in the wisdom of the Expert Committee were found to be not sustainable so as to decline the Environmental Clearance in relation to the site in question. The Authority had prayed that the same site should be permitted to be used for developing the project.

Second objection related to providing a green belt around the site as already noticed. The Respondents ensured that the green belt was marked and had already now been provided and trees of different variety had been planted. As far as affecting the water quality of distributary canal is concerned, it was again undisputed that the level of the said canal is higher than the level of the site in question. Furthermore, the Corporation had already constructed a wall around the site towards the distributary canal to ensure that there is no leakage of the leachates from the site in question to the canal. In light of this, it was further directed that the corporation and the awardee of the Project shall

ensure that the wall is properly maintained and is made in a manner that there is no seepage from or to the distributory canal in question.

Lastly, the complaint was that the site is near an air force station. Besides grant of Environmental Clearance in terms of Notification of 2006, the Air Force Authorities had granted no objection to this project.

Contention in relation to the non-application of mind is unsustainable in the facts and circumstances of this case. The EIA report preceded by the public hearing is in compliance to the provisions of Notification of 2006. Thereafter, the EIA was examined by the Committee, which has after examining all the aspects and facts, recommended to SEIAA for grant of 25 Environmental Clearance to the project. Government still again applied its mind between the recommendations by SEAC and issuance of final clearance on 30th August, 2012 by the concerned Authorities in the State Government.

It was directed that no variation to the model action plan will be made by any Authority, Corporation or Project Proponent They shall complete the project as per the schedule. The Tribunal further declined to set aside the Order dated 30th August, 2012. However, the Order shall stand modified to the extent afore indicated to the extent stated in the model action plan and in this order. The Original Applications were disposed of without any order as to costs.

M/s. Holi Drops Packed Drinking Water Company

Vs.

Public Works Department and Ors.

R.A. No.20 of 2014 (SZ)

In Application No.40 of 2013 (SZ) and M.A.No.282 and 283 of 2014 (SZ) Appeal No. 63 of 2014 (SZ) M.A.No.271 and 272 of 2014 (SZ) Application No.179 of 2014 (SZ) M.A.No.273 ad 274 of 2014 (SZ) Appeal No.50 of 2014 (SZ) M.A.No.277 and 278 of 2014 (SZ) Appeal No.55 of 2014 (SZ) M.A.No.275 ad 276 of 2014 (SZ)

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

Keywords: packaged drinking water unit, electricity service connection

M.A. No. 282 allowed, M.A. No. 283 closed, R.A. disposed of

Dated: 26 November 2014

M.A. No.282 of 2014 (SZ)

The Tribunal heard the Counsel for the applicant and also the learned Counsel for the Respondents. In view of the reasons adduced, the application is allowed and the Miscellaneous Application was ordered accordingly.

M.A.No.283 of 2014 (SZ)

This Miscellaneous Application was filed for seeking interim order enabling the applicant's packaged drinking water Unit to carry on its operation. In the opinion of the Tribunal, the said interim relief could not be granted at this stage. The Miscellaneous Application was closed.

Review Application No.20 of 2014 (SZ)

The Tribunal heard the counsel for appellant the respondents respectively. The counsel for the applicant submitted that the applicant's Unit, which fell under over exploitation category of water extraction, was closed from the 1st week of July, 2014. In view of the fact that all the machinery and in particular the membranes were to be preserved and if not done it would cause great prejudice and financial loss to the applicant, a direction was issued to the 3rd respondent to reconnect the Electricity 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 is directed to monitor the same. Accordingly, the Review Application was disposed of. No cost.

H. S. Neelakantappa & Anr.

Vs.

State of Karnataka & Ors.

Application Nos. 267 and 268 of 2013 (SZ)

(W.P. Nos. 47599 of 2011 and 25255 of 2012 of the High Court of Karnataka)

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

Keywords: Karnataka, irrigation project, ground water, Environmental Clearance (EC), limitation period

Applications dismissed

Dated: 1 December 2014

The groundwater level in Tarikere taluk had depleted severely during the past and due to acute shortage of water. The farmers had also held protests against the implementation of the Upper Bhadra Project and on the basis of the representations made by the farmers, the Assistant Commissioner; Tarikere submitted a detailed report to the Land Acquisition Officer about the inconvenience that would be caused to the farmers of Tarikere Taluk due to implementation of the said project. The 1st to 3rd respondents intended to divert the water from Bhadra dam to fill up the tanks in Chitradurga, Kolar and Tumakuru districts on the ground that the same would improve the groundwater level and bring down water scarcity in those districts. Though the 1st to 3rd respondents were aware about the problems faced by the Tarikere taluk, the first respondent passed a Government order No. JaSaEe 152 vibKaKe 2004 (Ba-1) dated 15.09.2008 for implementation of Stage I of Upper Bhadra Project. The 2nd respondent company was incorporated with an objective of expediting Upper Bhadra Project for the purpose of irrigating Chitradurga, Kolar and Tumakuru districts on the ground that the above districts are declared as backward and drought prone areas. The intended project involved lifting of entire 21.5 tmc/ft of water from an altitude of 45 m by using electric power. It is pertinent to specify here that not even a single project of this magnitude had worked either in the State or in the country.

The contention that geological study for canal and tunnel with reference to groundwater conditions is not carried out was incorrect. To allay the apprehension of the people of Tarikere on depletion of ground water due to construction of tunnel, the Government vide GO No. WRD 1 VBE 2008 Bangalore dated 28.02.2009, constituted a

committee which entrusted detailed study with an Expert in the field of hydro-geology. The committee deliberated on all the issues and apprehensions expressed by the people including study of alternatives and submitted its report to the Government on 23.06.2010. The decision in favour of construction of tunnel had been taken in the meeting convened by the Chief Minister on 10.01.2012 with the farmers, elected representatives, and the Government had communicated acceptance of the report of expert committee in its order dated 13.06.2012.

The following points were formulated for decision by the Tribunal:

1. Whether the applications are not maintainable since they are barred by limitation and fall outside the scope, power and jurisdiction of the National Green Tribunal (NGT)

2. Whether the Notification bearing No. JaSaEe 152 VibKaEe 2004(Ba-1) dated 15.09.2008 made by the State of Karnataka is liable to be set aside for all or any of the grounds stated in the applications.

3. Whether the applicants are entitled for a direction to the respondents to drop the entire project, namely, the Upper Bhadra Lift Irrigation for providing water to Tarikere Taluk for irrigation and drinking water purposes

4. To what relief are the applicants entitled to?

Advancing the arguments on behalf of the respondents, the learned counsel submitted that the applications were not maintainable in law because the administrative approval dated 15.09.2008 of the State of Karnataka questioned by the applicants was a policy decision which was within the domain of the executive and not justifiable unless it violated any law or abuse of powers. The applicants had not challenged any Environmental Clearance (EC) or substantial issue relating to the environment or pointed out any violation of the enactments in the First Schedule of the NGT Act, 2010.

The writ petitions were filed in 2011 and 2012, respectively after coming into force of the NGT Act, 2010. Hence, both the applications had to be dismissed on the ground of delay under Section 16 of the NGT Act, 2010. As such, the applications being appeals as contemplated under Section 16 of the NGT Act, 2010 are required to be dismissed without going into the merits of the matter. Even if the applications were treated as proceedings contemplated under Section 15 of the NGT Act, 2010, they would be still barred by virtue of Section 14 (3) which prescribes a limitation of 6 months from the date of cause of action for such dispute. In the instant case, the cause of action was related to the administrative approval dated 15.09.2008 or the statutory approval dated 05.01.2010.

It was further the argument of the counsel that the applicants had chosen to challenge the Government notification dated 15.09.2008 before the High Court of Karnataka which were entirely transferred to the Tribunal finally. The applicants had not chosen to challenge the EC dated 05.01.2010 granted by the MoEF even though they were fully aware of the same.

In terms of the EC, it was the duty of the Project Proponent to submit 6 monthly reports on the status of the compliance to the conditions stipulated in the EC. Such reports were submitted in time. The same had never been objected to by the MoEF. No deviation from the terms and conditions had been noticed. The case of the applicants that there had been infarction and violation of terms and conditions of the EC was hollow and speculative. No material was placed before the Tribunal to substantiate such a contention.

Though the applicants termed the applications as PIL, the writ petitions were filed since certain lands owned by the applicants were acquired for the project. Moreover, to avoid the land acquisition by the State Government, the applicants filed the applications. Such an ulterior motive was evidenced by the fact of delay of over three years in challenging the administrative order. While the writ petitions were pending adjudication, the petitioners/applicants sought transfer of the writ petitions to the Tribunal by giving up all the grounds on which the writ petitions were primarily based.

The learned counsel added that apart from the point of limitation, both the applications had got to be dismissed since the reliefs sought for did not fall within the ambit of substantial question relating to environment as defined in Section 2 (m) of the NGT Act, 2010. The prayer to quash the Government order dated 15.09.2008 passed by the 1st respondent and for direction to drop the entire Upper Bhadra Lift Irrigation Project to provide water to Tarikere Taluk for irrigation and drinking water purpose did not fall within the ambit of the NGT Act, 2010.

In answer to the above, the learned counsel for the applicants submitted that the applicants filed the PIL in the interest of safeguarding of the ecology, farmers and residents of Tarikere and Kadur taluks of Chikkamagalur district. The respondents commenced the work on this project in violation of the EC obtained by the respondents from the Central Government on 05.01.2010, but without procuring approvals under the Forest (Conservation) Act, 1980 and Wildlife (Protection) Act, 1972 causing huge and irreversible damage on the ecology and hence the applications filed before the High Court of Karnataka which were later transferred to this forum. The High Court, Karnataka by an order dated 20.02.2013 stayed all the works of the project in the forest land until forest clearance was obtained. The said order was still in operation.

The arguments advanced by the respondents that the present applications were not maintainable on the ground that challenge was made only to the administrative approval for the Upper Bhadra Project dated 15.09.2008 or a challenge to the EC accorded to the said project on 05.01.2010 would be barred by limitation was false. It had been alleged in Application No. 267 of 2013 that there was a continued non-compliance of the terms of the EC accorded to the Upper Bhadra Project. The reliefs sought for in Application No 267 of 2013 were not only for quashing the administrative order dated 15.09.2008, but also stoppage of the works of the Upper Bhadra Project. The time limit for filing is given in Section 14 (3) stating that it should be filed within 6 months from the date of cause of action arising. Thus, the applications were maintainable and not barred by time since the violation of EC was continuing day by day.

The contention put forth by the respondents that the issue regarding clearance from the National Board of Wildlife under the Wildlife Act would not come under the jurisdiction of this Tribunal since the said Act was not enumerated under Schedule I was baseless because the clearance under Wildlife Act was a specific condition under the EC dated 05.01.2010 which is issued under the EP Act, 1986 which fell within the subject matter of the Tribunal.

The applicants had chosen to challenge the Administrative Order in Notification No. JaSaEe 152 VibKaEe 2004 (Ba-1) dated 15.09.2008 in the year 2011 and 2012, respectively. The MoEF had accorded EC to the 1st respondent for the project in question on 05.01.2010 which was in public domain. Having not challenged the EC dated 05.10.2010 in respect of the project, the applicants came forward to stake as they were aggrieved by non-compliance of the some of the conditions attached to the EC. If the applicants were really aggrieved by the impugned order, they should have preferred appeal before the National Environment Appellate Authority within the period of 30 days under Section 11 of the NEAA Act, 1997.

The contention put forth by the learned counsel for the applicants that the challenge to the administrative sanction dated 15.09.2008 was only a formal prayer as the main prayer in the writ petitions against the continuance of the works for which EC was granted to the project cannot be countenanced. The relief sought for in Application No. 268 of 2013 (SZ) was only to set aside the administrative order and nothing more. In so far as Application No. 267 of 2013 (SZ) was concerned, the relief sought for was a direction to the respondents to drop the entire project of Upper Bhadra Lift Irrigation Project for providing water for irrigation and drinking water purpose. The relief sought for in Clause (a) to set aside the administrative order dated 15.09.2008 is evidently the main prayer and a direction to drop the entire project of Upper Bhadra Lift Irrigation can only be a cause for the first relief.

In view of the finings recorded by the Tribunal, both the applications were barred by limitation. The applications were dismissed. No cost.

Mr. Jeyanidhi, Yesupadham

Vs.

District Collector, District Collectorate

Application No. 249 of 2013

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

Keywords: Pollution, Unlicensed, Consent, Closure, TNPCB

Application disposed of

Dated: 2 December 2014

This application was brought forth by the applicants seeking a direction to restrain the 6th respondent from running a fabrication Unit at No.20, Ambedhkar Street, Naravarikuppam, which, according to them, had been causing pollution of all kinds in the past and in particular the noise generated was unbearable. It was also pleaded that the said Unit had been carried on without necessary permission, license and consent from the authorities. Despite the representations made to the 2nd respondent Tamil Nadu Pollution Control Board, no action had been taken. Under such circumstances, it became necessary for the applicants to approach the Tribunal for necessary relief.

After making necessary inspection, the learned counsel appearing for the Board reported that after making the inspection, Show Cause Notice was issued calling for reply that was followed by the reply. The Board was not satisfied that necessary licence and other things were not obtained by the 6th respondent and thought it fit for closure. Accordingly, the Unit was closed and the operation of the 6th respondent Unit was stopped. Thus, the grievance of the applicants cannot have any more force since the operation of the Unit against whom the allegations were made was stopped. Hence the statement made by the Board was recorded and the application was disposed of. No cost.

Dr. Subhash C. Pandey

Vs.

Union of India & Ors.

Original Application No. 107/2014 (CZ)

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

Keywords: agriculture, standing crops, natural calamity, damaged crops, insurance claim

Application disposed of with directions

Dated: 2 December 2014

The Original Application was filed by the Applicant on the ground that the State of Madhya Pradesh had faced severe hailstorm on 27.02.2014 and 10.03.2014 causing extensive damage to the standing agriculture crops in the State. It was alleged that as a result, the same became unfit for being harvested and the farmers incurred huge losses. It was alleged that the said damaged crops were being disposed of by the farmers by resorting to large scale burning as the same had become useless. It was alleged that as a result of the burning of such damaged crops and also there being dumped into water bodies, it was causing severe environmental pollution both air as well as water, particularly the air pollution It was also alleged that humanitarian issues were also involved since after having spent huge amount of money on the purchase of seeds, fertilizers, pesticides, diesel, etc. by taking loans and having incurred huge losses, the farmers were getting disheartened and there had been many cases of suicides committed by the farmers in despair. It was also brought to the notice of the Tribunal that the farmers were yet to receive the amount by way of crop insurance due to them for similar damages that occurred to their crops in the previous years.

When the matter was heard on 25.04.2014, on the request of the parties a committee was ordered to be constituted to be chaired by the Principal Secretary, Farmer Welfare and Agriculture Development, Government of Madhya Pradesh to consider all related issues such as adverse impact on the standing crops as a result of occurrence of natural calamities and disasters, disposal of such damaged crops as well as burning of crop residue which leads to air pollution and also to suggest better means and practices to be adopted by the farmers for the preservation and protection of environment as well as for the benefit of farmers and for efficient and better management as well as utilization of the biomass in a more productive manner. It was also directed that the Madhya

Pradesh State Pollution Control Board (MPPCB) should constitute a team of scientists to carry out research and collect data on a pilot basis on the effects on the environment particularly on the local ecosystem as a result of burning of crop residue so that the said committee under the chairmanship of the Principal Secretary, Farmer Welfare & Agriculture Development may also take note of the findings based upon the aforesaid research for including in their recommendations.

In the meanwhile, the officials of AIC informed the Tribunal that based upon the surveys conducted on the damage that occurred to the standing crops in the State of Madhya Pradesh assessments had been made and it was found that the standing crops worth Rs. 2976.00 Crores had been damaged during the year 2013.

The Tribunal was of the opinion that since the aforesaid assessment of the damaged crop pertained to the year 2013 and more than a year had elapsed, whether there was any provision in the scheme for grant of provisional relief/compensation to the farmers. The officers from the AIC submitted that there was no such provision. Accordingly, the provisions of the scheme were examined by the Tribunal as damage to the kharif crop of 2013 was still to be paid, not providing any interim relief does not at all mitigate the hardship of the farmers for whose benefit the National Agricultural Insurance Scheme (NAIS) had been brought into force.

The Tribunal requested the attention of the Ministry of Agriculture, Government of India as well as Agriculture Insurance Company of India Ltd. with a view to make crop insurance meaningful for the benefit of the farmers who had suffered loss of their crop, some measures of granting interim relief should be considered so that the farmers in despair do not resort to desperate step of committing suicide. The need was for appointing a competent authority in this behalf who must, within a specified period of time, carry out survey of the affected field of a particular farmer and make his recommendation which in turn, if felt necessary, may be scrutinized at a higher level and relief for the same to the extent of atleast 25% should be liable to be paid within a specified period of time of about 30-45 days.

It was also brought to the Tribunal's notice that under the existing scheme no compensation could be paid till the District was declared as adversely affected when such calamities occur. In this regard preliminary reports submitted by officials at Block level and by block Revenue officials even at Tehsil level should be considered sufficient enough guidelines to provide immediate relief as sometimes such disasters/calamities may be localized and not widespread so as to cover the entire Revenue District. Therefore, the scheme needed to be modified so as to make it more meaningful and to promptly provide relief to the farmers in distress.

During the pendency of the application before this Tribunal, the amount for 2013 had finally been sanctioned for being disbursed to the farmers concerned. However, claims for 2014 were yet to be processed and assessments made and compensation was yet to be decided and paid.

As regards the basic issue pertaining to the impact on the environment as a result of unscientific means adopted by the farmers for disposal of the damaged crop and crop residue by burning the same leading to air pollution, the Committee held its meeting on 06.06.2014 and the report of the Committee with its recommendations was filed before this Tribunal alongwith the affidavit dated 08.07.2014.

On 28.07.2014 the Learned Counsel for the State submitted that the State Government had taken a decision on 25.07.2014 for granting subsidy to the farmers for procurement of "straw reapers". This was necessary as the harvesting of Rabi crop was primarily being undertaken on a major scale which results in a substantial quantity of straw (stem of wheat plant) being left standing in the fields which was generally burnt by the farmers before the field was ploughed and made ready for the sowing of the kharif crop post summer and prior to the monsoon. As a result of such large scale burning of the left over crop residue in the fields, presence of Carbon particles in the atmosphere increases to a considerable extent.

The labour costs had gone up and the farmers were resorting to mechanized way of harvesting. Therefore, the crop residue, which was not collected after the harvesting was done mechanically, was left in the fields and there was no suitable method available for managing the crop residues. It became almost impossible to manually collect the same which in turn gave rise to the same being ignited and put on fire by the farmers before the field can be ploughed back for sowing next crop. Crop residues burning influences atmospheric air quality by emitting pollutants and leads to air pollution. It is in this background that the Government of Madhya Pradesh, after constitution of the Committee by this Tribunal, decided to procure straw reapers for being distributed to the farmers with the harvesters combined for collection of straw so that the same could be used as fodder for animals and thereby reducing the chance of burning.

On 18.09.2014, after hearing the Learned Counsel for the parties, the Tribunal took note of the fact with regard to the manner of implementation of the NAIS after it was submitted that an amount of Rs. 2187.43 Crores had been received and the same would be credited into the respective bank accounts of the farmers through the Nodal Agency. While dealing on the aforesaid issue on 18.09.2014 and after considering the NAIS scheme, the Tribunal recorded that the Scheme will be implemented in accordance with the operational modalities as worked out by the IA in consultation with the Department

of Agriculture and Co-operation. During each crop season, the agriculture situation would be closely monitored in the implementing State / Union Territories. The State / UT Department of Agriculture and District Administration shall set up a District Level Monitoring Committee (DLMC), who would provide fortnightly reports of Agricultural situation with details of area sown, seasonal weather conditions, pest incidence, stage of crop failure (if any), etc.

The State Government was directed to constitute Committees even at the District level and the compliance report for the entire State was to be submitted before the Tribunal within 3 months. The State shall also submit its report by way of compliance on the steps taken pursuant to the decisions taken and recorded in the order dated 25.07.2014 issued by the Ministry of Agriculture, Government of Madhya Pradesh filed on 28.07.2014 as well as the implementation of the recommendations made by the Committee which met on 06.06.2014 and 25.07.2014. The said compliance shall be reported before us on or before 28.02.2015.

With the aforesaid directions, the Original Application No. 107 of 2014 (CZ) stood disposed of along with the pending M.As. The matter was listed for reporting compliance on 4th March, 2015.

Kashinath Jairam Shetye & Ors.

Vs

Manohar Parrikar, Chief Minister of Goa

Application No. 93/2014

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

Keywords: Contempt of Court, Public statement, judicial functioning, Chief Minister, Goa

Application dismissed

Dated: 3 December 2014

This Application was filed by Mr. Kashinath Shetye and two others. They urged for the Tribunal to take cognizance of certain utterances and speeches of the Respondent, which amount to Contempt of the Court. They alleged that the public statements and speeches of the Respondent tantamount to unwarranted imputations against the Judges/Members of N.G.T, which may cause disturbance in the manner of their judicial functioning. The speeches of the Respondent as reported in the local print media dated 2.6.2014 and 11.6.2014 showed that the Respondent criticized the orders passed by the National Green Tribunal (NGT).

The Respondent, as the then Chief Minister of State of Goa, stated that certain orders of the NGT were not in the interest of economic policy of the State. He also stated that he would demand separate Bench of NGT for Goa, because many a times the officers of State Govt. were required to attend the NGT at Delhi and Pune, which did put financial burden on the State Ex-Chequer. Contempt Petition No.8 of 2014, filed in the High Court of Bombay at Goa, by the present Applicants was referred to. By order dated 13th March, 2014, the Division Bench dismissed that Contempt Petition on the ground that suo-motu cognizance of the alleged contempt may not be taken on basis of averments made in that Application. The Applicants were pursuing the same remedy in different forums.

Perusal of the utterances and part of speeches, which are reproduced by the Applicants in their Application, as well as in the print media (Newspapers) even if, are to be prima facie considered, then also it is difficult to say that such remarks/statements tantamount to interference in the work of judicial system or any kind of intention to scandalize the Courts. The utterances or speeches of a Chief Minister, must be considered in the

background of his 'intention' in order to find out whether he desired to weaken the Authority of Law and Majesty of the Courts.

It is only when a party is found to be disrespective and have intentionally disobeyed, disregarded the directions/orders of the Tribunal, or has/have committed contempt by undue criticism, so as to lower down image of the Judiciary in esteem of the public with ill-intention, such action is warranted. The Respondent should have taken care in the public speeches to use the words, as like statesman instead of a popular leader of a group, since his position was that of a Chief Minister. The Tribunal was hopeful that the Respondent would take caution in future, while criticizing any other pillar of the democracy. With these observations, the Application was summarily dismissed.

M/s. Arunasri Blue Metals

Vs.

Tamil Nadu Pollution Control Board & Ors.

Application No. 115 of 2014 (SZ)

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

Keywords: Consent to Establish, electricity connection, TNPCB

Application disposed of

Dated: 3 December 2014

This application was filed by the applicant seeking a direction to quash the order dated 26.2.2014 passed by the 2nd Respondent, Tamil Nadu Pollution Control Board, whereby the application made by the applicant herein seeking Consent to Operate the stone crushing Unit was rejected along with a direction to the Board to consider and grant Consent to Establish afresh. In the last hearing, after hearing the counsel for both sides and in appraisement of the facts and circumstances the Tribunal felt no impediment for the applicant for making a fresh application before the Board and a direction was also issued to the Board to consider the application on merits and in accordance with law and pass suitable orders thereon within a period of one month from the date of filing of the application. Subsequent to the said order dated 13.10.2014, the applicant made a fresh application before the Board which was considered and the Consent to Operate was granted by an order dated 5.11.2014. A copy of the order was placed before the Tribunal and the same was also perused and recorded. At this juncture, the counsel for the applicant submitted that subsequent to the Consent to Operate it was necessary for the 3rd respondent, Tamil Nadu Electricity Board to give Electricity Service Connection thereon, but they had not done it so far. In order to avoid the avoidable delay, it was suffice to record the statement made by the counsel that the consent on the application made by the applicant to operate the Unit was given on 5.11.2014 was recorded along with the directions to the 3rd respondent to restore the Electricity Service Connection to the Unit of the applicant. Accordingly, the application is disposed of. No cost.

M/s. Bhagawandoss Blue Metals

Vs.

Tamil Nadu Pollution Control Board & Ors.

Application No. 119 of 2014 (SZ)

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

Keywords: Consent to Establish, electricity connection

Application disposed of

Dated: 3 December, 2014

This application was filed by the applicant seeking a direction to quash the order dated 26.2.2014 passed by the 2nd Respondent, Tamil Nadu Pollution Control Board, whereby the application made by the applicant herein seeking Consent to Operate the stone crushing Unit was rejected along with a direction to the Board to consider and grant Consent to Establish afresh. In the last hearing, after hearing the counsel for both sides and in appraisement of the facts and circumstances the Tribunal felt no impediment for the applicant for making a fresh application before the Board and a direction was also issued to the Board to consider the application on merits and in accordance with law and pass suitable orders thereon within a period of one month from the date of filing of the application. Subsequent to the said order dated 13.10.2014, the applicant made a fresh application before the Board which was considered and the Consent to Operate was granted by an order dated 5.11.2014. A copy of the order was placed before the Tribunal and the same was also perused and recorded. At this juncture, the counsel for the applicant submitted that subsequent to the Consent to Operate it was necessary for the 3rd respondent, Tamil Nadu Electricity Board to give Electricity Service Connection thereon, but they had not done it so far. In order to avoid the avoidable delay, it was suffice to record the statement made by the counsel that the consent on the application made by the applicant to operate the Unit was given on 5.11.2014 was recorded along with the directions to the 3rd respondent to restore the Electricity Service Connection to the Unit of the applicant. Accordingly, the application is disposed of. No cost.

Mr. L. Chelladurai

Vs.

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

Application No. 41 of 2013 (SZ)

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

Keywords: Unlicensed, Consent To Establish, Consent to Operate, Pollution, TNPCB

Application disposed of

Dated: 4 December 2014

Pleaded case of the applicant was that the 4th respondent, M/s. Zion Iron Steel Works had been carrying on its operation without any permission, licence or Consent to Establish and Consent to Operate. The 4th respondent Unit had been causing pollution of all kinds, in particular high levels of noise. Despite a number of representations made, the authorities did not take any action whatsoever. Under the circumstances, there arose a necessity to approach the Tribunal with this application. In answer, it was submitted by the learned counsel for the 1st respondent that it was true that the 4th respondent had been carrying on the Unit without consent of the Tamil Nadu Pollution Control Board or any permission from the local bodies. Pursuant to several complaints given, a Show Cause Notice was given which was followed by a reply and in view of the fact that there was no Consent whatsoever, the authorities of the Board sealed the Unit on 2.12.2014. It was brought to the notice of the Tribunal not only by submission by the counsel for the Board and for the local authorities, but also by an affidavit that the Unit had been sealed. Under the circumstances, it was suffice to record the affidavit since nothing further survived in the matter to pursue. However, the 1st respondent was directed to monitor that the 4th respondent Unit shall not carry on any activities whatsoever without the necessary permission or licence, as required by law. Accordingly the application was disposed of. No cost.

Rashtriya Bhrastachar Nirmulan Prarishad

Vs.

State of Haryana & Ors.

Original Application No. 138 of 2014

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

Keywords: Deficiencies, Bio-Medical Waste, Haryana Pollution Control Board

Application disposed of

Dated: 5 December 2014

The Learned Counsel appearing for Respondent No. 3 submitted that the unit of the said respondent was inspected by a Joint Inspection team consisting of Haryana Pollution Control Board and Central Pollution Control Board. They had noticed certain deficiencies in their report dated 23rd May, 2013. The deficiency pointed out in their inspection report had been by the said Respondent. It was also brought to notice that vide order dated 4th September, 2014, the bank guarantee furnished by the Respondent for a sum of Rs. 5 lakh stood encashed for which the Respondent took legal remedy in accordance with law.

Without prejudice to the right and contention of the parties, this application was disposed of with the direction to Respondent No. 3 to provide a GPS System on the vehicles carrying bio-medical waste forthwith, if not already provided. It also had to carry out all the deficiencies and make good the deficiencies pointed out in the letter dated 4th September, 2014 within one week. The Learned Counsel appearing for the Respondent No. 3 submitted that they had already complied and rectified the deficiencies already pointed out. If the deficiencies persisted or other deficiencies were found by them including deficiencies in compliance of Bio-Medical Waste (Management and Handling) Rules 1998, Respondent No. 3 should be closed and would not be permitted to operate without specific orders of the Tribunal. If upon inspection no deficiency or irregularity was noticed, the joint inspection team would submit a report to the Tribunal and the unit should be permitted to carry on its activity in accordance with law. The Haryana Pollution Control Board shall also submit the status of consent in relation to the unit in question. With the above direction main Application No. 138 of 2014 was finally disposed while leaving the party to their own cost.

Vimal Bhai

Vs.

Japee Associates & Ors.

M.A. No. 982 of 2013

In

Original Application No. 322 of 2013

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

Keywords: Dumping, Muck/debris, River Bed, Dumping site, flash flood, Environmental Clearance

Applications disposed of

Dated: 5 December 2014

Original Application No. 322 of 2013

The only prayer in this Application was to issue directions to the Respondent/Project Proponent to stop dumping of muck or debris and to remove the muck already deposited in the river bed or any other site which is not a designated site for dumping. Further the Respondent to prepare a plan for that purpose. The common stand taken by the Respondents including the Project Proponent is that there was no muck dumped or deposited by them in the river bed and it was as a result of flash flood that occurred in the month of June, 2013 and as a result thereof some muck had got collected on the riverbanks. They further stated that they had removed the muck and deposited the same at the site, which was fully identified by the State Authority and the Committee constituted. It was contended that the Project Proponent had got Environmental Clearance for the original project and had dumped muck after removing, at the site duly identified by the State Government. It was undertaken by the State and the Project Proponent that if any muck was dumped on the river bed near the site of the Project Proponent it would be removed by the Project Proponent within one month from that day and the same would be dumped or deposited only at an approved site as may be declared by the State Government in consultation with MoEF. No dumping would be provided on the river bank. After one month the representatives of the CPCB, MoEF and Uttarakhand Pollution Control Board would inspect the site. The inspection date

would be informed to the Applicant who would be at liberty to be present at the time of inspection. They shall submit a report to the Tribunal. If the above directions wee not carried out, the Applicant could revive the Application or file a fresh Application as the case may be. With the above directions, the Original Application No. 322 of 2013 was disposed of without any order as to costs.

M. A. No.982 of 2013

This Application did not survive for consideration as the main Application itself stood disposed of. Consequently, M. A. NO. 982 of 2013 was disposed of.

Slaughter House at Ghosipur, Meerut

Vs.

State of U.P. & Ors

Original Application No. 169(THC) of 2014

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

Keywords: slaughter house, Uttar Pradesh Control Board,

Application disposed of

Dated: 5 December 2014

Learned counsel appearing for Uttar Pradesh Pollution Control Board had filed a copy of the inspection report conducted on 10th September, 2014. It was shown in the report that the slaughter house was lying closed since 16th January, 2013. In light of the above this Application was not needed to be kept pending before the Tribunal any longer. Further before parting with the file, SP and Station House Officer, Ghosipur, Meerut, Uttar Pradesh who are incharge of the area, was directed to ensure that the slaughter house would not be permitted to operate in any manner whatsoever and does not discharge any effluent in any form whatsoever, without specific Order of the Tribunal. In view of the above report and subject to the Order afore-indicated, the Original Application No. 169 of (THC) of 2014 stood disposed of while leaving the parties to bear their own cost.

Mr. N. Sankara Narayanan

Vs.

Union of India & Ors.

Application No. 294 of 2014 (SZ)

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

Keywords: Common Effluent Treatment Plant (CETP), subsidy

Application rejected

Dated: 9 December 2014

The case of the applicant was that the 11th respondent, the District Environmental Engineer, Namakkal District advised the owners of the Dyeing Units to form a Company to establish a Common Effluent Treatment Plant (CETP). He has also informed them that after forming so to approach the Central Government for subsidy of 25% and State Government subsidy of 50% to establish the CETP. The said advice was given which was published in the daily news paper. The 1st respondent, Union of India was the authority to authorise to allocate 25% subsidy with respect to the aforesaid CETP. It would be seen there was sheer violation of the Polluter Pay Principle as upheld by the Supreme Court of India and notice was issued. Thereafter it should be injuncted by way of permanent injunction to be issued by the Tribunal since it was allowed and it would be nothing but parting with the tax payers money which was revenue.

The Tribunal was of the opinion that the application had got to be rejected at the threshold since it was not a fit case for admission for more reasons, firstly, in the instant case, it was pleaded case of the applicant, the District Environmental Engineer, Namakkal shown as 11th respondent had advised the owners of the dyers Unit to establish CETP which cannot be in any way to be taken as against law. Secondly, it was further pleaded that they could approach for subsidy of 25% from the 1st respondent and 50% from the 2nd respondent, State Government. It was also further averred that they approached such subsidy were paid and it would be only from the sharing of the revenue of the public. Hence it should be injuncted. From the averments and submissions made by the counsel, it would be quite clear nothing had taken place yet. It was only an advise as if alleged by the applicant was the cause of action for applicant and hence it had got to be rejected on the ground that it is a premature and thirdly, even if such subsidy was granted in future it would not fall within the jurisdiction and ambit of the Tribunal. Under the circumstances, the application was rejected.

State Bank of India

Vs

Goa State Pollution Control Board & Ors.

Appeal No. 23/2014

With

Application No. 103 of 2014

M/s Axis

Vs

Goa State Pollution Control Board & Ors.

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

Keywords: hazardous waste, Hazardous Management (M & H) Rules, 2000, possession of hazardous material

Appeal and Application disposed of

Dated: 11 December 2014

By this Appeal filed under Section 16 of the National Green Tribunal Act, 2010, direction issued by Goa State Pollution Control Board (GSPCB), vide order dated 5.6.2014, was impugned by the Appellant – S.B.I.

M/s Sunrise Zinc Ltd borrowed certain amount from Appellant - S.B.I. for its industrial unit. M/s Sunrise Zinc Ltd started production of zinc ingots using zinc dross as raw material along with zinc-ash. There was no dispute about the fact that the chemical hazardous material, zinc-ash, was generated after the process of final production of zinc ingots. Goa State Pollution Control Board (GSPCB), granted consent to operate to M/s Sunrise Zinc Ltd on 22nd May,2007 for a period of two years. M/s Sunrise Zinc Ltd got itself in financial crisis and affairs were taken over by the creditor – Appellant – S.B.I. The factory premises and estates were sealed under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. The immovable properties of the factory unit were auctioned and sold in favour of M/s Axis – the Respondent No.6 by the Authorized officer on 18th April, 2011

and the possession thereof was delivered to M/s Axis. M/s Axis thereafter submitted an Application to GSPCB on 1st March, 2012 for grant of consent to establish the unit for manufacturing bricks & blocks etc. on the property which was purchased in that auction. Hazardous wastes generated at unit of the Company, was stacked at the open land styled as 'L-2' in the estate which was found during visits of GSPCB who gave Notices to the Respondent No.8, and specifically to the Appellant, auction purchaser, as well as the Respondent No.8, for the purpose of taking due care and protection of the stacked hazardous waste and ensure that the hazardous wastes is duly covered, transported and properly dealt with.

The questions that arose for determination in the appeal, were as follows:

i) Whether the Appellant is legally responsible for any kind of legal action of hazardous waste as directed under the impugned order?

ii) Whether the impugned order can be challenged in any manner by the parties except the Appellant, who have not preferred any Appeal i.e. the Respondent Nos.2 to 5 and 8, as well as the Respondent No 7?

Re: Issues (i) & (ii): Respondent No.7, failed to appear before the Tribunal, notwithstanding the fact that the Respondent No.7, was also served with a Notice by the GSPCB and by the Appellant- SBI. Learned Counsel for the Appellant submitted that the amount paid so far would not be claimed back from the GSPCB, though liberty may be granted to take further action for recovery, if any, from the borrowers or other parties, as may be permissible under the Law. He further submitted that SBI will not be liable for any further payment, in respect of expenses required for protection of hazardous waste or disposal thereof, since hazardous waste was no more in possession of SBI. Learned Advocates for other Respondents submitted that in this Appeal the liability imposed against them also should be determined, inasmuch as they are the bonafide purchasers and must be protected under Section 41 of the Transfer of Property Act. They submitted that they were not liable in any way for legal action taken by the GSPCB, because the officers of GSPCB were aware about stack of hazardous waste, which was kept on the site (L-2), within premises of the industrial unit. But, there was failure to remove the same by the GSPCB and disposal thereof, in accordance with the Rules. So far as question of liability was concerned, it was important to examine purports of Rule 4(1), of the Hazardous Management (M & H) Rules, 2000, which clearly indicates who will be responsible for handling of the hazardous wastes.

Sub-Rule (1) of Rule-4 makes the occupier as responsible person, forever, for environmentally sound handling of the hazardous wastes generated in his establishment. The expression 'occupier' as used in Rule (3) (q), covers a person who has control over affairs of the factory or the premises and includes stock of hazardous

waste, the person in possession of the hazardous waste. Still, however, last line of this Sub-Rule (q) of Rule-3, reveals that it gives inclusive definition of the word 'occupier' and clarifies that it includes a person who is in possession of the hazardous waste. In the context of responsibility attributable to the person in possession of the hazardous wastes, there is no contrast between the definitions inasmuch as Rule 4(1), particularly relates to responsibility attributable to such person, whereas, the Rule (3) (q) is of general nature and has no nexus with responsibility of handling the hazardous wastes and consequences, which are outcome of mishandling, improper handling or any penal nature arising out of accident, which may arise due to spillage of hazardous wastes.

In the result, the impugned order was directed to the extent of directing the Appellant to bear with the costs, however, maintained in accordance with the statement made by learned Counsel for the Appellant, with liberty to the Appellant to take any action against the parties, (except GSPCB), liable to pay the same, in accordance with the Law and as may be permissible under the Law. The direction to take out criminal action taken against the Appellant is set aside.

The Appellant would not be liable for any further monetary expenditure required to be incurred for disposal of the hazardous wastes and the GSPCB, may take immediate steps to dispose of the hazardous wastes. The Main ApplicationNo.103 of 2014 as well as Misc Application are also disposed of and the parties are at liberty to take up the issue, if so survived in their opinion. The Tribunal requested the Chairman and the Managing Director of SBI to consider principles of responsible financing and also, incorporation of environment and social governance principles in functioning of financial institutes and for integrating the same in their operational protocol and also due diligence procedures to avoid such instances in future.

Accordingly, the Appeal No.23 of 2014 and Application No.103 of 2014, along with Misc Applications in these matters were disposed of. No costs.

Harish Vyas

Vs

Union of India & Ors.

Original Application No. 56/2014 (THC) (CZ)

Original Application No. 106/2014 (THC) (CZ)

Original Application No. 156/2014 (THC) (CZ)

Original Application No. 310/2014 (THC) (CZ)

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

Keywords: mining lease, renewal of lease, Tonk District (Rajasthan), Aravalli Hills

Applications disposed of

Dated: 15 December 2014

Four Writ Petitions filed by the Petitioner, Shri Harish Vyas, before the High Court of Rajasthan, Jaipur Bench were transferred to National Green Tribunal, Central Zone Bench, Bhopal as ordered by the High Court on 11th Feb., 2014 pursuant to the judgment of the Supreme Court of India dated 9th August, 2012 passed in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 32. On transfer, they were registered as Original Application Nos. 56/2014, 106/2014, 156/2014 and 310/2014 respectively and since all these 4 Applications pertain to the issue of granting Mining Lease (in short 'ML') in Khasra No. 16/66 Niwai Reserved Forest Block of Tonk Forest Division, Rajasthan for mining Silica sand to the Petitioner (Applicant), they are dealt together.

The Applicant, aggrieved by the letter dated 12.09.2007 of the Chief Conservator of Forests (CCF) (Central), MoEF Regional Office, Lucknow addressed to the Chief Secretary, Government of Rajasthan informing that the Supreme Court of India on 08.04.2005 had ordered for restraining mining in any area of Aravali Hills falling in the State of Rajasthan where permissions had been accorded after 16.12.2002 and inspite of this order, Shri Harish Vyas, the Applicant herein, had been permitted to do mining in Tonk District of Rajasthan, filed the Writ Petition. It was further stated in the letter of the CCF that the said mines be immediately stopped and the list of officers responsible for issuing illegal orders may be submitted to the MoEF, Regional Office (Central).

The contention of the Applicant was that Mining Lease bearing ML No. 16/1966 for mining the mineral silica sand in Niwai Forest, Tonk Forest Division was registered in his favour for a period of 20 years commencing on 23.07.1969. Accordingly, he did the mining in the area for 20 years without any irregularities. The Applicant stated that he had applied for renewal of the ML after expiry of the 20 years lease period in 1989 and that renewal was granted for a further period of 10 years by the Mines & Geology Department, Government of Rajasthan with effect from 23.07.1989. Subsequently, he applied for renewal vide application dated 31.03.1998 with regard to permission for diversion of forest land to the extent of broken up area and additional area for approach road, and when the application was pending under the Forest (Conservation) Act, 1980, he applied for second renewal on 15.07.1998.

Original Application No. 56/2014 11

The facts that gave rise to this petition are that the ML No. 16/1966 for mining Silica sand in Niwai Forest Block of Tonk forest division, was applied for by the Applicant and the lease came to be granted in July, 1969 for 20 years. On expiry of the lease period on 22.07.1989, the Applicant applied for renewal and was granted the first renewal by the Mines and Geology Department, Government of Rajasthan for a period of 10 years from 23.07.1989 to 22.07.1999. It was submitted that in the meanwhile, the Forest (Conservation) Act, 1980 had been promulgated and had been brought into force and there had been judicial apprehension and order from the Supreme Court with regard to the grant of mining leases in forest areas. It was alleged that despite the aforesaid, the Applicant continued his mining operations in the forest area. However, the Applicant claimed that he moved an application on 31.03.1998 seeking permission for renewal of the ML under the Forest (Conservation) Act, 1980 to the extent of broken up area and some additional area for the approach road. It was submitted that while the said application remained pending, the Petitioner's mining lease became due for second renewal and as such he claims that he applied for the same vide application dated 15.07.1998.

Subsequent to the aforesaid letter the renewal agreement was made with Assistant Mining Engineer, Tonk on 26.06.2005 for a further period of 20 years with effect from 23.07.1999. On 20.12.2010, the Chief Conservator of Forests, MoEF, Regional Office, Central Region, Lucknow wrote a letter to the DFO, Tonk and Assistant Mining Engineer, Tonk, Rajasthan, drawing their attention to the condition No. 10 of the aforesaid letter dated 23.09.2002.

The DFO, Tonk issued the impugned letter dated 20.01.2011 to the Applicant asking him to stop the mining operations in the forest land as per the order of the MoEF, Regional Office, Central Region, Lucknow dated 20.12.2010 which had been challenged by the

Applicant. The High Court vide order dated 10.02.2012, came to the conclusion that under the initial application submitted by the Applicant in 1998, the same pertained only to the period of the subsisting lease up to 22.07.1999 only and thereafter, the permission granted vide letter dated 23.09.2002 by the MoEF, Government of India and Condition No. 10 thereof must be construed as pertaining to the period from 23.07.1989 to 22.07.1999 only in the light of the fact that in 1980, the (Forest Conservation) Act had come into force and it was therefore incumbent at the time of granting renewal in 1989 to seek the permission of the MoEF in accordance with the provisions of (Forest Conservation) Act 1980 and rules made thereunder.

The Tribunal was in agreement with the aforesaid view expressed by the High Court, Rajasthan. However, the Learned Counsel for the Applicant contended that as per his original application submitted on 31.03.1998, recommendation was for renewal also and the stand of the MoEF, Regional Office Lucknow vide their letter dated 20.12.2010 interpreting Condition No. 10 of the letter dated 23.09.2002 as "*the lease period of mines has already been expired therefore the diversion of forest land period is co-terminus with lease renewal period. Further, mining lease cannot be renewed without prior approval of diversion of forest land under the Forest (Conservation) Act, 1980 from the Central Government*" was a misreading of the Condition No. 10 imposed in the letter dated 23.09.2002 read with the aforesaid recommendation made in the noting on the file of the MoEF.

The Tribunal did not agree with the aforesaid submission of the Applicant. At the time when the application was submitted in March 1998, it was only a question of grant of ex-post facto sanction for the period of the renewal from July 1989 to July 1999. Though, the Applicant contended that in the said application it was mentioned "for subsequent period as per rules", it was clear that grant of permission under the Forest (Conservation) Act, 1980 under letter dated 23.09.2002 particularly under Condition No. 10 which stated that permission, was being granted to be co-terminous with the period of lease and that no renewal would be made of the Mining Lease without prior permission from the Central Government under the Forests (Conservation) Act, 1980.

According to the Tribunal after 1989, there was no valid renewal of ML until the time the letter dated 23.09.2002 was issued as Forest (Conservation) Act came into force in 1980 itself. It was evident that the renewal of the ML was made on 24.06.2005 when the lease was executed. It was further stated that an area of 7.89 hectares for mining and an area of 0.56 hectares for approach road (total 8.45 hectares) being the forest land required to be diverted in accordance with the letter dated 23.09.2002. It was clearly visualised that for subsequent renewal with effect from 23.07.1999, 8.45 hectares was again required to be diverted and therefore, the contention of the Applicant that the MoEF letter dated 23.09.2002 giving permission for renewal of the lease on the basis of

the diversion of 8.45 hectares of forest land was sufficient and applied to the period from 23.07.1999 to 22.07.2019, was incorrect.

The Tribunal agreed with the views expressed by the Learned Single Judge in the order dated 10.02.2012 and the order of the MoEF and the order of the DFO dated 20.01.2011. As on 24.09.1998 the question of renewal beyond 22.07.1999 had not at all arisen and the case under consideration was only for the period from 1989 to 1999. Moreover, it is a settled law that notes on the file are for the internal working of the Department only and whatever is the decision taken, it is on the basis of the order finally issued which in question was the order dated 23.09.2002 containing the Condition No. 10 which was explicit and made it necessary for the Applicant to have sought permission for subsequent renewal with effect from 23.07.1999 based upon the provisions of the Forest (Conservation) Act. The Supreme Court of India on 08.04.2005 in I.A.Nos. 828, 831, 833, 834, 1310, 1331, 1332 had ordered for restraining mining in any area of Aravali Hills falling in the State of Rajasthan where permissions had been accorded after 16.12.2002 and therefore as the ML period had already expired on 22nd July 1999 and there was no subsequent renewal of the ML and since it was not under subsistence as on the cut off date fixed by Supreme Court i.e. 16.12.2002 and since the above order of the Supreme Court was applicable in this case as the ML site was falling in Aravali Hills the question of renewal of ML did not arise and the issue required independent consideration.

Accordingly, the renewal agreement made on 23.06.2005 as per the order dated 02.06.2005 of the Director, Mines & Geology, Rajasthan for granting renewal for the claimed 2nd extension period of 20 years from 23.07.1999 to 22.07.2019 was bad under law. Accordingly, the Original Application No. 56/2014 filed by the Applicant challenging the order dated 20.01.2011 of the DFO, Tonk, was disposed of. Since, the Original Applications No. 106/2014, 156/2014 and 310/2014 were the offshoot of the main petition (O.A. No. 56/2014) and as the main petition was disposed of no interference was called for in any of the Original Applications and accordingly Original Applications No. 106/2014, 156/2014 and 310/2014 also stood disposed of.

Mr. Shanmugam

Vs.

The Chairman, Tamil Nadu Pollution Control Board & Ors.

Application No. 250 of 2013 (SZ)

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

Keywords: Electricity, Disconnection, Electric Service Connection, TNPCB

Application disposed of

Dated: 15 December 2014

This application was brought forth by the applicant seeking a direction to the 3rd and 4th respondents to comply with the directions given by the 1st respondent, the Tamil Nadu Pollution Control Board (Board) in its proceedings dated 29.10.2013. The only grievance of the applicant in the application was that the direction issued to the 3rd and 4th respondents to disconnect the Electric Service Connection given to the 53 stone crushing Units and 4 mixture Units functioning in and around Thiruneermalai area was not given effect to and hence it became necessary to approach the Tribunal. It was represented by the counsel for the 1st and 2nd respondents Board that it was true on inspection, violations by the above crushing and mixture Units were noticed which necessitated an order of closure made by the Board on 29.7.2013 and further directions were issued to the 3rd and 4th respondents to disconnect the Electric Service Connection available to those Units. It is submitted by the learned counsel for the 3rd and 4th respondents that on receipt of the order of the Board the Electric Service Connection was disconnected on 16.8.2013 and 17.8.2013 and thus according to the counsel, it was not correct on the part of the applicant to state that the orders of the Board were not given effect to. The above factual position was well admitted by the counsel for the applicant and thus it was quite clear that when the application came to be filed on 22nd September 2013, the applicant had no case to make before this Tribunal and hence it would suffice to dispose of the application. Recording the submissions made by the counsel for the applicant, the application was disposed of. No cost.

Mr. V. Vekateswararlu

Vs.

The Secretary to Government, Housing and Urban Development Department & Ors.

Application No. 272 of 2013 (SZ)

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

Keywords: Injunction, Formation Of approach road, Water course

Application disposed of

Dated: 16 December 2014

The applicant herein a native of Kuttambakkam brought forth this application seeking a direction to restrain the respondent authorities from proceeding with laying an approach road for the formation of Thirumazhisai Satellite Township in an extent of 12.65 acres in the water course poramboke lands in Survey Numbers mentioned in the application alleging that if permitted it would affect the water course which is the only source of water for many of the villagers and would also result in environmental degradation. The only question that arose was whether the applicant was entitled for an injunction as asked for in the application.

An affidavit filed by the 2nd respondent indicated that the Thirumazhisai Satellite Town scheme was situate far away from the main road and there was no proper access to approach the lands. Hence, the 2nd respondent decided vide Board Memo No.TC3/36797/2013, dated 10.12.2013 to lay a temporary approach pathway to Thirumazhisai Satellite Township to provide access for men and materials. Though it was originally proposed to lay a temporary approach pathway to a length of 947 m later during the execution it was found that the path way was only to a length of 403.3 m only is required. RCC Hume pipes were installed in the required places for allowing the free flow of water. From the submissions made, it was quite evident that this was only a temporary approach pathway in order to have the formation of levelled approach road. Hence, the contention put forth by the applicant side that the water body was likely to be interfered with and thus the degradation of the environment and ecology was likely to be caused cannot not be countenanced. The 2nd respondent also filed an undertaking affidavit that they would remove the temporary approach pathway immediately after the completion of 100 feet approach elevated corridor work.

It was brought to the notice of the Tribunal that the respondent installed RCC Hume pipes in the required places for the flow of water. Above all, the undertaking given by the 2nd respondent for the removal of the temporary approach pathway immediately after completion of the 100 feet elevated corridor work would suffice and hence the apprehension of the applicant is partly unfounded and partly answer is given by the respondents undertaking. Recording all the above, the application was disposed of. No cost.

Aleixo Arnolfo Pereira

Vs.

State of Goa & Ors.

M.A. No. 24/2014

M.A. No. 165/2014

Application No. 03/2014

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

Keywords: Temporary Seasonal Structures, Beach Shacks, CRZ Area, Shack Policy, Precautionary Principle

Application partly allowed with directions

Dated: 17th December, 2014

Applicant, Aleixo Arnolfo Pereira filed this Application challenging permissions granted by Respondent No.1 i.e. the Directorate of Tourism, State of Goa and Respondent No.3, Goa Coastal Zone Management Authority (GCZMA), allowing raising of temporary beach shacks and temporary huts in private properties, around villages Mazorda and Utorda. Applicant also prayed for suspension of permission granted for temporary shacks and temporary huts in the private properties by the Respondent No.1, in CRZ areas, under the shack policy of State of Goa.

Briefly stated, case of Aleixo is that the "Tourism Policy for erection of temporary seasonal structures, beach shacks, huts and others 2013-2016," in State of Goa, commonly known as 'Shack Policy', envisages granting of permission to the beach shacks and huts by the Tourism Department, which is in contravention to the CRZ Regulations, 2011. Aleixo submitted that CRZ Notification 2011 empowers only GCZMA to regulate permissible activities in CRZ areas. Aleixo further alleged that under the disguise of shack policy, the Respondent No.1 had usurped powers of regulatory authorities available only under the CRZ Notification to grant permissions to the beach shacks and huts in CRZ areas. Aleixo stated that as per Notification for constitution of GCZMA, GCZMA is required to regulate permissible activities as per approved Coastal Zone Management Plan (CZMP) by following due process, as per Rule 4.2 and after examination of the proposals recommend the proposals for approval of MoEF, as shacks/huts are not covered under the EIA Notification 2006. Aleixo further

alleged that GCZMA, though is responsible for enforcement of CRZ Rules and also, to ensure that the coastal environment in the State is protected, GCZMA, has not properly examined and appraised the proposals on various grounds.

The Respondent No.1 submitted that shack policy had been framed only after approval from the Goa Coastal Management Authority (GCZMA), which was the concerned regulating, and monitoring authority for coastal belt of the state. The Respondent No.1 further submitted that this policy had been approved by the High Court of Bombay at Goa, in PIL No.9 of 2011, tagged with the Writ Petition No.167 of 2007 and High court had even given liberty to any citizen to challenge independently any provision of the policy or infringement of any individual rights and in view of aforesaid, judicial Dictum there were several Petitions filed before the High Court of Bombay at Goa. The Respondent No.1 further submitted that beach shacks and huts, were permissible activity under the CRZ Notification, 2011. The Respondent No.1 further stated that such permissions involving any erection of structures or development in CRZ areas or environmental issues, contained in CRZ Notification, were subject to approval by GCZMA and the individuals applying for such permissions need to get the approvals from GCZMA, independently, irrespective of such permissions being granted by the Respondent No.1 under Clause (C) of the shack policy. The Respondent No.1 therefore submitted that shack policy was not violative of the CRZ notification. Therefore, the Respondent No.1 sought dismissal of the Application.

The Respondent No.3 submitted that the shack policy was received from the Director of Department of Tourism on 27.8.2013 and accordingly site inspection of various beach stretches were carried out by its Members and said shack policy was discussed in 90th Meeting of GCZMA on 7.9.2013, and only thereafter necessary approval was accorded to the shack policy on certain conditions. GCZMA further submitted that they received only two Applications for beach shacks in private properties and had dealt with them as per the Law. It was further stated that the Coastal Zone Management Plan (CZMP), had been Notified by the MoeF in the year 1996 and the said plan was valid up to 31.1.2015.

GCZMA further submitted that temporary seasonal structures in Goa were permitted as exception to the main provisions of CRZ Notification and therefore, the procedure under Clause 4.2 of the Notification, would not be applicable for such temporary structures. GCZMA further submitted that the High Court of Bombay at Goa, in PIL No.20 of 2012, vide order dated 20.12.2012, had clearly held that " GCZMA is entitled to permit erection of purely temporary structures between the months of September to May in CRZ-III, areas, subject to compliance of the said regulations."

The Respondent No.4, during pendency of the Application, had applied to the GCZMA for necessary permission and had obtained the same. It was the submission of the

Respondent No.4 that they should be allowed to operate the shack as they had the necessary permission under the CRZ Notification.

The issues which required determination were as follows:

i) Whether the shack policy can be challenged before the NGT and if yes, whether policy is complying with CRZ Notification, 2011?

ii) Whether temporary seasonal structures in the CRZ areas require permission of GCZMA and if whether present practice of granting NOC is as per CRZ Notification, 2011?

iii) Whether any specific directions are required to be given to the Authorities?

The shack policy was for the period of 2013-2016. The Tribunal had perused submissions made by the Respondent Nos.1 and 3 and noted that this policy was evolved as per directions of the High Court in (PIL) Writ Petition No.9 of 2011 and in Writ Petition No.167 of 2007. The Respondent No.1 also submitted that this shack policy was under challenge before the High Court. Under these circumstances, it was found that the prayer relating to challenge to the shack policy in the present Application could not be entertained by the Tribunal so as to avoid any possible conflict of judicial decisions.

The learned Senior Counsel appearing for other private shack owners argued that seasonal temporary structures were allowed in the coastal areas of Goa by specific exemption given under Clause (8) of the CRZ Notification, 2011 and it was settled legal proposition that exemption if given separately need not be bound by earlier prescribed provisions of the said Regulations.

Aleixo plead that though the CRZ Notification, 2011 allows purely temporary and seasonal structures in CRZ areas of Goa, it was his contention that as per Clause 4.2 (ii) such proposal needed to be examined by GCZMA, and subsequently, ought to be sent with recommendation to the MoEF, as these projects were not covered under EIA Notification. The Respondent No.3 argued that the CRZ Notification, 2011 had carved out certain relaxation/exception for the areas requiring special consideration as in Clause 8(3)(v) and therefore, such exceptions cannot and need not be regulated as per procedure laid down in Clause 4.2.

Accordingly, Issues-I and II were answered.

The Tribunal had directed GCZMA to place on record information about permissions sought and granted by GCZMA and it was submitted by GCZMA that only two Applications were received for construction of shacks. This information submitted by

GCZMA clearly supported the allegations made by Aleixo that those temporary seasonal structures like shacks were being developed in CRZ areas without permission of GCZMA.

The Tribunal was of the opinion that certain directions were required to be given to regulate such seasonal temporary structures in sustainable manner without affecting the coastal environment of Goa, on basis of the principles of Precautionary principle as mandated under Section 19 and 20 of NGT Act, 2010. The Application was accordingly partly allowed with following directions:

i) The seasonal temporary structures, as permitted under the CRZ Notification, shall be regulated by GCZMA by granting necessary permissions, subject to compliance of the guidelines formulated by GCZMA and other provisions of CRZ Notification.

ii) GCZMA, shall put all the permissions granted to the shacks and other temporary structures on its website immediately within two days from the date of issuance of permission for public information. The guidelines developed by GCZMA shall also be put on the website for public information along with all relevant material.

iii) GCZMA, shall immediately carry out a rapid survey to tentatively identify the sand dunes present in the villages with CRZ-I areas in the coastal areas of Goa and locate them on map, within a period of four weeks and shall not issue any permission in such areas until detail survey conducted by NIO, is completed.

iv) The shacks which have been constructed in current season, shall apply to GCZMA for CRZ clearance in next two weeks and the Authority shall examine such Applications within further next two weeks, for grant/refusal of such permissions. In case, the shacks providers do not apply for GCZMA permission in two weeks, the Respondent No.1, shall revoke their permission and GCZMA, shall issue necessary directions for dismantling of the shacks. GCZMA and Respondent-1 shall immediately give public notice clearly mentioning the directions of Tribunal in this regard.

v) GCZMA, shall carry out study to assess the carrying capacity of different beaches in State of Goa, for providing such shacks and other temporary structures, in environmentally sustainable manner to protect the coastal environment, based on the 'precautionary principle' in next six months and based on findings of this study, the permissions for the year 2015-2016, only shall be granted.

vi) MoEF shall cause inspection of compliance of these directions in first week of February and submit a detailed report before the scheduled date.

The Application No. 03/2014 along with all the Misc Applications were accordingly disposed of. No costs. The Application was listed for compliance/directions on 14/2/2015.

George B. Fernandes

Vs.

The State of Goa & Ors.

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

Keywords: construction activity, Goa Coastal Zone Management Authority (GCZMA), Section 14 & 15, National Green Tribunal Act

Application dismissed

Dated: 17 December 2014

The Applicant filed this Application challenging the order dated 8-4-2013 passed by Goa Coastal Zone Management Authority (GCZMA)-Respondent No.4, thereby granting permission to Respondent Nos.5 and 6 for regularization of alleged illegal structure constructed by them, on the property under Survey No.146/28 of Calangute village, Bardez Goa. The Applicant stated that the said property was in CRZ area being within 500m from High Tide Line (HTL). Respondent Nos.5 and 6 demolished the old existing structure situated in the said property belonging to one Mrs. Maria Madgalene Sequeira and constructed a new building thereupon. The Applicant alleged that this construction was illegal and he had lodged complaints with Respondent Nos.1 to 4 as regards the said construction. Based on his complaint when the Authorities initiated action, the Respondent-5 filed W.P. No. 176/2009 in High Court of Bombay at Goa, and the Applicant filed application for intervention. Thereafter, the Respondents withdrew the Writ Petition with liberty to approach Apex Court. The Respondent-5 then approached Apex Court by filing W.P. No. Civil 511/2009 wherein also, the Applicant filed application for intervention, and finally, the Respondents withdrew the writ petition. The Applicant stated that thereafter the Respondent- 5 and 6 filed Writ Petition No. 807/2009 in the High Court of Bombay at Goa against the directions for demolition of structure issued by and when the said petition came up for hearing before the High Court on 11-10-2012, Respondent Nos. 5 and 6 submitted that they filed an Application for regularization dated 28-5-2009 before the GCZMA which is under consideration and therefore, withdrew the petition with liberty to challenge the order, if required. The GCZMA had made a statement before the High Court that they shall consider the regularization Application in accordance with the law expeditiously.

Respondent Nos.4, 5 and 6 raised preliminary objections on ground of limitation as well as selection of appropriate remedy under the N.G.T. Act. It was the contention of the

Respondent Nos.5 and 6 that the entire Application had been drafted as an Appeal and even the prayer was specific for quashing and setting aside the impugned order dated 8-4-2013 and therefore, this was not an Application under Section 14 and 15 of N.G.T. but clearly an Appeal under Section 16 of N.G.T. Act. The learned counsel for GCZMA also argued that the Applicant had challenged the impugned order previously but had failed.

The learned counsel for Respondent Nos. 5 and 6 also raised the plea of limitation as the Applicant himself had submitted on record that the cause of action for filing this Application first arose on 27- 8-2013 when the Applicant first learnt about the impugned order dated 8-4-2013 passed by the Respondent No.4. He contended that even if the Application was considered under Section 14, the Application which was filed on 19-6-2014 was clearly outside the period of limitation of six months and even with additional grace period of 2 months and hence, the Application was time barred. The Application did not have any prayer regarding the relief of compensation or restitution, neither did the Applicant had any locus-standi as stipulated in Section 15 of N.G.T. Act and therefore, section 15 could not be applied in the present case.

The learned Advocate for Applicant tried to canvas that the impugned order was an order for regularization of structure already constructed and as such, did not fall within the ambit of Section 16 of N.G.T. Act. Therefore, it needed to be considered under Section 14 as a dispute where a substantial question related to environment is involved. The learned Advocate also tried to advance an argument that though the High Court on 3rd September 2013 directed the Applicant to approach N.G.T., Applicant had opted for a legal remedy by filing a Misc. Civil Application which was filed for review of the High Court's order. However that Misc. Civil Application was rejected by the High Court on 7th February 2014. It was therefore contended that though the knowledge of the impugned order was received on 27-8-2013, the limitation would trigger only on 7th February 2014 and considering the provisions of Section 14 of N.G.T. Act, the Application was well within the limitation period.

The order dated 3rd September 2013 gave a liberty to the Applicant to file an Appeal against the said order before the N.G.T. The subsequent filing of M.C.A. for review could not give a fresh ground for extension of limitation as the orders of the High Court dated 3rd September 2013 were explicit and clear. The argument of the Applicant that the limitation will trigger only as on 7th February 2014, i.e. date of disposal of the said MCA could not be accepted.

There was no claim for restitution and restoration of environment and therefore, the Application could not be considered under Section 14 or 15 of the N.G.T. Act. Even if the Application was treated as an Application u/s. 14, the same was time barred, even

by considering the date of High Court order i.e. 3rd September 2013 as a triggering point, instead of 27.8.2013 as submitted by Applicant. The Application was dismissed. No costs.

M/s. Pattancheru Environ-Tech Ltd.

Vs

Andhra Pradesh Pollution Control Board & Ors.

Application No. 92 of 2013 (SZ) (THC)

(W.P. No. 3510 of 2009 of the High Court of Andhra Pradesh at Hyderabad)

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

Keywords: treatment of industrial effluents, Common Effluent Treatment Plant (CETP), pipeline project, penalty

Application disposed of with directions

Dated: 17th December, 2014

The applicant's company was incorporated for establishing and running a Common Effluent Treatment Plant (CETP) for treating the industrial effluents generated from industries in the area. With the industrial development in the area, environmental pollution became an issue and a writ petition in W.P (C) No. 1056/1990 was filed in the Supreme Court seeking compensation and directions relating to environmental pollution control. The applicant's company was also impleaded as a party respondent in the said writ petition. On 12.05.1998, the Supreme Court considered the Joint Action Plan (JAP) submitted by the Central Pollution Control Board (CPCB) and directed that the immediate measures as proposed in the said plan was to come into force on 01.06.1998 subject to further order of the court. In course of proceedings, different options were discussed and vide order dated 10.10.2000, the Supreme Court directed the parties to finalize one option pursuant to which the "pipe-line option" was recommended. In November 2000, a revised JAP was submitted before the Supreme Court outlining time frame for the pipe line project which was finally approved for implementing the above mentioned option. The revised JAP proposed Environment Impact Assessment (EIA) study, preparation of Environment Management Plan (EMP) for the pipe line project and Environmental Clearance from Andhra Pradesh Pollution Control Board (APPCB) etc., and only thereafter any further activities were to be taken up. On 06.02.2001, the Supreme Court approved the pipeline project and the period proposed in the revised JAP was submitted before the court.

The respondents had not undertaken the connectivity of the pipeline with STP at Amberpet. The bulk drug manufacturers association made a representation to the

Government to comply with the directions of Supreme Court and to permit CETP, Patancheru to discharge the effluent through a 18 km long 10 pipeline connected to STP, Amberpet.

The 2nd respondent, contrary to the order of the Supreme Court and the observations of the Chief Secretary without issuing any notice to the petitioner, the applicant herein, passed orders on different dates imposing a penalty of Rs. 2,32,62,000/- from November 2007 to October 2008 further stating that if the penalty amount was not paid action will be initiated for the non-compliance of the order of the Supreme Court dated 17.07.2007. In no part of the order dated 17.07.2007 the Supreme Court empowered the 2nd respondent to levy and collect penalty from the applicant. The 2nd respondent by letter dated 06.02.2009 addressed to the applicant's bankers, invoked the bank guarantee and encashed the bank guarantee amount of Rs. 50,00,000/-. The 2nd respondent addressed a letter dated 10.02.2009 to applicant's bankers to freeze the bank accounts of the applicant and requested them to remit the funds available in the applicant's account to the 1st respondent to implement the orders of the Supreme Court. The action of the 2nd respondent was totally in violation of the orders of Supreme Court in W.P. No.441 of 2005, dated 17.07.2007 and the provision of Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) read with Rule 34 of Water (Prevention and Control of Pollution) Rules, 1975 (Water (P&CP) Rules, 1975. As per Rule 34 of the Water (P&CP) Rules 1975, the 1st respondent was liable to issue a notice before passing any direction under Section 33A of the Water Act, 1974. The 2nd respondent did not issue any notice either to the applicant or to the respondents before passing the directions to freeze bank accounts of the Applicant. The action of the 1st and 2nd respondents was also in violation of Articles 14 and 19 of Constitution of India.

The 1st and 2nd respondents filed the reply stating that the application was not at all maintainable and deserved to be dismissed in limini. The appeal remedy had not been exhausted and the application had been filed directly. The penalty had been imposed on the applicant after giving due notice and opportunity for violation of the standards as laid down by the JAP which was approved by the Supreme Court of India.

The Supreme Court of India in writ petition W.P.(C) No. 1056 of 1990 directed the CPCB and the respondent to jointly submit an action plan for containing industrial pollution in Patancheru area. The JAP, 1998 was approved and endorsed by the Supreme Court. The CPCB submitted a comprehensive report on effluents management in Nakkavagu basin during March, 1998 to the Supreme Court. The report indicated four options. On 06.02.2001, the Supreme Court accepted the revised JAP of the project of providing 18 Km pipeline submitted in November, 2000.

The Jawaharlal Nehru Technological University (JNTU), Hyderabad, conducted the EIA studies for the 18 km long pipeline project during March, 2001 and supplementary technical studies during December, 2008 and concluded that there will not be any negative impact on the environment due to discharge of treated industrial effluents into river Musi river. The work of laying the pipelines was completed in the year 2006. The High Court of Andhra Pradesh constituted a Five Member Fact Finding Committee by its order dated 25.09.2003 which was to submit a status report on the Terms of Reference (TOR) based on which appropriate orders could be passed by the Court. The Committee submitted its report to High Court in March 2004.

The Committee observed that the four parameters fixed by the Supreme Court were not sufficient to evaluate the treatment efficiency in clear terms. In furtherance of the orders of the Supreme Court, in a matter that originated under the Hazardous Waste Management, a Supreme Court Monitoring Committee was constituted which made inspections all over the country. In the month of October, 2004, the said Monitoring Committee inspected the applicant's CETP and other areas of Hyderabad and came up with a finding that all the measures of the CETPs were not environment friendly. Thereafter, the respondent imposed stringent standards on industries and CETPs. In the order dated 12.03.2007 passed in W.P.(C). No. 476 of 2005 and 441 of 2005 and batch cases, the Supreme Court suggested that the CPCB and the State Pollution Control Board (SPCB) shall meet to sort out the problem, and submit an action plan. The CPCB and the respondent submitted a JAP to the Supreme Court. The Supreme Court endorsed the action plan and issued an order on 17.07.2007. The Supreme Court directed the APPCB to implement the action plan at the earliest possible time. The impugned orders in the present application were orders issued by the APPCB in due compliance of the orders issued by the Supreme Court.

The respondent denied that the impugned orders were issued without any notice and in violation of the principles of natural justice. In compliance with the directions of the Supreme Court contained in the order dated 17.07.2007, the respondent issued directions to the applicant on 25.07.2007 and to the member industries on 31.07.2007 for effective implementation of the JAP of CPCB and APPCB. The effective date of implementation of the Joint Action Plan was from 01.08.2007 and was completed in January, 2009. At no point of time, the applicant objected to the said directions issued on 25.07.2007. On having accepted the same at that point of time, the applicant could not dispute the same. The respondent had strictly implemented the JAP and the defaulters were penalized as per the said JAP. As the applicant was not complying with the standards stipulated in the JAP, penalty was imposed for the period November 2007 to January 2009.

The conduct of the applicant showed that inspite of the orders passed by the respondent from March, 2008 onward in respect of exceeding the prescribed level of standards, the applicant paid no regard to the same and on the other hand flagrantly continued the violations resulting in the passing of the various orders. Since the applicant did not pay the penalty imposed and not complied with the standards, the respondent vide letter dated 04.02.2009 invoked the Bank Guarantee for Rs.50 lakhs furnished by the applicant.

The following questions were formulated for decision. (i) Whether the applicant was entitled for a declaration that the action of the second respondent in Proceedings No. PTN- 25/PCB/ZO/RCP/2005 dated 06.02.2009 as arbitrary, illegal and without jurisdiction and declare that the second respondent has no authority to levy penalty against the applicant. (ii) Whether a direction had to be issued to the respondent/Board to refund the amount collected against the bank guarantee and release the frozen bank accounts. (iii) To what reliefs the applicant was entitled?

The learned counsel on behalf of the Applicant submitted that the applicant should comply with the standards strictly once the connectivity with STP was given. It was not in dispute that there was no connectivity during the relevant period. Hence, penalty was not imposable on the applicant for nonconforming to the outlet standards. Therefore, the outlet norms must be complied with only after the connectivity with the STP was given. Thus, the imposition of penalty for non-compliance of the outlet standards when there was no connectivity with the STP was contrary to the express direction of the Apex Court and thus it was not sustainable. It was also submitted that the applicant could not be made responsible for any alleged breach of the inlet standards as the applicant had no control over the same. The responsibility of the applicant was only to ensure compliance of CETP with outlet norms irrespective of the quality of effluent received for treatment. The respondent authorities were responsible to monitor the quality of inlet which was provided by the member-industries. For imposing penalty, the 1st respondent relied on the JAP and stated that the JAP provided for imposing the penalty for violation of the standards also. Apart from all the above, the quantum of penalty of Rs. 2,32,62,000/- on the applicant was harsh. While the penalty of Rs. 30/- per KLD was imposed on the industry for non-compliance, a penalty of Rs. 300/- per KLD was imposed on the applicant for the same incident of noncompliance which would be contrary to the principles of justice.

The learned counsel for the respondents submitted that the imposition of penalty as found in the order was perfectly correct and valid. As seen above, the respondent/ APPCB has imposed a penalty of Rs. 2,32,62,000/- at Rs. 300/- per KLD on the applicant/CETP for non-compliance of the standards both outlet and inlet during the period from April, 2008 to October, 2008.

The outlet standards were to be complied with by the applicant after providing connectivity with the STP which was a part of the Action Plan. Since Amberpet is far away from the location of the applicant's CETP, a project of laying pipeline for a distance of 18 km was undertaken by the HWSSB in the year 2001 and the same was completed in the year 2009. Thus, it was quite clear that during the relevant period, i.e. 11/2007 to 10/2008 there was no connectivity. Thus, imposition of penalty for non-compliance of the outlet standards during the period, in the absence of any connectivity with STP would be contrary to the order of the Apex Court. Hence, the claim by the APPCB in that regard is liable to be set aside

The Tribunal had to necessarily negate the contentions of the applicant's side for the following reasons: A Monitoring Committee appointed by the Apex Court of India placed a JAP pursuant to which the proposal for laying a pipeline to carry the treated industrial effluent of the Applicant's CETP and then on to STP was undertaken. In the year 2004, the said Monitoring Committee appointed by the Apex Court inspected the applicant's CETP along with others when it was noticed that they were not meeting the standards.

It was made clear that if the CETP failed to comply with the prescribed standards within the stipulated period of 30 days, legal action would be initiated under Section 33-A of the Water (Prevention and Prevention of Pollution) Amendment Act, 1988 for closure of the facility in the interest of public health and environment. In order to ascertain the above compliance, a review meeting was convened on 14.12.2005 and further directions were issued on 26.12.2005.

The Apex Court made an order on 12.03.2007 in the aforesaid writ petitions that both CPCB/SPCB should have a meeting to solve the problem. Accordingly, a meeting was convened on 19.04.2007 wherein it was decided to carry out inspection of JETL/PETL and related industries jointly by CPCB/SPCB to come out with specific recommendations. In a meeting convened on 02.07.2008 the representative of the applicant's CETP also participated and expressed their views. The Action Plan proposed in the Joint Inspection Report was finalized by both the CPCB/APPCB with due consideration with consultations with the applicant.

The applicant's CETP was a party to all the above meetings wherein it was decided that the applicant CETP should accept the effluent from the member industries (inlet) not below the approved standards, which were applicable to CETP. The contention put forth by the applicant that the imposition of penalty at Rs. 300/- per KLD on the applicant was contrary to the principles of justice had to be rejected because this rate was actually fixed by a Committee which filed the JAP and was also approved by the Apex Court. Also, as could be seen, there was no connectivity with the STP as held

supra and therefore the applicant was not liable to pay and the respondent cannot impose any penalty for the outlet for the said period.

Hence, it was declared that the impugned proceedings of the 2nd respondent dated 06.02.2009 was set aside only to the extent of the penalty for non-compliance of the standards for outlet during the period from November, 2007 to October, 2008 and thus the applicant was liable to pay the penalty in respect of non-compliance of the standards for inlet during the period November, 2007 to October, 2008 to which extent the proceedings of the 2nd respondent dated 06.02.2009 was valid and executable. The 2nd respondent was directed to serve a fresh proceedings on the applicant in respect of the penalty for non-compliance for inlet for the period from November, 2007 to October, 2008 within a week and the applicant was to pay the calculated amount within a period of 3 months from the date of service of the proceedings. Accordingly, with the above directions the application was disposed of. No cost.

Vinod Kumari Kori

Vs.

State of Madhya Pradesh & Ors.

Original Application No. 338/2014 (CZ)

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

Keywords: construction, Dharamshala, Eco Sensitive Zone (ESZ), Environmental Clearance

Original Application disposed of

Dated: 23 December 2014

This application pertained to the construction being carried out by the Respondents outside the gate of Bandhavgarh National Park at Khasra No. 245 in Village Tala, Tehsil Maanpur, District Umaria in Madhya Pradesh. As per the allegations made in the application, the construction was being carried out for constructing a Dharamshala which as per the allegations of the Applicant is located in the Eco Sensitive Zone (ESZ) and which is prohibited under law.

A Misc. Application bearing No. 624/2014 was filed seeking interim direction against the construction. The Learned Counsel for the Respondent State submitted an undertaking that till the factual report is received, they shall not carry out any construction and shall maintain the status-quo.

During the course of hearing, Learned Counsel appearing for the Respondent State placed two letters of the District Collector dated 15.12.2014 and 19.12.2014. He submitted that the construction was not that of any Dharamshala but was a memorial 'Smarak' which was being constructed in memory of 'Sant Shiromani Shir Senji Maharaj'. Learned Counsel submitted that the undertaking which was given shall be maintained by the Respondent State and no further construction shall be allowed in the site in dispute till either permission is granted from the concerned authorities or an alternate site is allocated in consultation with the Forest Department / Chief Wildlife Warden.

The Tribunal accepted the undertaking which was furnished by the Learned Counsel for the State and till that time either of the two conditions were fulfilled i.e. either permission or Environmental Clearance granted by the concerned authorities in

accordance with law, a different location over which construction is permissible is identified, the work on the disputed site shall remain stopped. In case no such permission was granted in the disputed site, the Respondent shall restore the site to its original form within a period of six months. The Respondents were directed to indicate the decision in this behalf on or before 16.03.2015. The Respondents were also directed to carry out a survey with regard to the existing constructions and in case any construction is found within the prohibited / restricted zone constructed post the declaration of the EIA Notification, 2006 of the MoEF, the Respondents were directed to take action in accordance with law.

With the aforesaid observations, the Original Application No. 338 of 2014 stood disposed of. Matter was listed for compliance on 16th March, 2015.

Mr. Naim Sharif Hasware

Vs.

M/s Das Offshore Engineering Pvt. Ltd. & Ors.

Application No. 15(THC)/2014

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

Keywords: injunction, restitution, Environmental Clearance (EC), CRZ Clearance, State Environmental Assessment Committee (SEAC)

Application disposed of with directions

Dated: 24 December 2014

Originally, Naim Sharif Hasware filed a suit bearing Regular Civil Suit R.C.S.No.196 of 2013 in the Court of Civil Judge, Senior Division at Raigad-Alibag. He sought reliefs of declaration and mandatory injunction. He, however, described in the pleadings that certain licences issued to the Defendant No.1, for construction of project, were illegal and withdrawal of condition No.3 (iv) vide letter dated January 31st, 2012, issued by the Defendant No.3 was illegal. He also urged that illegal acts of Defendant No.1 should be cancelled on the ground that the same were in breach of terms of the lease agreement dated 21st August, 2009, entered between Defendant No.1 and the Defendant No.2. The suit was transferred to the Tribunal in view of the order dated 28.11.2013.

Around 2009, Naim had done certain contractual work for M/s Das Offshore Co. In last week of June, 2010, M/s Das Offshore Co. directed him to stop the work, which he had accepted on contract basis. M/s Das Offshore Co. had undertaken a project work at Raigad, taluka Mhasla, District Raigad for assembling and offloading certain structures associated with the work of offshore Oil and Natural Gas extraction at Rajapuri creek. For such purpose, M/s Das Offshore Co. desired to construct a wall of barges and jetty at Rajapuri creek at Rohini within reclaimed area. Naim was going ahead with the work which had to be suddenly halted due to instructions of M/s Das Offshore Co. on 26th June, 2010. So, the workers of Naim, his machinery and all the expenditure incurred for the work became defunct. He suffered monetary loss.

M/s Das Offshore Co. had entered into a lease agreement with Maritime Board to carry out certain activities at Rajapuri creek. It was agreed that Maritime Board would give facility for sea-front situation at Rohini to M/s Das Offshore Co., in order to carry out the work of project. It was, however, agreed that M/s Das Offshore Co. ought to obtain

Environmental Clearance (EC), required for construction of fabrication yard, within 24 months from the date of lease-deed, or otherwise, the lease agreement, would be deemed as cancelled. In case, M/s Das Offshore Co. wants any extension of time, at least sixty days prior to lease period would come to an end, it will have to apply for extension period sought to be applied for by the said Company. However, M/s Das Offshore Co. failed to comply with such legal obligations to seek extension of lease period, though no E.C. was obtained from MoEF.

M/s Das Offshore Co. started excavation of land, filling of land and blasting work at the site by engaging various contractors without prior permission of the various Govt. departments. M/s Das Offshore Co. failed to comply with various conditions shown in the EC. Hence, Naim made complaints to Maritime Board and other Govt. departments about illegal activities of M/s Das Offshore Co. They did not pay any heed to his complaints. One of such violation was that the Environment Department, categorically imposed condition No.3, that no land development including reclamation, shall be carried out by M/s Das Offshore Co. For no reason by letter dated 31st January 2012, Environment Department revoked that condition by issuing corrigendum and deleted 'the said condition'. According to Naim unilateral deletion of above condition was a clear violation of the Environmental Laws and was arbitrary action on part of the SEIAA and Environment Department.

According to M/s Das Offshore Co., Naim had challenged EC dated 17th January 2012, which was barred by limitation. It was denied that the conditions of EC were violated by M/s Das Offshore Co. The EC was granted on 17th January, 2012, but foreshore activities required land reclamation, therefore, condition 3(e) of the EC was deleted on 31st January, 2012, at the request of M/s Das Offshore Co. According to the Respondent No.1, EC had been granted on 17th January, 2012 by imposing various conditions, including the condition that no land reclamation shall be carried out, but at a later stage the Respondent No.1 made out a case that without creating a water frontage, activity of project could not be viable and therefore, by letter dated 31January 2012, the condition No.3 (iv) was deleted from the EC dated 17th January,2012. The Respondent No.1, therefore, emphatically denied that deletion of such condition at subsequent stage, was illegal and without any authority and was unsustainable, because same was not done on basis of any EIA study. On these premises, the Respondent No.1 sought dismissal of the Application.

By filing affidavit on behalf of the Respondent No.3, 6 and 7, Environment Department (Govt. of Maharashtra) resisted the Application. According to them, the SEAC appraised the project and recommended it to the State Environmental Impact Assessment Authority (SEIAA).

The environmental issues arising, which can be culled out from record of the present case, may be stated as follows:

I) Whether the Environmental Clearance (EC), namely; request for allotment of waterfront and natural tidal area for setting of captive yard phase-I, at village Rohini, without considering the fact that previously M/s Das Offshore Engg. Pvt.Ltd had already applied for E.C. to MoEF along with Rapid Environment Report and therefore the project could not be taken of altogether as "new case"?

II) Whether or not it was legal obligation of SEAC and SEIAA, to appraise the project in the light of earlier deliberations/objections considered by the Expert Committee, in its Meeting dated 9/10th November,2010 by MoEF, as per letter dated 7th December, 2010, before completing process of appraisal and the impugned EC?

III) Whether the project in question has caused environmental degradation, loss to environment and destruction of CRZ area?

IV) Whether it is now essential to issue Mandamus to remove all structures, land reclamation by the Respondent No.1, for the purpose of restitution of the property or the land reclamation in particular, or any other relief in terms of compensation needs to be granted for restitution of Environment?

Re: Issue (i) & (II) : CRZ Clearance was originally sought from MoEF for offshore facilities by the Respondent No.1. Respondent No.1, M/s Das Offshore Co. had already submitted an Application for CRZ Clearance to MoEF.

Two things were clear, namely; (a) the site was found surrounded with mudflats, mangroves and there was absence of justification for selection of the site, and (b) the project required environmental and CRZ Clearances, which therefore, needed ToR and other procedure under EIA Notification to be complied with. The project in question could be considered as project 'B' yet, it was necessary for the Respondent No.1, to follow the procedure of going through Stages of Appraisal. This Appraisal will entail screening of an Application seeking Environmental Clearance (EC), by the Appraisal Committee, whether project activity requires Environmental study for preparation of Environmental Impact Assessment (EIA) for its appraisal prior to grant of EC, depending upon nature thereof.

As per O.M. dated 8th February,2011, where such projects were under consideration of the MoEF could be sent only by the MoEF to the State Authority. Projects which attracted EIA Notification and are categorized as 'B' projects, shall be considered under the Environmental Impact Assessment (EIA) Notification, 2006 by SEAC after obtaining prior recommendations from the concerned CZMA. The provisions of EIA Notification dated 14th December, 2006, are attracted and as such O.M. dated 24th February, 2011,

ought to have been considered by the SEAC and SEIAA, before recommendation/ appraisal of the project in question. Not only that, but the issues raised by MoEF were not addressed in any justifiable manner, yet the project was granted approval by SEAC and SEIAA. In any case, the SEAC could not have treated the project as a "new case".

There was hardly any justification as to why all of a sudden, even though MCZMA letter is very specific regarding the scale, purpose and nature of reclamation which can be carried out, such condition was summarily withdrawn by SEIAA and was deleted vide communication dated 31st January,2012. It was therefore evident that the SEAC had appraised the project, even when such proposal was still under consideration of MoEF. Thus, in view of failure to observe basic principles of natural justice, the decision of SEAC/SEIAA was illegal and untenable. This answered both the above Issues, referred to above.

Re: Issue (iii): The project activity was admittedly waterfront related activity for the purpose of installation of workshop and other construction, proposed repairs of equipments or Barges etc. and oil channels on various ONG platforms. The written statement of Respondent No.1, showed that commissioning of Rohini fabrication yard related to development of offshore fabrication yard. All the facilities were proposed to be developed over reclaimed area. The boulders and rocks were available from nearby hills, which were approved by the Revenue Department, as borrow area. From aforesaid project activity, as understood by SEIAA, definitely was harmful and detrimental to environment.

Respondent No.1, gave no justification either for selection of site or other two points raised by MoEF. The project activity could have destructed mangroves and the mudflat, was the clear message given to the Respondent No.1. Respondent No.1, was well aware of this difficulty and precarious situation, which he desired to obviate. It also appeared from the record that the Respondent-1 also started the development/ construction activities prior to obtaining the EC, and accordingly, MPCB had issued stop work order notice. The SEAC/SEIAA had not considered this aspect in their appraisal. He thus, committed suppression of facts or fraud. Consequently, third issue was answered in the affirmative.

Re: Issue (iv): MPCB issued stop-work order, in the meanwhile, but it was vain. In pursuance to directions of the Tribunal, joint inspection was carried out in presence of representative of the Respondent No.1. The project was practically completed without considering environmental implications and loss of environment. The Respondent No.1, was, therefore, liable to face the legal consequences for environment degradation, because due to illegalities committed while implementing the project in question.

In the result, the Application was partly allowed. The prayer for Mandamus for restitution of the property was rejected. The Respondent No. 1 had to pay amount of Rs. 25 crores, as penalty for environment damages/ compensation for the purpose of restoration of environment on account of destruction. Respondent No.1 was to deposit this amount with Environment Department, Government of Maharashtra, within 4 weeks else the Collector, Raigad would seal the premises of Respondent- 1 and recover the amount by auction of all property of Respondent-1. Out of these amounts, amount of Rs. 5 crores be transferred to MCZMA which shall be used for mangroves plantation purpose, preferably in project area, and Rs.20 crores be credited to a separate account by State Environment Department, for development of environment programme. The Respondent No.1 was to pay costs of the litigation being Rs.1 lakh to each of the Respondent and to the Applicant within 4 weeks. Accordingly the application was disposed of.

Sukrut Nirman Charitable Trust

Vs.

The State of Maharashtra & Ors.

Application No. 75(THC)/2014(WZ)

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

Keywords: Animal Slaughtering, Slaughter House, Precautionary Principle, Environmental Pollution, Hazardous waste, Pollution, Maharashtra Pollution Control Board (MPCB)

Application partly allowed with certain directions

Dated: 24 December 2014

This Application was filed by the Applicant as P.I.L. No. 44/2012 in the High Court of Judicature at Bombay, Bench at Nagpur which was transferred to this Tribunal vide Order of the Division Bench dated 18th June 2014. The Applicant is a Charitable Trust and claimed to be working in the field of Animal Welfare Laws and alleges environmental damage caused due to the slaughter house activities. The Applicant sought to challenge illegal setting up of meat processing and cold storage units of Respondent Nos. 11 and 12.

The Applicant submitted that Respondent No.11 and Respondent No.12 obtained the consent to establish and operate the industrial units from the Respondent No.7 i.e. Maharashtra Pollution Control Board (MPCB) under the provisions of Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981 and authorization under the Hazardous Waste (Management and Handling) Rules 1989 and amended Rules 2000. The Applicant submitted that Respondent-Nos.11 and 12 were granted consent for a particular capacity of meat processing by the MPCB without proper appraisal of their Applications, manufacturing process and also, the possible pollution sources and quantification thereof. The Applicant submitted that in case of Respondent No.11, the consent to establish did not even contain anything about disposal of solid waste. The Applicant claimed similar instance of non assessment of pollution sources and quantification thereof in case of Respondent No.12.

The Applicant claimed that the MPCB had not verified from where both these units would source their raw material i.e. slaughtered animals. It was the contention of the Applicant that the Respondent Nos.11 and 12 would procure the raw material from illegal slaughtering of animals being practiced elsewhere and the industrial activities of Respondent Nos. 11 and 12 would encourage such unorganized and illegal slaughtering of animals, causing wide spread pollution and environmental damages.

The Applicant, therefore, submitted that the MPCB should have applied the 'precautionary principle' which has been accepted as one of the principles of environmental governance in the country by the Apex Court, in order to verify the availability of raw material from the authorized and environmentally sound slaughter houses before grant of consent to establish and even during operation of units. Applicant therefore claimed that the MPCB failed to have proper due diligence and Appraisal of the pollution caused, directly or indirectly, by the activities of Respondent Nos. 11 and 12 before granting them the consent.

The Respondent No.11 submitted that the Respondent-Industry started functioning from 13th April 2012. MPCB had issued consent to operate to the unit dated 27th March 2012 which was valid upto 31st January 2015. The Respondent further submitted that there was neither any slaughterhouse within the premises of Respondent-unit nor were any animals slaughtered in the premises of the Respondent. The Respondent claimed that they had taken necessary permissions from all the regulatory agencies and they were strictly adhering to the terms and conditions specifically laid therein.

The contesting Respondent claimed that the contention of Applicant that he is procuring the raw material i.e. slaughtered animals from the illegal sources which was resulting in pollution was without any basis and evidence. The Respondents submitted that the raw material was received by Respondent No.11 in his factory in sealed containers by refrigerated trucks and vans in very hygienic condition. With the result that no air or water pollution, what-so-ever, was caused during transportation of the meat. Similarly, the finished product was packed in the sealed container and then transported by means of refrigerated vans resulting in zero air and water pollution. The Respondent No.17, therefore, claimed that there was no pollution caused due to their industrial activities and therefore, the Respondents prayed for dismissal of the Application.

MPCB further submitted that the Respondent No.12 was given consent to establish on 23-11-1998 in Green category for cold storage unit. Subsequently, consent to establish for expansion was granted on 17-5-2008 in Green category and amended consent to operate was granted to the unit on 23-6-2008. MPCB filed another Affidavit subsequently and submitted that this consent is further amended on 29-11-2014 with de-boning capacity

and by changing industry category from Green to Red. The MPCB further submitted that they had conducted inspection of both the Respondent Nos. 11 and 12-Industries on 27-9-2014 and in case of Respondent NO.11, it was observed that the industry had not provided mechanical equipments for aeration treatment. It was observed from that reports that several parameters like suspended solid BOD, COD, chlorides etc. were exceeding the limits.

The following issues needed to be resolved for final adjudication of the matter.

1) Whether the sourcing of the raw material from slaughter houses need to be appraised by the MPCB before allowing any downstream operations like meat processing, based on precautionary principle?

2) Whether the necessary environmental safeguards are prescribed for the Respondent-Industries by the MPCB through its consents?

3) Whether the industries have provided necessary pollution control system to achieve the specified norms?

4) Whether any directions are required to be given to the Authorities or industries?

Issue No.1: It was the claim of Respondent Nos.11 and 12 that they brought the raw material i.e. slaughtered animals from outside and there were no slaughtering activities carried out in the industrial premises. The main contention of the Applicant was that the operation of both Respondents would require about 1000 M.T. p.m. of slaughtered animals and such slaughtering, if not done at the authorized place, with appropriate pollution control arrangements, would cause large scale pollution. The Applicant, therefore, contended that it was the duty of the Regulating Agency i.e. MPCB to verify the sources of such raw material on the precautionary principle. At the same time, the Applicant contended that it is also the responsibility of the industry-Respondents to declare the sources of their raw material. Respondent Nos.11 and 12 negated the claim of the Applicant that they were sourcing their raw material from unauthorized sources and instead pleaded that the Applicant should support his charges/claims by substantial information.

MPCB submitted that as a part of general appraisal process, the sources of raw material was not verified by the Board. The slaughtering activity has been identified one of the major polluting activity and the Apex Court has issued several directions to control of the pollution from time to time. There was a justification in the argument of the Applicant that the MPCB should have appraised and monitored the sourcing of raw material from the slaughter house based on the precautionary principle and onus of proof on the Respondents. Therefore, issue No.1 was answered in the AFFIRMATIVE.

Issue No.2: The consents had been amended by certain addition or deletion without much emphasis on inclusion of appropriate environmental safeguards. Even when the matter was pending before the Tribunal, the consent of Respondent No.12 dated 23-6-2008 was amended from Green to Red category with an increased capacity of meat processing. It was also observed that enforcement and compliance of all these conditions is not up to the mark. The MPCB needed to review the consent conditions in respect of both these industries in a comprehensive manner to include the necessary conditions and safeguards and therefore, the issue No.2 was answered in the NEGATIVE.

Issue No.3: The Industrial operation of Respondent No.11 and 12 generate significant amount of Solid Waste which was generally in the form of bones. The MPCB made it mandatory that this solid waste needed to be disposed to the bone mills for further reuse and processing. In spite of the specific allegations, the MPCB had not come on record with the actual quantities of solid waste generated. During the final arguments the MPCB was asked about the performance of the effluent treatment plan (ETP) in view of its critical observations in its visit reports dated 27-09-2014. The MPCB had filed Affidavit on 12th November 2014 and it was observed that the analysis reports of 27-11-2013, 24-3-2014 had been annexed, which showed that certain parameters were exceeding the standards. The visit reports when read with the analysis reports indicated that all was not well with the pollution control systems at both the industries. Accordingly, the issue No.3 was answered in NEGATIVE.

Issue No.4: 20. Certain specific directions were required to be given in keeping with precautionary principle, under the provisions of sections 19 and 20 of NGT Act, 2010, for ensuring environmental compliance and sustainable development.

Accordingly, the Application was partly allowed with following directions:

1) The MPCB was to direct the Respondent Nos.11 and 12 to maintain record of sourcing of slaughtered animals along with necessary details like consent/clearance available with those slaughtered houses, based on the precautionary principle and burden of proof principle laid down by the Apex Court. These records shall be verified by MPCB during its inspections.

2) The Member Secretary of MPCB shall review the environmental performance and the consents issued to both these industries and issue appropriate time bound directions for upgradation of pollution control systems and also, issue necessary amended consents in next four weeks. All the compliances were to be made by industries in four months. In case of failure of industry to ensure substantial compliance in stipulated time, MPCB was to issue closure directions to the industry, which could not be revoked.

3) The MPCB was to visit these industries on bimonthly basis for next two years to ascertain the compliance of consent conditions. The Industries were to be directed to maintain the necessary records of the solid waste generation and disposal which would be verified by MPCB officials during their inspections.

4) The Respondent Nos.11 and 12 were to pay the costs of Rs.25000/- each to the Applicant towards the cost of the Application.